

V.S. DREAM COACHING

Year – 2026



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know something
nobody else knows**

NO. 1 OF 2026

NEWSLETTER

JANUARY 2026

INDEX

S.N.	Subject
1.	UGC Regulations, 2026
2.	President's Address to Parliament
3.	Republic Day, 2026
4.	Padma Awards, 2026
5.	United States intervention in Venezuela
6.	Economic Survey, 2026
7.	U.P. Cabinet Decisions January, 2026
8.	Supreme Court Cases
9.	Allahabad High Court Cases
10.	Study Material-G.K. (Dual Government in Bengal)
11.	Study Material-Language (Synonyms and Antonyms)
12.	Current Affairs Jan. 2026

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NEWSLETTER

JANUARY 2026

1. UGC Regulations, 2026

Introduction

On **13 January, 2026**, the University Grants Commission has notified the University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, aimed at tackling caste-based discrimination in higher education institutions (HEIs). These rules aim to eliminate discrimination on campuses and ensure that students, teachers, and staff from all backgrounds feel safe, respected, and supported.

University Grants Commission

The University Grants Commission (UGC) is a statutory body responsible for the coordination, funding, and maintenance of standards in higher education in India. It was established to ensure uniform quality and systematic development of universities across the country.

- The idea of a national higher education system originated from the **Sargeant Report, 1944**.
- A University Grants Committee was formed in 1945 to supervise Aligarh, Banaras, and Delhi Universities.
- By 1947, its jurisdiction was extended to all existing universities in India.
- The University Education Commission (1948) chaired by **Dr. S. Radhakrishnan** recommended restructuring it on the British model.
- In 1952, the Union Government designated the University Grants Commission to oversee grants for higher education institutions.
- The UGC was formally inaugurated in **1953 by Maulana Abul Kalam Azad**.
- It became a statutory body in 1956 under the **UGC Act, 1956**.
- The UGC is headquartered in New Delhi.
- It consists of a Chairman, Vice-Chairman, and ten members appointed by the Central Government.
- Its main functions include grant allocation, advising on higher education reforms, and maintaining academic standards.
- Present Chairperson of UGC is Vineet Joshi

Key Provisions of UGC Regulations, 2026

- **Broad Coverage of Caste-Based Discrimination:** The regulations define caste-based discrimination as any unfair or biased treatment against Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), thereby explicitly extending legal protection to OBCs and correcting a major omission in the earlier draft framework.
- **Expanded Definition of Discrimination:** Discrimination is defined as any unfair, biased, or differential treatment, whether explicit or implicit, on grounds such as caste, religion, race, gender, place of birth, or disability, including acts that impair equality in education or violate human dignity.
- **Mandatory Equal Opportunity Centres (EOCs):** Every higher education institution is required to establish an Equal Opportunity Centre (EOC) to promote equity, social inclusion, and equal access, and to address complaints related to discrimination on campus. Each institution must form an Equity Committee under the EOC, chaired by the head of the institution, with mandatory representation from SCs, STs, OBCs, persons with disabilities, and women, ensuring inclusive decision-making.
- **Reporting and Compliance Framework:** EOCs must submit bi-annual reports, while institutions are required to file an annual report on equity-related measures to UGC, strengthening institutional accountability. The regulations place a clear duty on institutions to eradicate discrimination and promote equity, with the head of the institution made directly responsible for effective implementation and compliance.
- **National-level Monitoring Mechanism:** UGC will establish a national monitoring committee comprising representatives from statutory bodies and civil society to oversee implementation, review complaints, and suggest preventive measures, meeting at least twice a year.
- **Penalties for Non-compliance:** Institutions violating the regulations may face debarment from UGC schemes, prohibition on offering degree, distance, or online programmes, or even removal from UGC recognition, making the rules enforceable rather than advisory.

How Do the Regulations Define Discrimination?

- **Conceptual Clarity:** Defines discrimination as exclusion, restriction, or differential treatment.
- **Scope Expansion:** Covers social, academic, and institutional spaces.
- **Operational Reach:** Includes both direct actions and systemic practices.

- **Institutional Accountability:** Fixes responsibility on authorities, not just individuals.

Ombudsperson in New UGC Rules 2026

An Ombudsperson is an independent authority responsible for hearing appeals related to equity-based grievances when a complainant is not satisfied with the decision taken by the institution's internal mechanisms.

- The Ombudsperson acts as a neutral and impartial appellate authority.
- Students or staff can approach the Ombudsperson if their complaint regarding discrimination, exclusion, or unfair treatment is not adequately resolved by the Equity Committee.
- The Ombudsperson ensures transparency, fairness, and timely justice.
- **Decisions of the Ombudsperson are binding on the institution.**

Equal Opportunity Centre

- Equal Opportunity Centre ('EOC') is a campus body that ensures fairness, inclusion, and equal opportunities for all students and staff while addressing discrimination issues.
- Every HEI is now required to set up an EOC, responsible for:
 - Implementing equity related policies and programmes
 - Providing academic, financial, and socio emotional guidance
 - Building a socially inclusive, diverse campus environment
 - Assisting marginalized groups
 - Maintaining an online portal for reporting discrimination
- Institutions with less than 5 members can depend on the university's EOC.
- The EOC will be supported by an Equity Committee with representation from:
 - Senior faculty
 - Non-teaching staff
 - Civil society experts
 - Student representatives
 - Members of disadvantaged groups, including women and PwD
- To ensure proactive monitoring:
 - Each department, school, hostel, and facility will have an Equity Ambassador.
 - Institutions will also form Equity Squads, mobile teams that frequently monitor vulnerable locations on campus.
- Institutions will be required to guarantee fairness in:
 - Admissions

- Hostel allotment
- Classroom allocation
- Mentorship groups
- Administrative or academic selections

Equity Committee Composition

Every Higher Education Institution must constitute an Equity Committee under the Equal Opportunity Centre. The committee examines complaints, recommends action, and ensures compliance with equity norms.

- The Head of the Institution shall be the ex-officio Chairperson
- Three Professors/Senior Faculty Members of the HEI, as Members
- One Staff Member, other than a teacher, of the HEI, as a Member
- Two representatives from civil society having relevant experience, as Members
- Two student representatives, to be nominated based on academic merit/excellence in sports/performance in co-curricular activities, as Special Invitees.
- The Coordinator of the Equal Opportunity Centre shall act as the ex-officio Member Secretary

Representation Requirement

The committee must ensure adequate representation of:

- Scheduled Castes (SC)
- Scheduled Tribes (ST)
- Other Backward Classes (OBC)
- Women
- Persons with Disabilities

How are these Regulations different from 2012 Guidelines?

- **From Advisory to Mandatory:** Converts soft guidelines into enforceable rules.
- **Punitive Powers:** Introduces institutional penalties.
- **Monitoring Framework:** Adds national-level compliance review.
- **Operational Precision:** Specifies timelines, responsibilities, and reporting formats.

What provisions address Campus Culture and Reporting?

- **Equity Helpline:** 24×7 helpline for discrimination complaints.
- **Equity Ambassadors:** Student and faculty representatives.
- **Role Definition:** Act as “torchbearers of equity”.
- **Preventive Approach:** Focus on awareness, not only punishment.

What are the draft and final Regulation Changes?

- **Removed Provision:** Penalty for “false complaints” dropped.
- **Rationale:** Avoids chilling effect on marginalised complainants.
- **Institutional Penalties:** Retained against institutions, not individuals.
- **Clarity Added:** Detailed complaint disposal procedures introduced.

Legal Provisions against Caste Discrimination

India has a strong constitutional and legal framework to prevent caste-based discrimination and ensure equality, dignity, and social justice. These provisions protect historically disadvantaged communities, especially Scheduled Castes (SCs) and Scheduled Tribes (STs), from exclusion and abuse.

- **Article 14 (Right to Equality):** Guarantees equality before law and equal protection of laws to all persons, prohibiting arbitrary discrimination.
- **Article 15 (Prohibition of Discrimination):** Prohibits discrimination by the State on grounds of religion, race, caste, sex, or place of birth and allows affirmative action for socially and educationally backward classes.
- **Article 16 (Equality of Opportunity in Public Employment):** Ensures equal opportunity in public employment and permits reservation for SCs, STs, and OBCs.
- **Article 17 (Abolition of Untouchability):** Abolishes untouchability in all forms and declares its practice a punishable offence.
- **Article 46 (Directive Principle of State Policy):** Directs the State to promote the educational and economic interests of SCs, STs, and other weaker sections and protect them from social injustice and exploitation.
- **Protection of Civil Rights Act, 1955:** Enforces Article 17 by prescribing penalties for practising untouchability and denying civil rights.
- **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Provides stringent punishment for offences against SCs and STs and aims to prevent social, economic, and physical exploitation.
- **Right to Education Act, 2009:** Promotes inclusive and non-discriminatory access to elementary education for all children.

- **University Grants Commission Regulations:** Mandate higher education institutions to prevent caste-based discrimination and establish grievance redressal and equity mechanisms.
- **Judicial Safeguards:** Indian courts have consistently upheld constitutional values of equality and dignity and expanded protections through progressive interpretations.

Impact of Caste-Based Discrimination on Access to Education

- **Erosion of Constitutional Values:** Caste discrimination undermines equality, dignity, and fraternity, weakening trust in affirmative action and democratic institutions.
- **Restricted Access to Quality Education:** Prejudice and poor schooling outcomes reduce the representation of SC/ST/OBC students in elite institutions, limiting social mobility.
- **Higher Dropout Rates:** Combined academic, financial, and psychological pressures result in disproportionately higher dropout rates among marginalised communities.
- **Psychological Exclusion:** Stigma associated with “reserved category” status causes anxiety, low self-esteem, and adverse academic outcomes.
- **Weak Grievance Redressal:** SC/ST Cells in many institutions lack autonomy and effective enforcement powers, often prioritising institutional reputation.
- **Campus Segregation:** The Thorat Committee (2007) highlighted segregation in hostels, dining spaces, and sports facilities, leading to isolation of marginalised students.

Issues and Concerns with the Draft Regulation

- **Ultra vires regulation:** The UGC Act does not mandate regarding VC selection or appointment. Its primary role is towards setting teaching standards and qualifications for academic staff. The regulations exceeding the extent and scope of the UGC Act are invalid. Here, the selection of VCs is not directly connected with maintaining the educational standards.
- **Erosion of State Autonomy:** By enforcing these regulations, it is feared that UGC might risk centralising power and undermining federalism which is a ‘basic feature’ of the Constitution. It is also seen as undermining State governments' role in education, a subject under the Concurrent List. States have argued the proposal facilitates the Centre’s control over institutions via gubernatorial proxies, which threatens institutional autonomy.
- **Conflict between UGC regulations and State laws:** UGC regulations cannot override State laws unless approved by Parliament. The

Supreme Court in 2015 has also ruled that UGC regulations bind universities but may not apply mandatorily to State universities. Furthermore, Article 254 (Doctrine of Repugnancy), State laws shall prevail unless repugnant to central laws. In this case, a regulation (subordinate legislation) does not qualify as "central law" under Article 254.

- **Previous observations of Court:** In past, Bombay High Court (2011) has ruled that VC selection has no "direct impact" on educational standards and UGC lacks the mandate under Section 26 for VC selection.
- **Kalyani Mathivanan Case, AIR 2015 SC 1875:** Hon'ble Supreme Court ruled that UGC Regulations are recommendatory in nature for State universities and held that VC appointments in State universities fall under State legislation.
- **Inconsistency in approach:** UGC's stance on VC appointments has shifted repeatedly (E.g., 2010, 2013, 2018, 2025 draft), which has raised concerns about administrative overreach.
- **Concerns over non-academic VCs:** Critics also fear this could lead to appointments of politically loyal individuals in academic leadership and is viewed as detrimental to the higher education system's integrity and autonomy.

Supreme Court's Intervention

Hon'ble Supreme Court on January 29, 2026 in case **Mritunjay Tiwari Vs. Union of India and Anr., W.P.(C) No. 101/2026, Vineet Jindal Vs. Union of India and Anr., W.P.(C) No. 109/2026 and Rahul Dewan and Ors. Vs. Union of India and Anr., W.P.(C) No. 108/2026**, kept in abeyance the University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, which allegedly recognises only caste-based discrimination committed against Scheduled Castes, Scheduled Tribes and Other Backward Communities within educational campuses while failing to protect upper castes or general category students.

"The 2026 Regulations have sweeping consequences which will divide the society," Chief Justice Surya Kant, heading a Bench comprising Justice Joymalya Bagchi, observed.

Substantial questions of law involved

Hon'ble Court called for the Union's response, noting that there are 5 questions involved insofar as constitutionality and validity of the Regulations are concerned. The Hon'ble Court ruled that the following substantial

questions of law arise for consideration and would require detailed examination:

- (i) Whether the incorporation of Clause 3(c) in the Impugned Regulations, defining “Caste-based Discrimination”, bears a reasonable and rational nexus to subserve the object and purpose of the 2026 UGC Regulations, particularly in light of the fact that no distinct or special procedural mechanism has been prescribed to address caste-based discrimination, as opposed to the exhaustive and inclusive definition of “Discrimination” provided under Clause 3(e) of the Impugned Regulations?
- (ii) Whether the introduction and operationalisation of “caste-based discrimination” under the Impugned Regulations would have any bearing on the existing constitutional and statutory sub-classification of the Most Backward Castes within the Scheduled Castes, Scheduled Tribes, and Other Backward Classes, and whether the Impugned Regulations provide adequate and effective protection and safeguards to such Extremely Backward Castes against discrimination and structural disadvantage?
- (iii) Whether the inclusion of the expression “segregation” in Clause 7(d) of the Impugned Regulations, in the context of allocation of hostels, classrooms, mentorship groups, or similar academic or residential arrangements, albeit on transparent and non-discriminatory criteria, would amount to a “separate yet equal” classification, thereby infringing the constitutional guarantees of equality and fraternity under Articles 14, 15 as well as the Preamble to the Constitution of India?
- (iv) Whether the omission of the term “Ragging” as a specific form of discrimination in the framework of the Impugned Regulations, despite its existence in the University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2012, constitutes a regressive and exclusionary legislative omission? If so, whether such omission is violative of unequal treatment of victims of discrimination by creating an asymmetry in access to justice and thus falls foul of Articles 14 and 21 of the Constitution of India??
- (v) Any other ancillary question that may arise or be proposed by the parties during the course of these proceedings and warrant the intervention of this Court.

2. President's Address to Parliament

The President of India, **Ms. Droupadi Murmu**, addressed a joint sitting of both Houses of Parliament on January 28, 2026. She outlined the major policy achievements and objectives of the government in her address.

Key highlights of the address include:

(i) Economy

- GST reforms have led to citizens saving more than one lakh crore rupees.
- Last year, income above Rs 12 lakh per annum was exempted from taxation. The Income Tax law was replaced.

(ii) Infrastructure and Transport

- Last year, around 18,000 kilometres of rural roads were added. Almost the entire rural population is now connected by roads.
- More than 150 Vande Bharat trains have been introduced. Vande Bharat sleeper trains were introduced between Bengal and Assam.
- India's metro network crossed 1,000 kilometres, making it the third largest network in the world.
- In the last decade, more than four crore pucca houses have been built for the poor. Possession of 32 lakh houses was handed over last year.
- In the five years of Jal Jeevan Mission, 12.5 crore household have been provided piped water connection. Of this, one crore households were added in the last year.
- In the last 11 years, more than 7,200 kilometres of National Highways have been constructed in the North-Eastern region. Further, 50,000 kilometres of rural roads have been built. More than Rs 80,000 crore have been invested in development of railways in the region.

(iii) Industry and Commerce

- The Production Linked Incentive scheme has attracted investment of around two lakh crore rupees. Production worth more than Rs 17 lakh crore has been achieved.
- The production of electronics reached Rs 11 lakh crore, increasing sixfold in the last 11 years. Over 25 lakh jobs have been created in electronics manufacturing. India became the second largest country in mobile manufacturing.
- In 2025, four more semiconductor manufacturing units were sanctioned. A total of 10 such units are going to commence operations.

- A package of Rs 70,000 crore has been announced for the shipping sector. Large ships have been granted infrastructure status. Old maritime laws have been replaced.
- India has become the third largest startup ecosystem in the world. Around two lakh startups have been registered in the country, of which around 50,000 registered in the last year.
- In 2025-26, India's smartphone exports crossed one lakh crore rupees. India has started exporting electric vehicles to more than 100 countries.

(iv) Energy

- SHANTI (Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India) Act has been enacted to achieve the target of 100 gigawatts of nuclear energy by 2047.
- Through PM Surya Ghar Muft Bijli Yojana, around 20 lakh rooftop solar systems have been installed.
- Under the Ujjwala Yojana, more than 10 crore households have been provided with LPG connections so far.

(v) Labour, skilling and job creation

- For the protection and welfare of workers, dozens of labour laws have been consolidated into four Codes.
- The Viksit Bharat G RAM G Act (which replaced MGNREGA) will ensure 125 days of guaranteed employment in villages. It will help create new facilities for the farmers, livestock farmers, and fishermen.
- Under the Mudra Yojana, more than Rs 38 lakh crore has been provided to small entrepreneurs. Around 12 crore loans have been disbursed for first-time self-employment.
- Under the Prime Minister Viksit Bharat Rozgar Yojana, more than 3.5 crore new jobs are being created.
- More than 20 lakh youths are employed with the two lakh registered start-ups. Under PM Setu scheme, Rs 60,000 crore is being spent to upgrade more than 1,000 Industrial Training Institutes (ITIs).
- More than 60,000 youths have been trained for the semiconductor industry and 10 lakh youths are being trained in the Artificial Intelligence sector.
- Under the PM Vishwakarma scheme, more than 20 lakh artisans have received training and banking support.
- Under PM SVANidhi scheme, 72 lakh street vendors have been provided with financial assistance worth Rs 16,000 crore.
- Research and innovation are being promoted through Anusandhan National Research Foundation, Atal Innovation Mission and Atal Tinkering labs.

(vi) Health

- Under the Ayushman Bharat Yojana, more than 11 crore free medical treatments have been provided until 2025. Of these, 2.5 crore treatments were provided last year.
- Under the Pradhan Mantri Jeevan Jyoti Bima Yojana and the Pradhan Mantri Suraksha Bima Yojana, claims worth more than Rs 24,000 crore have been disbursed to provide insurance cover.
- In the last 18 months, around one crore senior citizens have received Vay Vandana cards.
- Around eight lakh senior citizens have received free medical treatment. Around 1.8 lakh Ayushman Arogya Mandirs have been set up across the country.
- More than 6.5 crore citizens have been screened under Sick Cell Anaemia Elimination Mission.

(vii) Agriculture

- Last year over 350 million tonne of food grains were produced. Around 150 million tonne of rice was produced.
- The Agriculture Infrastructure Fund has attracted private investment of over Rs 1.25 lakh crore.
- Under the PM Kisan Samman Nidhi, more than four lakh crore rupees have been transferred to farmers.
- In 2024-25, fish production reached around 200 lakh tonnes.
- A new policy has been formulated to provide fisherman living along the coastline benefits of the Exclusive Economic Zone.

(viii) Social Justice

- In the last decade, 25 crore citizens have overcome poverty.
- Last year, more than 6.75 lakh crore rupees have been transferred to beneficiaries through Direct benefit Transfer.
- Around 95 crore citizens have social security cover.
- Under PM JANMAN scheme, more than 2.5 lakh houses have been provided in tribal villages. Along with the Dharti Aaba Janjatiya Gram Utkarsh Abhiyan, more than one lakh crore rupees has been spent on these two schemes.
- In the last 11 years scholarships worth Rs 42,000 crore have been granted to students belonging to Scheduled Caste communities.
- More than 400 Eklavya Model Residential schools have been established for the education of tribal children.

(ix) Women empowerment

- Around 10 crore women have been connected to Self-Help Groups.
- More than 60 lakh women became Lakhpati Didi in the last year, increasing the number of Lakhpati Didi in the country to two crore.
- Under the 'Swasth Nari, Sashakt Parivar' campaign, around seven crore women have received health check-ups.
- The first batch of women cadets graduated from the National Defence Academy.

(x) Governance

- Through the Jan Vishwas Act, 2025, more than 300 offenses have been decriminalised.

(xi) Defence and Internal affairs

- The number of maoist affected districts has been reduced from 126 to eight. Of these, only three districts remain most affected. In the last year, around 2,000 maoists have surrendered.
- In 2025, India's defence production crossed Rs. 1.5 lakh crore. Defence exports crossed Rs 23 thousand crore

3. Republic Day, 2026

India celebrates Republic Day every year on 26 January to commemorate the enforcement of the Constitution of India and the country's transition into a sovereign, democratic republic.

Republic Day is not merely a national holiday or a ceremonial parade. Instead, it represents the soul of Indian democracy. It reflects the collective will of the people and the supremacy of the Constitution.

Theme of Republic Day of India, 2026

The theme of Republic Day of India, 2026 is centred on the **150th anniversary of India's national song, 'Vande Mataram'**. This theme highlights the historical, cultural, and emotional importance of the song in India's freedom struggle and nation-building journey.

'Vande Mataram' symbolises **patriotism, sacrifice, and the spirit of India's independence movement**. By choosing this theme, Republic Day 2026 pays tribute to the song's role in uniting people against colonial rule.

The theme reminds citizens of **India's rich cultural heritage** and the **power of national symbols** in strengthening unity and national identity. It connects the past freedom struggle with present-day constitutional values.

Moreover, focusing on the 150-year milestone encourages younger generations to understand the historical context of '**Vande Mataram**' and its relevance in modern India. It promotes awareness about India's journey as a democratic republic.

Finally, the theme aligns Republic Day celebrations with the broader idea of nationalism rooted in constitutional values, cultural pride, and democratic ideals. Therefore, Republic Day of India, 2026 becomes not only a celebration of the Constitution but also a tribute to India's enduring national spirit.

Chief Guests of Republic Day of India, 2026

For this year's Republic Day, the chief guests are **Mr. Antonio Costa**, the President of the European Council and **Ursula von der Leyen**, President of the European Commission.

The Making of the Indian Republic

Republic Day marks a defining milestone in India's national journey. It marks the day the Constitution of India came into force on **26 January 1950**, formally establishing the country as a '**Sovereign Democratic Republic**'. While independence on **15 August 1947** ended colonial rule, it was the adoption of the Constitution that completed India's transition to self-governance based on law, institutional accountability, and the will of the people of India.

This constitutional milestone is commemorated each year through observances that reflect the functioning of democratic institutions and the diversity of the nation. Republic Day celebrations bring constitutional ideals into the public domain, most visibly through the national ceremony and parade held in New Delhi along the Kartavya Path. The parade presents a coordinated display of military discipline, cultural heritage, and regional representation, with tableaux from states and Union Territories highlighting India's cultural plurality. Across the country, flag-hoisting ceremonies, official programmes, and cultural events are organised at state capitals, districts, educational institutions, and local communities. These events make Republic Day a shared civic occasion that reaffirms the values and principles enshrined in the Constitution.

26th January: From Purna Swaraj to the Constitution

The decision to declare 26 January as Republic Day reflects a deliberate historical choice to anchor India's constitutional beginning in the milestones of its freedom struggle. Over two decades, the date came to symbolise a clear progression—from the assertion of complete independence in 1930 to the formal adoption of a constitutional system of self-government in 1950. Understanding this journey is essential to understanding Republic Day itself, as it reveals how political aspiration was gradually transformed into a durable, constitutional order.

India's path from Independence to Republic

(a) 26 January 1930 — Call for Purna Swaraj

The demand for Purna Swaraj (complete independence) became a formal political objective in 1929, after resolutions adopted during the national struggle for freedom. On 26 January 1930, Indians across the country observed Purna Swaraj Day, committing themselves to the goal of complete self-rule and rejecting dominion status under British governance. This declaration and nationwide observance marked a decisive shift in the freedom

movement, articulating a clear political objective that went beyond demands for constitutional reforms under colonial rule.

(b) 9 December 1946 — Constituent Assembly begins work

The Constituent Assembly of India met for the first time on 9 December 1946 at the Constitution Hall, now the Central Hall of Parliament House. This marked the formal beginning of India's constitution-making process. Entrusted with the responsibility of framing a Constitution for independent India, the Assembly worked for two years, eleven months, and seventeen days to complete this historic task. During this period, it held eleven sessions spread over 165 days, with 114 days devoted to detailed discussion of the Draft Constitution. Its members were chosen through indirect elections by the Provincial Legislative Assemblies, along with representatives of the princely states, ensuring that the Constitution was shaped through a broadly representative and deliberative process.

(c) 15 August 1947 — India attains independence

On 15 August 1947, India attained independence, bringing an end to nearly two centuries of colonial rule. The transfer of power marked the culmination of a long and sustained freedom struggle led by leaders, freedom movements, and ordinary citizens across the country. Independence restored political sovereignty to the Indian people and initiated the task of nation-building, as the newly free nation began shaping its future based on democratic ideals, unity, and self-determination.

(d) 26 November 1949 — Constitution of India adopted

After nearly three years of extensive deliberations, the Constituent Assembly adopted the Constitution of India, completing one of the most significant exercises in democratic institution-building. The drafting process involved detailed discussions on the nature of the Indian State, the rights and duties of citizens, the balance of power between different parts of government, and safeguards for social justice and equality. The adoption of the Constitution marked the culmination of this collective effort to establish a governance framework rooted in democratic values and constitutional principles. The date of adoption, 26th November 1949, is formally recorded in the concluding line of the Preamble, underscoring its constitutional authority and historical importance.

(e) 26 January 1950 — Constitution came into force

When the Constitution came into effect on 26th January 1950, India was formally established as a Sovereign Democratic Republic, marking the beginning of constitutional governance in independent India. Through the 42nd Amendment Act in 1976, 'Socialist and Secular' were added, thereby making India Sovereign, Socialist Secular Democratic Republic. The newly drafted Constitution was enforced by replacing the Government of India Act 1935. With this, authority was given to democratic institutions operating under the Constitution, and sovereignty was placed with the people. The choice of 26th January was deliberate, as the date carried the historical legacy of the Purna Swaraj observance of 1930, when complete independence had been asserted as the national objective. By bringing the Constitution into force on this date, independent India symbolically connected the political aspirations of the freedom movement with the institutional framework of a constitutional republic.

National Celebration and Living Constitutional Values

Republic Day unfolds each year as a shared national moment, where ceremony, colour, and collective memory come together. From the capital to the farthest corners of the country, the day is marked by flag hoisting ceremonies and parades by armed forces and school children, creating a shared sense of significance.

The grandest and most important of these parades is held at the Kartavya Path in New Delhi, which showcases a multi-hued image of the country's cultural heritage and military prowess. The day begins with a solemn tribute at the National War Memorial, where the Prime Minister pays homage to our fallen soldiers, setting a reflective tone before the main ceremony.

At Kartavya Path, the arrival of the President of India formally marks the commencement of the proceedings. The unfurling of the National Flag, accompanied by the National Anthem and a 21-gun salute, signals the beginning of the parade. Marching contingents of the Army, Navy and Air Force, along with other uniformed services, pass in ceremonial formation, reflecting discipline and coordination. Mechanised columns and selected defence presentations further add to the spectacle.

A distinctive feature of the parade is the presentation of tableaux by States/ Union Territories and the Ministries, which highlight regional culture and themes of national importance. Cultural performances integrated into the procession also add visual depth without interrupting its formal rhythm. One of the main functions of the parade is to honour the martyrs who have

sacrificed their lives for the country and to bestow bravery awards upon military personnel and citizens. Signature segments such as the motorcycle display and the Indian Air Force fly past bring the parade to its grand conclusion.

Republic Day and Youth Aspirations

Republic Day holds special significance for India's youth. It reminds them that rights come with duties and freedom requires responsibility. The Constitution expects citizens to respect national symbols, uphold unity and integrity. It also urges the citizens to promote harmony and scientific temper. Furthermore, Republic Day encourages young Indians to actively participate in democracy and nation-building.

Conclusion

Republic Day is the celebration of India's constitutional soul. By observing **26th January, 2026**, India reaffirms its faith in democracy, justice, and the rule of law.

For citizens, Republic Day serves as a reminder that the Constitution is not merely a legal document but a living guide for governance and citizenship.

As India progresses, the true tribute to Republic Day lies in upholding constitutional values in everyday public life. The strength of the Indian Republic ultimately depends on informed citizens, ethical leaders, and institutions guided by constitutional morality.

4. Padma Awards, 2026

Padma Awards - one of the highest civilian Awards of the country, are conferred in three categories, namely, Padma Vibhushan, Padma Bhushan and Padma Shri. The Awards are given in various disciplines / fields of activities, viz.- art, social work, public affairs, science and engineering, trade and industry, medicine, literature and education, sports, civil service, etc. 'Padma Vibhushan' is awarded for exceptional and distinguished service; 'Padma Bhushan' for distinguished service of high order and 'Padma Shri' for distinguished service in any field. The awards are announced on the occasion of Republic Day every year.

These Awards are conferred by the President of India at ceremonial functions which are held at Rashtrapati Bhawan usually around March / April every year. For the year 2026, the President has approved conferment of **131 Padma Awards** including 2 duo cases (in a duo case, the Award is counted as one) as per list below. The list comprises **5 Padma Vibhushan, 13 Padma Bhushan and 113 Padma Shri Awards**. 19 of the awardees are women and the list also includes 6 persons from the category of Foreigners / NRI / PIO / OCI and 16 Posthumous awardees.

Padma Vibhushan (5)

S.N.	Name	Field	State
1	Shri Dharmendra Singh Deol (Posthumous)	Art	Maharashtra
2	Shri K.T. Thomas	Public Affairs	Kerala
3	Ms. N. Rajam	Art	Uttar Pradesh
4	Shri P. Narayanan	Literature and Education	Kerala
5	Shri V. S. Achuthanandhan (Posthumous)	Public Affairs	Kerala

Padma Bhushan (13)

SN	Name	Field	State / Country
6	Ms. Alka Yagnik	Art	Maharashtra
7	Shri Bhagat Singh Koshyari	Public Affairs	Uttarakhand
8	Shri Kallipatti Ramasamy Palaniswamy	Medicine	Tamil Nadu
9	Shri Mammooty	Art	Kerala
10	Dr. Nori Dattatreya	Medicine	United States of America

11	Shri Piyush Pandey (Posthumous)	Art	Maharashtra
12	Shri S K M Maeilanandhan	Social Work	Tamil Nadu
13	Shri Shatavadhani R Ganesh	Art	Karnataka
14	Shri Shibu Soren (Posthumous)	Public Affairs	Jharkhand
15	Shri Uday Kotak	Trade and Industry	Maharashtra
16	Shri V K Malhotra (Posthumous)	Public Affairs	Delhi
17	Shri Vellappally Natesan	Public Affairs	Kerala
18	Shri Vijay Amritraj	Sports	United States of America

Padma Shri (113)

SN	Name	Field	State / Country
19	Shri A E Muthunayagam	Science and Engineering	Kerala
20	Shri Anil Kumar Rastogi	Art	Uttar Pradesh
21	Shri Anke Gowda M.	Social Work	Karnataka
22	Ms. Armida Fernandez	Medicine	Maharashtra
23	Shri Arvind Vaidya	Art	Gujarat
24	Shri Ashok Khade	Trade and Industry	Maharashtra
25	Shri Ashok Kumar Singh	Science and Engineering	Uttar Pradesh
26	Shri Asok Kumar Halder	Literature and Education	West Bengal
27	Shri Baldev Singh	Sports	Punjab
28	Shri Bhagwandas Raikwar	Sports	Madhya Pradesh
29	Shri Bharat Singh Bharti	Art	Bihar
30	Shri Bhiklya Ladakya Dhinda	Art	Maharashtra
31	Shri Bishwa Bandhu (Posthumous)	Art	Bihar
32	Shri Brij Lal Bhat	Social Work	Jammu and Kashmir
33	Shri Buddha Rashmi Mani	Others - Archaeology	Uttar Pradesh
34	Dr. Budhri Tati	Social Work	Chhattisgarh
35	Shri Chandramouli Gaddamanugu	Science and Engineering	Telangana

36	Shri Charan Hembram	Literature and Education	Odisha
37	Shri Chiranji Lal Yadav	Art	Uttar Pradesh
38	Ms. Deepika Reddy	Art	Telangana
39	Shri Dharmiklal Chunilal Pandya	Art	Gujarat
40	Shri Gadde Babu Rajendra Prasad	Art	Andhra Pradesh
41	Shri Gafruddin Mewati Jogi	Art	Rajasthan
42	Shri Gambir Singh Yonzon	Literature and Education	West Bengal
43	Shri Garimella Balakrishna Prasad (Posthumous)	Art	Andhra Pradesh
44	Ms. Gayatri Balasubramanian and Ms. Ranjani Balasubramanian (Duo)*	Art	Tamil Nadu
45	Shri Gopal Ji Trivedi	Science and Engineering	Bihar
46	Shri Guduru Venkat Rao	Medicine	Telangana
47	Shri H V Hande	Medicine	Tamil Nadu
48	Shri Hally War	Social Work	Meghalaya
49	Shri Hari Madhab Mukhopadhyay (Posthumous)	Art	West Bengal
50	Shri Haricharan Saikia	Art	Assam
51	Ms. Harmanpreet Kaur Bhullar	Sports	Punjab
52	Shri Inderjit Singh Sidhu	Social Work	Chandigarh
53	Shri Janardan Bapurao Bothe	Social Work	Maharashtra
54	Shri Jogesh Deuri	Others - Agriculture	Assam
55	Shri Juzer Vasi	Science and Engineering	Maharashtra
56	Shri Jyotish Debnath	Art	West Bengal
57	Shri K Pajanivel	Sports	Puducherry
58	Shri K Ramasamy	Science and Engineering	Tamil Nadu
59	Shri K Vijay Kumar	Civil Service	Tamil Nadu
60	Shri Kabindra Purkayastha (Posthumous)	Public Affairs	Assam
61	Shri Kailash Chandra Pant	Literature and Education	Madhya Pradesh

62	Ms. Kalamandalam Vimala Menon	Art	Kerala
63	Shri Kewal Krishan Thakral	Medicine	Uttar Pradesh
64	Shri Khem Raj Sundriyal	Art	Haryana
65	Ms. Kollakal Devaki Amma G	Social Work	Kerala
66	Shri Krishnamurthy Balasubramanian	Science and Engineering	Telangana
67	Shri Kumar Bose	Art	West Bengal
68	Shri Kumarasamy Thangaraj	Science and Engineering	Telangana
69	Prof. (Dr.) Lars-Christian Koch	Art	Germany
70	Ms. Liudmila Viktorovna Khokhlova	Literature and Education	Russia
71	Shri Madhavan Ranganathan	Art	Maharashtra
72	Shri Maganti Murali Mohan	Art	Andhra Pradesh
73	Shri Mahendra Kumar Mishra	Literature and Education	Odisha
74	Shri Mahendra Nath Roy	Literature and Education	West Bengal
75	Shri Mamidala Jagadesh Kumar	Literature and Education	Delhi
76	Ms. Mangala Kapoor	Literature and Education	Uttar Pradesh
77	Shri Mir Hajibhai Kasambhai	Art	Gujarat
78	Shri Mohan Nagar	Social Work	Madhya Pradesh
79	Shri Narayan Vyas	Others - Archaeology	Madhya Pradesh
80	Shri Naresh Chandra Dev Varma	Literature and Education	Tripura
81	Shri Nilesch Vinodchandra Mandlewala	Social Work	Gujarat
82	Shri Nuruddin Ahmed	Art	Assam
83	Shri Othuvaar Thiruthani Swaminathan	Art	Tamil Nadu
84	Dr. Padma Gurmet	Medicine	Ladakh
85	Shri Palkonda Vijay Anand Reddy	Medicine	Telangana
86	Ms. Pokhila Lekthepi	Art	Assam
87	Dr. Prabhakar Basavprabhu Kore	Literature and Education	Karnataka

88	Shri Prateek Sharma	Medicine	United States of America
89	Shri Praveen Kumar	Sports	Uttar Pradesh
90	Shri Prem Lal Gautam	Science and Engineering	Himachal Pradesh
91	Shri Prosenjit Chatterjee	Art	West Bengal
92	Dr. Punniamurthy Natesan	Medicine	Tamil Nadu
93	Shri R Krishnan (Posthumous)	Art	Tamil Nadu
94	Shri R V S Mani	Civil Service	Delhi
95	Shri Rabilal Tudu	Literature and Education	West Bengal
96	Shri Raghupat Singh (Posthumous)	Others - Agriculture	Uttar Pradesh
97	Shri Raghuvver Tukaram Khedkar	Art	Maharashtra
98	Shri Rajastapathi Kaliappa Goundar	Art	Tamil Nadu
99	Shri Rajendra Prasad	Medicine	Uttar Pradesh
100	Shri Rama Reddy Mamidi (Posthumous)	Others - Animal Husbandry	Telangana
101	Shri Ramamurthy Sreedher	Others - Radio Broadcasting	Delhi
102	Shri Ramchandra Godbole and Ms. Suneeta Godbole (Duo)*	Medicine	Chhattisgarh
103	Shri Ratilal Borisagar	Literature and Education	Gujarat
104	Shri Rohit Sharma	Sports	Maharashtra
105	Ms. S G Susheelamma	Social Work	Karnataka
106	Shri Sangyusang S Pongener	Art	Nagaland
107	Sant Niranjana Dass	Others - Spiritualism	Punjab
108	Shri Sarat Kumar Patra	Art	Odisha
109	Shri Saroj Mandal	Medicine	West Bengal
110	Shri Satish Shah (Posthumous)	Art	Maharashtra
111	Shri Satyanarayan Nuwal	Trade and Industry	Maharashtra
112	Ms. Savita Punia	Sports	Haryana
113	Prof. Shafi Shauq	Literature and	Jammu and

		Education	Kashmir
114	Shri Shashi Shekhar Vempati	Literature and Education	Karnataka
115	Shri Shrirang Devaba Lad	Others - Agriculture	Maharashtra
116	Ms. Shubha Venkatesha Iyengar	Science and Engineering	Karnataka
117	Shri Shyam Sundar	Medicine	Uttar Pradesh
118	Shri Simanchal Patro	Art	Odisha
119	Ms. Sivasankari	Literature and Education	Tamil Nadu
120	Dr. Suresh Hanagavadi	Medicine	Karnataka
121	Swami Brahmdev Ji Maharaj	Social Work	Rajasthan
122	Shri T T Jagannathan (Posthumous)	Trade and Industry	Karnataka
123	Shri Taga Ram Bheel	Art	Rajasthan
124	Shri Tarun Bhattacharya	Art	West Bengal
125	Shri Techu Gubin	Social Work	Arunachal Pradesh
126	Shri Thiruvaarur Bakthavathsalam	Art	Tamil Nadu
127	Ms. Tripti Mukherjee	Art	West Bengal
128	Shri Veezhinathan Kamakoti	Science and Engineering	Tamil Nadu
129	Shri Vempaty Kutumba Sastry	Literature and Education	Andhra Pradesh
130	Shri Vladimer Mestvirishvili (Posthumous)	Sports	Georgia
131	Shri Yumnam Jatra Singh (Posthumous)	Art	Manipur

Note: * In Duo case, the Award is counted as one.

5. United States intervention in Venezuela

The relationship between the US and Venezuela entered a critical phase in January 2026 when American forces conducted a military operation in Caracas that resulted in the capture of **Venezuelan President Nicolás Maduro**.

Background: Understanding the Crisis

Venezuela has experienced a prolonged political and economic crisis over the past decade. The country, which holds substantial oil reserves, has seen significant economic contraction under President Nicolás Maduro, who assumed power in 2013 following Hugo Chávez's death.

The Venezuelan economy faced severe challenges including hyperinflation and currency devaluation, leading to approximately 8 million citizens leaving the country. Oil production declined from 3.5 million barrels per day in the late 1990s to approximately 900,000 barrels daily by 2025. This reduction resulted from various factors including infrastructure deterioration and management challenges.

US President Donald Trump had focused on Venezuela during his first term, formally charging Nicolás Maduro and top aides with alleged involvement in drug trafficking. After Trump returned to power in early 2025, his administration declared a 'war on drugs' and accused Maduro of being 'one of the largest narco-traffickers in the world'.

The 2024 elections in Venezuela faced international scrutiny, with numerous countries questioning their legitimacy. The United States and over fifty nations subsequently withdrew recognition of Nicolás Maduro as the legitimate president, though he maintained control through military and international support from Cuba, China, and Russia.

Operation Absolute Resolve

On **January 3, 2026**, the United States launched "**Operation Absolute Resolve**," a military operation targeting the **presidential palace in Caracas**. Special operations forces extracted **President Nicolás Maduro and First Lady Cilia Flores from the Miraflores Palace**.

The military action resulted in casualties on multiple sides. Cuban forces, who had been providing security assistance to the Venezuelan government, lost 32 military personnel during the operation. Venezuelan officials reported total

casualties exceeding 80 individuals, including security personnel and civilians.

The Trump administration framed the intervention using narco-terrorism designations. The US Department of Justice had previously unsealed indictments charging Maduro and other officials with conspiracy related to drug trafficking, alleging the use of state infrastructure to facilitate such activities.

Why the Intervention: Understanding US Objectives

Several factors appear to have motivated the US Venezuela operation, reflecting broader strategic considerations.

(i) Resurrection of the Monroe Doctrine

The Trump administration has explicitly sought to reimpose American primacy in the Western Hemisphere. President James Monroe declared in 1823 that the Americas were off-limits to future European interference. The recently released National Security Doctrine of the Trump administration identifies Latin America and the Caribbean as a strategic priority, asserting that the US must deny influence or control by outside powers in the region.

(ii) China Factor

China has made substantial investments in Latin America through its Belt and Road Initiative, with 24 signatories in the region. China is the largest or second largest trading partner of most Latin American countries. Significantly, China accounts for nearly 80% of Venezuela's oil purchases, and China National Petroleum Corporation (CNPC) is the largest foreign company with operations in Venezuela's oil sector.

In 2024, China Concord Resources Corporation signed a \$1 billion agreement with PDVSA, Venezuela's state oil company, to develop two oilfields. The US appears concerned about Chinese and Russian influence in what it considers its sphere of influence. Venezuela and Cuba are the two Latin American governments that publicly seek stronger strategic and economic ties with China and Russia.

(iii) Control Over Oil Resources

Venezuela possesses approximately 17% of the world's known oil reserves, more than 300 billion barrels, nearly four times the reserves of the United

States. American companies such as **Exxon, Mobil and Gulf Oil** were active in Venezuela's oil sector until the 1976 nationalization.

Last month, Trump demanded Venezuela return all the "stolen American oil, land and assets," in direct reference to Venezuela's nationalization of its oil resources. He made clear he wanted Venezuelan oil for American companies, which would help the US reduce dependence on Persian Gulf oil and force China to seek alternatives.

(iv) Countering Narco-Terrorism

The Trump administration framed the intervention using narco-terrorism designations. The US Department of Justice had unsealed indictments charging Maduro and other officials with conspiracy related to drug trafficking, alleging the use of state infrastructure to facilitate such activities. The administration presented this as justification for military action to counter state-sponsored drug trafficking.

Narco-Terrorism

Narco-terrorism refers to the **use of drug trafficking proceeds to finance terrorist or insurgent activities**, or collaboration between drug cartels and armed political groups.

In this context, the US allegations are:

- Maduro regime allegedly collaborated with drug cartels
- Cocaine shipments routed through the Caribbean and Eastern Pacific
- Use of state institutions to protect trafficking networks

Maduro and his wife Cilia Flores were indicted in New York under narco-terrorism conspiracy charges, **first filed in 2020 and recently expanded**.

Comparison with the 1990 US Invasion of Panama

The operation has drawn immediate parallels with the **1990 US invasion of Panama**. It led to the arrest of **Manuel Antonio Noriega** on drug trafficking charges.

The similarities with the Venezuelan incident are:

- Sitting head of state captured
- Drug-related charges as justification
- US to install interim governance
- Widespread international criticism

However, unlike Panama, **Venezuela holds far greater strategic importance** due to its energy reserves and geopolitical positioning.

Oil Reserves in Venezuela – The Energy Angle:

Venezuela holds the **largest proven oil reserves** in the world, even surpassing Saudi Arabia. However, despite this enormous resource base, the country today earns only a fraction of the revenue it once generated from crude oil exports.

As of **2023**, **Venezuela's proven oil reserves** are estimated at about **303 billion barrels**, placing it at the top globally. In comparison, **Saudi Arabia** ranks **second** with around 267.2 billion barrels, followed by **Iran** (208.6 billion barrels) and **Canada** (163.6 billion barrels). Together, these four countries account for more than half of the world's total proven oil reserves.

By contrast, the **United States** holds approximately **55 billion barrels**, ranking **ninth** globally. This stark difference highlights that Venezuela's oil reserves are more than five times larger than those of the United States, underscoring a paradox where vast resource abundance has not translated into sustained economic gains.

Legal Questions and International Law

The US Venezuela operation has prompted extensive legal analysis regarding international law principles.

Article 2(4) of the UN Charter generally prohibits the use of force against another state's territorial integrity. The United States has presented its justification based on self-defense provisions under Article 51 of the UN Charter, arguing that state-associated narco-terrorism activities constitute a security threat. Additionally, US officials note that since Washington withdrew recognition of **Nicolás Maduro in 2019**, certain legal protections may not apply.

The International Court of Justice has typically maintained restrictive interpretations of when military force may be justified. The situation has generated debate about how established international legal norms apply to contemporary security challenges.

Within the United States, the operation has revived discussions about executive authority and congressional oversight regarding military actions. Some legislators have questioned whether proper procedures under the War Powers

Resolution were followed, which typically requires congressional consultation before significant military deployments.

India's Position on the Crisis

India responded to the US Venezuela situation with a carefully calibrated statement emphasizing established diplomatic principles. On January 4, 2026, India's Ministry of External Affairs issued an official press release addressing the developments.

India expressed "deep concern" about recent events in Venezuela and confirmed it is "closely monitoring the evolving situation." The statement emphasized India's traditional approach to international disputes by reaffirming support for "the well-being and safety of the people of Venezuela."

Significantly, India called upon "all concerned to address issues peacefully through dialogue, ensuring peace and stability of the region." This position reflects India's consistent foreign policy principle of respecting sovereignty while advocating for peaceful conflict resolution.

India's response aligns with its historical approach to international conflicts, emphasizing dialogue over military intervention and respect for UN Charter principles.

Conclusion

The US Venezuela situation represents a significant development in hemispheric relations with implications extending beyond the immediate participants. The operation involving Nicolás Maduro has raised important questions about international law, sovereignty principles, and the mechanisms for addressing cross-border security concerns.

The situation's resolution will likely influence international discussions about appropriate responses to complex challenges involving governance, transnational crime, and economic interests. Countries including India have emphasized the importance of dialogue and peaceful resolution in addressing such matters.

6. Economic Survey, 2026

Every year, ahead of the presentation of the Union Budget in Parliament, the Government of India places before the nation a document that quietly shapes the entire economic conversation of the year — the **Economic Survey**. More than a compilation of statistics, it is the Government's official assessment of India's economic journey, its structural strengths, emerging challenges, and the policy direction that lies ahead.

The Union Finance Minister tabled the **Economic Survey 2025–26** in Parliament during the Budget Session on **29 January 2026**. As with previous years, it is expected to set the analytical and intellectual foundation for the Union Budget 2026 that will follow.

Economic Survey

The Economic Survey is an annual document prepared by the Department of Economic Affairs, Ministry of Finance, under the supervision of the Chief Economic Adviser (CEA) of India. It presents a detailed analysis of the Indian economy's performance during the previous financial year.

Features of the Economic Survey

- Economic Survey 2026 provides a comprehensive analysis of India's economic performance, including growth, inflation, employment, and fiscal trends.
- It evaluates sector-wise performance such as agriculture, industry, services, and infrastructure.
- It is released every year before the Union Budget to provide an economic background for policy formulation.
- The document is data-driven and analytical in nature, based on official statistics and economic indicators.
- It reviews government policies and reforms while suggesting future economic strategies.
- The Economic Survey serves as an important reference for policymakers and researchers.

Economic Survey 2026 History

The Economic Survey was first presented in 1950–51 as a part of the Union Budget documents to provide an overview of India's economic performance. However, in 1964, it was separated from the Budget and began to be presented as an independent document. This change was introduced to ensure a more

detailed and objective review of economic developments before the presentation of the Union Budget. The separation allowed policymakers and Parliament to analyze economic trends, challenges, and opportunities in advance, thereby enabling better-informed fiscal decisions.

In line with this tradition, the Economic Survey 2026 has been released on 29th January 2026, before the Union Budget 2026-27, which will be presented on **1st February 2026**.

Key Highlights of Economic Survey 2026

The Economic Survey 2026 highlights India's continued macroeconomic resilience, with FY26 real GDP growth estimated at 7.4%, low inflation, improved fiscal consolidation, and a strong banking and external sector despite global uncertainties. It underscores structural transformation driven by robust services growth, manufacturing revival, infrastructure expansion, digital and financial inclusion, poverty reduction, and a long-term vision of strategic resilience and strategic indispensability under the Viksit Bharat 2047 framework.

1. Overall State of the Economy

- India remained the fastest-growing major economy for the fourth consecutive year, despite global headwinds such as geopolitical tensions, trade fragmentation and financial instability.
- As per First Advance Estimates, real GDP growth for FY26 is projected at 7.4%, while GVA growth is estimated at 7.3%, indicating broad-based economic expansion.
- Potential growth rate of the Indian economy is assessed at around 7%, with FY27 real GDP growth projected between 6.8–7.2%.

2. Consumption and Investment

- Private Final Consumption Expenditure (PFCE) grew by 7% in FY26, reaching 61.5% of GDP, the highest level since 2012, reflecting strong domestic demand.
- Rural consumption improved due to a good agricultural performance, while urban demand was supported by stable employment and tax rationalisation.
- Gross Fixed Capital Formation (GFCF) rose by 7.8%, remaining steady at 30% of GDP, driven by sustained public capital expenditure and revival of private investment.

3. Fiscal Developments

- Centre's revenue receipts increased to 9.2% of GDP in FY25, up from the pre-pandemic average of about 8.5%, reflecting improved tax buoyancy.
- The direct tax base expanded, with income tax return filers increasing from 6.9 crore in FY22 to 9.2 crore in FY25, indicating better compliance and formalisation.
- Gross GST collections during April–December 2025 stood at ₹17.4 lakh crore, registering a 6.7% year-on-year growth.
- Effective capital expenditure of the Centre rose to about 4% of GDP in FY25, reinforcing growth through infrastructure creation.
- India reduced its general government debt-to-GDP ratio by 7.1 percentage points since 2020, while maintaining high public investment.

4. Monetary Management and Banking Sector

- The banking system showed strong resilience, with Gross NPAs declining to 2.2% in September 2025, a multi-decadal low.
- Net NPAs declined further to 0.5%, reflecting improved asset quality and stronger balance sheets.
- Credit growth of scheduled commercial banks accelerated to 14.5% (YoY) by December 2025, supporting economic activity.

5. Financial Inclusion and Capital Markets

- Under PM Jan Dhan Yojana, 55.02 crore bank accounts were opened by March 2025, with 36.63 crore accounts in rural and semi-urban areas.
- The number of unique investors crossed 12 crore in September 2025, with nearly 25% being women, highlighting widening financial participation.
- Mutual fund penetration expanded beyond metros, with a growing share of investors from non-tier I and II cities.
- GIFT City is emerging as an international financial hub, helping channel global capital into India.

6. External Sector Performance

- India's share in global merchandise exports nearly doubled from 1% in 2005 to 1.8% in 2024, while services export share rose from 2% to 4.3%.
- Total exports reached a record USD 825.3 billion in FY25, driven mainly by services exports.
- Services exports touched an all-time high of USD 387.6 billion, growing by 13.6%.

- India remained the largest recipient of remittances globally, with inflows of USD 135.4 billion in FY25, approximately 3.5% of GDP.
- Foreign exchange reserves rose to USD 701.4 billion (January 2026), providing import cover of about 11 months and covering 94% of external debt.

7. Inflation Trends

- India recorded the lowest average CPI inflation (1.7%) for April–December 2025 since the beginning of the CPI series.
- The sharp decline in inflation was mainly due to moderation in food and fuel prices, strengthening household purchasing power.

8. Agriculture and Allied Sectors

- Foodgrain production reached 3,577.3 LMT in AY 2024–25, an increase of 254.3 LMT over the previous year.
- Horticulture, contributing about one-third of agricultural GVA, produced 362.08 MT, surpassing foodgrain output.
- Livestock and fisheries sectors showed strong long-term growth with fish production increasing by more than 140 per cent during 2014–2024, compared to the increase from 2004–14, reflecting diversification of rural incomes.
- Under PM-KISAN, more than ₹4.09 lakh crore has been transferred to farmers, strengthening income support.
- e-NAM enhanced price discovery by integrating farmers, traders and FPOs across States.

9. Services Sector

- Services accounted for 53.6% of GDP and 56.4% of GVA, the highest ever, reflecting India's shift towards a service-led economy.
- India emerged as the 7th largest services exporter globally, driven by IT, business services and digitally delivered services.
- The services sector attracted over 80% of total FDI inflows during FY23–FY25.

10. Industry and Manufacturing

- Industry GVA (in real terms) grew by 7% in H1 FY26, despite global slowdown pressures.
- Manufacturing GVA accelerated to 7.72% in Q1 and 9.13% in Q2 FY26, indicating structural recovery.

- PLI schemes across 14 sectors attracted over ₹2 lakh crore in investment, generated ₹18.7 lakh crore in output, and created 12.6 lakh jobs.
- The India Semiconductor Mission advanced domestic manufacturing with ₹1.6 lakh crore investment across 10 projects.

11. Infrastructure and Connectivity

- Central government capital expenditure increased over four times since FY18, reaching ₹11.21 lakh crore in FY26 (BE).
- High-speed highway corridors expanded nearly ten-fold to 5,364 km.
- Railway network expanded with near-total electrification (99.1%).
- India became the 3rd largest domestic aviation market, with airports increasing from 74 (2014) to 164 (2025).
- Power sector reforms led to DISCOMs recording a positive PAT of ₹2,701 crore in FY25 for the first time.

12. Social Sector: Education, Health and Employment

- School enrolment improved with GERs exceeding 90% at primary and upper primary levels.
- Expansion of premier institutions: 23 IITs, 21 IIMs and 20 AIIMS, including overseas IIT campuses.
- India achieved faster reduction in maternal and child mortality than global averages since 1990.
- Employment (15 years & above) stood at 56.2 crore persons in Q2 FY26, with new job creation supported by manufacturing and services.
- e-Shram portal registered over 31 crore unorganised workers, with women forming 54%.

13. Poverty Reduction and Rural Development

- Multidimensional Poverty Index (MPI) declined sharply from 55.3% (2005–06) to 11.28% (2022–23) as per NITI Aayog.
- Social Services Expenditure increased to 7.9% of GDP in FY26 (BE).
- SVAMITVA scheme improved rural asset ownership through drone-based property mapping.

14. Strategic Vision: From Swadeshi to Strategic Indispensability

- The Survey advocates “Disciplined Swadeshi” through a three-tier framework focusing on strategic urgency, feasibility and cost-effectiveness.
- Emphasises reducing input costs, strengthening advanced manufacturing, and integrating India into global value chains.

- The long-term goal is to make India strategically indispensable in the global economic system.

Difference between Union Budget and Economic Survey

The Economic Survey is an analytical document that reviews India's economic performance and provides policy insights, while the Union Budget is a financial statement outlining government revenue, expenditure, and fiscal priorities. The Survey is presented before the Budget to guide policy decisions. Together, they provide a complete picture of India's economic strategy and planning

Aspect	Economic Survey	Union Budget
Nature	Analytical document assessing the economy	Financial and legal statement of government's revenue and expenditure
Purpose	Review past economic performance and provide policy recommendations	Allocate resources, announce taxes, and set fiscal priorities
Content	GDP trends, inflation, employment, sector-wise performance, and policy suggestions	Tax proposals, government spending, fiscal deficit, and schemes
Timing	Released before the Budget	Released after the Economic Survey
Binding Nature	Non-binding, advisory in nature	Legally binding financial plan for the fiscal year
Prepared by	Chief Economic Adviser and Ministry of Finance	Finance Minister with Ministry of Finance support
Focus	Economic trends, challenges, and future outlook	Financial planning, allocation of resources, and fiscal management
Usefulness	Helps policymakers, researchers, and analysts understand economic conditions	Directly affects citizens, businesses, and government programs
Political Nature	Objective and neutral	Policy-oriented and may include government priorities
Frequency	Annually	Annually

7. U.P. Cabinet Decisions January, 2026

Cashless Medical Treatment for Teachers, Staff

On **29 Jan, 2026**, the Uttar Pradesh government has approved a cashless medical treatment for teachers, non-teaching staff, and their dependent family members working under the Secondary and Basic Education Departments. The decision was taken at a cabinet meeting chaired by Chief Minister Yogi Adityanath on Thursday.

The Chief Minister had announced the initiative on Teachers' Day last year, and the Cabinet has now formally approved it. Around 15 lakh teachers and non-teaching employees associated with the Basic and Secondary Education Departments are expected to benefit from the decision. The total estimated expenditure for the scheme is approximately 448 crore rupees. The cashless facility will be available in both government and private hospitals. Teachers working in self-financed, recognised institutions will receive benefits after due verification. It was also clarified that employees and their dependents already covered under any other central or state government health scheme, including the Pradhan Mantri Jan Arogya Yojana or the Chief Minister Jan Arogya Abhiyan, will not be eligible for benefits under this scheme.

The benefit will extend to:

- Teachers of government, aided, and self-financed schools
- Shiksha Mitras and special educators
- Instructors and full-time/part-time teachers
- Wardens of Kasturba Gandhi Residential Schools
- Cooks under the PM Poshan (Mid-Day Meal) scheme
- Dependent family members of all eligible beneficiaries

Three years practice rule is mandatory for UP PCS (J) Recruitment

On 29 Jan, 2026, the Uttar Pradesh government has made three years of legal experience mandatory for recruitment to PCS (J) positions. The Cabinet approved the Uttar Pradesh Judicial Service (Seventh Amendment) Rules, 2026. This amendment was made based on a recommendation from the High Court, Allahabad.

According to these rules, the provision of compulsory three years of legal practice i.e. advocacy in direct recruitment to PCS (Judicial) Service has been added under **Rule 11** relating to educational qualification. Previously, a Bachelor of Laws (LLB) degree was sufficient for recruitment to these positions. The Supreme Court had mandated three years of experience in the

Civil Judge (Junior Division) examinations. All High Courts and State Governments were instructed to implement it in their respective jurisdictions. Therefore, the state government has made this amendment.

Key Urban and Infrastructure decisions

Among other major decisions, the Cabinet approved:

- Formation of a Metropolitan Corporation in Noida, following Supreme Court directions issued in case Virendra Singh Nagar Vs. State of Uttar Pradesh and Anr., on 13.08.2025
- Sewerage projects under AMRUT 2.0 in Gorakhpur (₹721.40 crore) and Varanasi (₹266.49 crore)
- Implementation of Uttar Pradesh Urban Redevelopment Policy 2026
- Approval of revised development charges for urban infrastructure
- Notification of UP Municipal Advertisement Regulation Rules, 2026

Science parks, Transport, and Industrial projects

The Cabinet also cleared:

- Establishment of Science Parks and Planetariums in Bareilly and Moradabad
- Amendments to the UP Motor Vehicle Taxation Act, 1997 to boost revenue
- Creation of 351 new posts of Assistant Motor Vehicle Inspectors
- Expansion and modernization of the Ganga Kisan Cooperative Sugar Mill in Muzaffarnagar
- Land acquisition for future expansion of Noida International Airport, Jewar

Other major approvals

Additional decisions include:

- Industrial water supply for the proposed PM Mitra Textile Park in Lucknow–Hardoi
- Digitisation of registered deeds in Sub-Registrar offices
- Revised royalty and dead rent rates for minor minerals
- Rehabilitation of disaster-affected families in Bahraich
- Government-led resettlement of Hindu Bengali families displaced from Bangladesh

8. Important Supreme Court Cases

January 2026

INDEX

S.N.	Subject	Case Reference
1.	In prosecutions under the Unlawful Activities Prevention Act, 1967 delay in trial does not operate as a "trump card" which automatically displaces statutory safeguards Denied bail to Umar Khalid and Sharjeel Imam in the Delhi riots larger conspiracy case, observing that the materials showed a prima facie case against them under Act, 1967. Granted bail to some of the other accused in the case - Gulfisha Fatima, Meera Haider, Shifa Ur Rehman, Mohd. Saleem Khan and Shadab Ahmed.	Gulfisha Fatima Vs. State (Govt. of NCT of Delhi), decided on 05.01.2026
2.	Disciplinary proceedings cannot be initiated against members of the district judiciary merely for passing allegedly incorrect or erroneous judicial orders. If the complainant is a recalcitrant member of the Bar, apart from contempt action, a reference should be made to the Bar Council for disciplinary proceedings, with a direction to dispose of such references expeditiously.	Nirbhay Singh Suliya Vs. State of Madhya Pradesh and Anr., decided on 05.01.2026
3.	Plaintiff is 'Dominus Litis'. He can't be compelled to add a defendant in suit under Order 1 Rule 10 CPC.	Nak Engineering Company Pvt. Ltd. Vs. Tarun Keshrichand Shah and Ors., decided on 05.01.2026
4.	The right to a speedy trial, guaranteed under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an under-trial, without commencement or reasonable	Arvind Dham Vs. Directorate of Enforcement, decided on 06.01.2026

	progress of trial, effectively converts pre-trial detention into a form of punishment.	
5.	Cognizance can't be taken on a cheque dishonor complaint filed belatedly unless the delay is condoned by the Court.	S. Nagesh Vs. Shobha S. Aradhya, decided on 06.01.2026
6.	Bail shouldn't be denied unless there's strong and convincing evidence showing serious involvement. When a person is added as an accused under Sec. 319 Cr.P.C. and that person is ultimately arrested and prays for bail, the relevant consideration at the end of the court while considering his plea for bail should be the strong and cogent evidence than mere probability of his complicity.	Md Imran @ D.C. Guddu Vs. State of Jharkhand, decided on 07.01.2026
7.	Suggested the Union Government to introduce a "Romeo-Juliet" clause in the POCSO Act to exempt adolescents who engage in consensual relationships from criminal prosecution, despite being below the age of consent (18 years) and having only a minor age difference.	State of Uttar Pradesh Vs. Anurudh and Anr., decided on 09.01.2026
8.	Mere non-substitution of one of the legal heirs of a deceased party wouldn't render the suit abated if the deceased party's interest is adequately represented by other legal heirs. The law is settled that the vendor is a necessary party in a suit for specific performance of an agreement for sale, notwithstanding that vendor has transferred his interest in the subject matter of the agreement to a third party.	Kishorilal (D) through LRS. & Ors. Vs. Gopal and Ors., decided on 12.01.2026
9.	A purchaser who acquires property during the pendency of litigation, as a transferee pendente lite, has no right	Alka Shrirang Chavan and Anr. Vs. Hemchandra Rajaram Bhonsale and Ors., decided on

	to obstruct the execution of the decree and remains bound by the outcome of the proceedings, holding the transfer strictly subservient to the decree.	12.01.2026
10.	Split verdict on the constitutionality of Section 17A of the Prevention of Corruption Act, inserted by the 2018 amendment, which mandates that there should be a prior sanction from the Government to launch an investigation against a public servant under the Act. Justice BV Nagarathna held that Sec. 17A is unconstitutional. Justice KV Viswanathan refused to do so and instead read it down to hold that the question of sanction must be decided by the Lok Pal or the Lok Ayukta. In view of the divergence of opinion in the bench, the matter was directed to be placed before the Chief Justice of India for the constitution of an appropriate bench to decide the issue.	Centre for Public Interest Litigation Vs. Union of India, decided on 13.01.2026
11.	A daughter-in-law who becomes a widow after the death of her father-in-law is entitled to claim maintenance from his estate under the Hindu Adoptions and Maintenance Act, 1956. The protection of the Hindu Adoption and Maintenance Act cannot be based on the timing of the husband's death.	Kanchana Rai Vs. Geeta Sharma, decided on 13.01.2026
12.	Motive assumes significance, primarily in cases based on circumstantial evidence. Where there is direct evidence in the form of a credible and trustworthy dying declaration, the absence of strong proof of motive is not fatal to the prosecution case.	State of Himachal Pradesh Vs. Chaman Lal, decided on 15.01.2026
13.	In public employment, wait-listed candidates do not acquire any vested	Rajasthan Public Service Commission, Ajmer Vs. Yati

	or automatic right to appointment once the statutory validity of the waiting list has expired.	Jain and Ors., decided on 15.01.2026
14.	A conviction cannot be sustained merely on the basis of “so-called confessional statements” made under Section 27 Evidence Act to the police and an alleged discovery arising from such confessional statements, especially when the chain of circumstantial evidence remains incomplete.	Tulasareddi @ Mudakappa and Anr. Vs. State of Karnataka and Ors., decided on 16.01.2026
15.	In the changing times, the matrimonial litigation has increased manifolds. It is the duty of all concerned including the family members of the parties to make their earnest effort to resolve the disputes before any civil or criminal proceedings are launched.	Neha Lal Vs. Abhishek Kumar, decided on 20.01.2026
16.	Subordinate legislation does not become binding unless it is published in the Official Gazette, and it is the date of such Gazette publication, not the mere date of issuance of the notification, which renders it binding.	Viraj Impex Pvt. Ltd. Vs. Union of India and Anr., decided on 21.01.2026
17.	It is necessary to suggest to the Union and State Governments the urgent need for the digitization of registered documents and land records using secure, tamper-proof technologies such as Blockchain. Many experts believe that Blockchain, a shared, digital record book (ledger) system would ensure that once a transaction of a sale or mortgage or like nature is recorded, it becomes immutable and cryptographically secured.	Hemalatha (D) by LR. Vs. Tukaram (D) by LR. and Ors., decided on 22.01.2026
18.	A confession can form a legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. However, it was also held that a Court shall not base a	Bernard Lyngdoh Phawa Vs. State of Meghalaya, decided on 27.01.2026

	conviction on such a confession without corroboration.	
19.	Waqf Tribunals have jurisdiction only over properties notified in the “list of auqaf” or registered under the Waqf Act, and not over disputes concerning unregistered properties.	Habib Alladin and Ors. Vs. Mohammed Ahmed, decided on 28.01.2026
20.	Any interference with privately owned property, including by way of demolition or deprivation of its beneficial use, must rest on a clear statutory foundation and be preceded by due consideration of all relevant factual and legal circumstances, which exercise, appears not to have been undertaken in the present case.	M/S Aarsuday Projects and Infrastructure (P) Ltd. Vs. Jogen Chowdhury and Ors., decided on 29.01.2026
21.	Right to menstrual health is part of the right to life under Article 21 of the Constitution. Issued directions to schools to provide biodegradable sanitary napkins free of cost to adolescent girls. Issued directions to ensure that schools are equipped with functional and hygienic gender-segregated toilets. Directed the pan-India implementation of the Union's national policy, 'Menstrual Hygiene Policy for School-going Girls' in schools for adolescent girl children from Classes 6-12.	Dr. Jaya Thakur Vs. Government of India and Ors., decided on 30.01.2026

IN THE SUPREME COURT OF INDIA

**Gulfisha Fatima
Vs.
State (Govt. of NCT of Delhi)**

**[Criminal Appeal No. _____ of 2026
arising out of SLP (Crl.) No. 13988/2025]**

**[Criminal Appeal No. ____/2026
arising out of SLP (Crl.) No. 14030/2025]**

**[Criminal Appeal No. ____/2026
arising out of SLP (Crl.) No. 14132/2025]**

**[Criminal Appeal No. ____/2026
arising out of SLP (Crl.) No. 14165/2025]**

**[Criminal Appeal No. ____/2026
arising out of SLP (Crl.) No. 14859/2025]**

**[Criminal Appeal No. ____/2026
arising out of SLP (Crl.) No. 15335/2025]**

**[Criminal Appeal No. ____/2026
arising out of SLP (Crl.) No. 17055/2025]**

Head Note – In prosecutions under the Unlawful Activities Prevention Act, 1967 delay in trial does not operate as a "trump card" which automatically displaces statutory safeguards. Denied bail to Umar Khalid and Sharjeel Imam in the Delhi riots larger conspiracy case, observing that the materials showed a prima facie case against them under Act, 1967. Granted bail to some of the other accused in the case - Gulfisha Fatima, Meera Haider, Shifa Ur Rehman, Mohd. Saleem Khan and Shadab Ahmed.

JUDGMENT

Aravind Kumar, J.

Table of Contents

- 1. INTRODUCTION.....
 - 1.1 BRIEF BACKGROUND OF THE CASE
 - 1.2 CASE OF PROSECUTION AS PROPOUNDED UNDER FIR

NO. 59 OF 2020

- 1.3 CHARGESHEET:
2. CONSIDERATION OF PROLONGED INCARCERATION AND THE CONSTITUTIONAL PLEA UNDER ARTICLE 21. ...
- 3 STATUTORY FRAMEWORK OF SECTION 43D(5) AND THE SCOPE OF JUDICIAL INQUIRY AT THE BAIL STAGE
- 4 SCOPE OF "TERRORIST ACT" UNDER SECTION 15 AND THE STATUTORY CONTEXT
- 5 INDIVIDUALISED ROLE AND DIFFERENTIATION IN TREATMENT OF THE PRIME CONSPIRATORS WITH OTHERS.
- 6 SHARJEEL IMAM - APPELLANT IN SLP (CRL.) NO. 14030 OF 2025
 - 6.1 SUBMISSIONS ON BEHALF OF APPELLANT:
 - 6.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:
 - 6.3 FINDINGS OF THE TRIAL COURT:
 - 6.4 FINDINGS OF THE HIGH COURT:
 - 6.5 DISCUSSION ON ROLE AND FINDINGS:
- 7 UMAR KHALID - APPELLANT IN SLP (CRL.) 14165 OF 2025:
- 7.1 SUBMISSION ON BEHALF OF APPELLANT:
- 7.2 SUBMISSIONS ON BEHALF OF RESPONDENT:
- 7.3 FINDINGS OF THE TRIAL COURT:
- 7.4 FINDINGS OF THE HIGH COURT:
- 7.5 DISCUSSION ON ROLE AND FINDINGS:
- 8 SHIFA UR REHMAN - APPELLANT IN SLP (CRL.) 14859 OF 2025
- 8.1 SUBMISSIONS ON BEHALF OF THE APPELLANT:
- 8.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:
- 8.3 FINDINGS OF THE TRIAL COURT:
- 8.4 FINDINGS OF THE HIGH COURT
- 8.5 DISCUSSION ON ROLE AND FINDINGS:
- 9 SALEEM KHAN - APPELLANT IN SLP (CRL.) NO. 15335/2025
- 9.1 SUBMISSIONS ON BEHALF OF THE APPELLANT:

- 9.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:
.....
- 9.3 FINDINGS OF THE TRIAL COURT:
- 9.4 FINDINGS OF THE HIGH COURT:
- 9.5 DISCUSSION ON ROLE AND FINDINGS:
- 10 MEERAN HAIDER - APPELLANT IN SLP (CRL.) 14132 OF 2025
.....
 - 10.1 SUBMISSIONS ON BEHALF OF APPELLANT:
 - 10.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:
.....
 - 10.3 FINDINGS OF THE TRIAL COURT:
 - 10.4 FINDINGS OF THE HIGH COURT:
 - 10.5 DISCUSSION ON ROLE AND FINDINGS:
- 11 SHADAB AHMED - APPELLANT IN SLP(CRL.) NO. 17055/2025
.....
 - 11.1 SUBMISSIONS ON BEHALF OF APPELLANT:
 - 11.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:
 - 11.3 FINDINGS OF THE TRIAL COURT:
 - 11.4 FINDINGS OF THE HIGH COURT:
 - 11.5 DISCUSSION ON ROLE AND FINDINGS:
- 12 GULFISHA FATIMA - SLP (CRL.) NO. 13988/2025
 - 12.1 SUBMISSIONS ON BEHALF OF THE APPELLANT:
 - 12.2 SUBMISSIONS ON BEHALF OF THE RESPONDENT:
.....
 - 12.3 FINDINGS OF THE TRIAL COURT:
 - 12.4 FINDINGS OF THE HIGH COURT:
 - 12.5 DISCUSSION ON ROLE AND FINDINGS:
- 13 FINAL CONCLUSION AND OPERATIVE DIRECTIONS
 - 13.1 ACCUSED IN RESPECT OF WHOM BAIL IS DECLINED
.....
 - 13.2 ACCUSED IN RESPECT OF WHOM BAIL IS GRANTED
.....
 - 13.3 CONDITIONS GOVERNING RELEASE ON BAIL
 - 13.4 CONCLUDING OBSERVATION

1. INTRODUCTION

1. Heard. Leave Granted.

2. These appeals arise out of a common judgment and order passed by the High Court of Delhi in Criminal Appeal No. 184 of 2022 and connected matters, by which the High Court affirmed the rejection of bail applications filed by the appellants. The appellants stand arraigned as accused in FIR No. 59 of 2020 registered by the Crime Branch, Delhi, arising out of the incidents that occurred in several parts of the National Capital Territory of Delhi (hereinafter referred to as "Delhi Riots") in February 2020.

3. At the inception, the appellants were booked under Sections 147, 148, 149 and 120B of the Indian Penal Code. Upon completion of investigation, a chargesheet came to be filed alleging offences under Sections 120B read with Sections 109, 114, 124A, 147, 148, 149, 153A, 186, 201, 212, 295, 302, 307, 341, 353, 395, 420, 427, 435, 436, 452, 454, 468, 471 and 34 of the Indian Penal Code, as also under Sections 13, 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967, Sections 25 and 27 of the Arms Act, and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984.

4. The appellants before this Court are Sharjeel Imam [SLP (Crl.) No. 14030 of 2025], Umar Khalid [SLP (Crl.) No. 14165 of 2025], Shifa Ur Rehman [SLP (Crl.) No. 14859 of 2025], Mohd. Saleem Khan [SLP (Crl.) No. 15335 of 2025], Meeran Haider [SLP (Crl.) No. 14132 of 2025], Shadab Ahmed [SLP (Crl.) No. 17055 of 2025], and Gulfisha Fatima [SLP (Crl.) No. 13988 of 2025].

5. The prosecution case, as placed before the Court, proceeds on the footing that the incidents of violence were not isolated or spontaneous, but were the outcome of a larger conspiracy in which several accused persons are alleged to have participated at different stages and in different capacities. While the FIR and the impugned judgment are common, the role attributed to each appellant, the nature of the allegations, and the material relied upon by the prosecution are not uniform.

6. Before this Court, certain submissions have been advanced which are common to all the appeals, particularly on the question of prolonged incarceration and the plea founded on Article 21 of the Constitution. At the same time, each appeal also raises issues which are specific to the appellant concerned and which turn on the role attributed, the prosecution material relied upon, and the findings recorded by the courts below.

7. The judgment, therefore, first notices the broad factual background of the case and the prosecution narrative as emerging from FIR No. 59 of 2020 and

the charge-sheets filed pursuant thereto. It then considers the plea of prolonged incarceration and the statutory framework governing the grant of bail under Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967. The scope of a "terrorist act" under Section 15 of the Act is also examined, to the extent it bears upon the submissions advanced.

8. Thereafter, the appeals are taken up one by one. In each case, the submissions advanced on behalf of the appellant and the response of the prosecution are noticed, followed by the findings of the Trial Court and the High Court. The role attributed to the appellant is then considered in the light of the statutory requirements and the principles governing the grant of bail under the UAPA.

9. It is in this manner that the present batch of appeals falls for consideration.

1.1. BRIEF BACKGROUND OF THE CASE

10. FIR No. 59 of 2020 is one of the FIR's registered for the cause of the riots that took place in Delhi NCR in the month of February 2020. The prosecution story reveals how the riots were allegedly orchestrated and executed by the Appellants herein.

11. The prosecution case is founded on allegations of a pre-planned criminal conspiracy involving several accused persons, including the present appellants. It is alleged that the conspiracy was hatched with the object of orchestrating riots in the National Capital Territory of Delhi as a form of protest against the enactment of the Citizenship Amendment Act, 2019 and the proposed National Register of Citizens.

12. According to the prosecution, the conspiracy culminated in the deliberate incitement of widespread communal violence on and around 22nd, 23rd, and 24th February 2020. The acts allegedly committed during this period were not spontaneous but were the outcome of coordinated efforts to inflame tensions, mobilise crowds, and execute violent actions across various parts of Delhi.

13. The riots are stated to have resulted in grave consequences, including the loss of 54 lives, among them a senior police officer and an Intelligence Bureau official, as well as grievous injuries to several police personnel and civilians. In addition, extensive damage was caused to over 1,500 public and private properties, alongside substantial intangible harm to public order, social harmony, and the nation at large.

14. Before proceeding to the further analysis of the matter, it would be apposite to advert to the contents of First Information Report No. 59 of 2020 (hereinafter referred to as "the FIR"), as well as the contents of the charge-

sheet and the supplementary charge-sheets filed by the Investigating Officer before the competent Court, which are discussed in the succeeding section.

1.2. CASE OF PROSECUTION AS PROPOUNDED UNDER FIR NO. 59 OF 2020

15. First Information Report No. 59 of 2020 constitutes the genesis of the present case and sets out the allegations of conspiracy attributed to the appellants herein, which are stated to have culminated in the riots that occurred on 23rd, 24th, and 25th February 2020. Before proceeding further with the analysis, it is necessary to reproduce the contents of the said FIR.

16. FIR 59 of 2020 was registered by the PS, Crime Branch New Delhi on 06.03.2020. Sub-Inspector Shri. Arvind Kumar, posted with the Crime Branch, Delhi claims to have received information from an informant regarding the communal riots that occurred in Delhi on 23rd, 24th and 25th February 2020. According to the information so received, the riots were allegedly the outcome of a pre-planned conspiracy orchestrated by the Jawaharlal Nehru University (JNU 'for short') student Umar Khalid along with his associates, who were stated to be affiliated with different organisations.

17. It is alleged that, as part of the said conspiracy, Umar Khalid delivered provocative speeches calling upon people to come out on the streets and block roads during the visit of the then President of the United States of America, Mr. Donald Trump, on 24th and 25th February 2020. The alleged objective of such actions was to internationalise a narrative that minorities in India were being illtreated and tortured. It is further alleged that women and children were deliberately mobilised to come out on the streets in various localities of Delhi to escalate tensions and precipitate communal violence.

18. The FIR further reveals that, in several areas including Maujpur, Kardampuri, Jafrabad, Chand Bagh, Gokulpuri, Shiv Vihar and adjoining localities, weapons and incendiary materials such as firearms, petrol bombs, acid bottles, stones, slingshots and other dangerous substances were allegedly stockpiled in homes in advance. It is alleged that the task of mobilising people from different places to participate in the riots was assigned to one Danish, resident of Bhajanpura, Delhi. Specific reference is made to 23rd February 2020, when women and children allegedly blocked the road under the Jafrabad Metro Station to create public disruption, and to the pre-planned evacuation of children from minority schools in the concerned areas.

19. On the basis of the aforesaid information, a daily diary entry bearing DD No. 03 was made. Thereafter, an FIR was registered under Sections 147, 148,

149 and 120B of the Indian Penal Code. Pursuant to the directions of the senior officer, a copy of the FIR was forwarded to the Police Station, Special Cell, Lodhi Colony, for investigation.

20. Subsequent to the registration of the FIR, the appellants herein were apprehended on different dates in connection with FIR No. 59 of 2020. The dates on which the appellants were apprehended in relation to the present FIR are set out hereunder:

SL. No.	SLP. (CrI.) No.	Name of Appellant	Date of Arrest
1.	13988/2025	Gulfisha Fatima	11.04.2020
2.	14030/2025	Sharjeel Imam	28.01.2020
3.	14132/2025	Meeran Haider	01.04.2020
4.	14165/2025	Umar Khalid	01.10.2020
5.	14859/2025	Shifa Ur Rehman	26.04.2020
6.	15335/2025	Mohd Saleem Khan	25.06.2020
7.	17055/2025	Shadab Ahmed	20.05.2020

1.3. CHARGESHEET:

21. Upon registration of the FIR, the Crime Branch undertook investigation and filed the main charge-sheet on 16.09.2020 against fifteen accused persons, which included some of the appellants herein, namely Gulfisha Fatima, Meeran Haider, Shifa Ur Rehman, Mohd. Saleem Khan, and Shadab Ahmed. The main charge-sheet alleged that the said accused persons were part of a larger conspiracy which culminated in the riots that took place on 23rd, 24th, and 25th February 2020 in Delhi.

It was alleged therein that the accused had committed offences punishable under Sections 120B read with Sections 109, 114, 124A, 147, 148, 149, 153A, 186, 201, 212, 295, 302, 307, 341, 353, 395, 420, 427, 435, 436, 452, 454, 468, 471, and 34 of the Indian Penal Code, as well as under Sections 13, 16, 17, and 18 of the Unlawful Activities (Prevention) Act, 1967 (for short, "UAPA"), Sections 25 and 27 of the Arms Act, and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 (for short, "PDPP Act"). Upon filing of the main charge-sheet, the learned Trial Court¹ took cognizance of the offences against the accused named therein.

Thereafter, the State filed its first supplementary charge-sheet on 22.11.2020, arraying three additional accused persons, including the remaining two appellants herein, namely Umar Khalid and Sharjeel Imam, and the Court, vide order dated 22.11.2020, took cognizance of the offences against them as well. The State subsequently filed three further supplementary charge-sheets on 23.02.2021, 02.03.2022, and 07.06.2023.

22. The charge-sheets filed by the State disclose the alleged role attributed to each of the accused/appellants and the contours of the larger conspiracy purportedly orchestrated by them, commencing from the period immediately after the Citizenship Amendment Bill, 2019 (for short, "CAB") was passed by the Central Cabinet on 04.12.2019, and culminating in the riots that occurred in various parts of Delhi and the National Capital Region on 23rd, 24th, and 25th February 2020.

23. Before proceeding further, it is necessary to notice the principal submission urged on behalf of all the appellants at the threshold. The submission rests on the length of custody undergone and the plea that continued incarceration, in the absence of early conclusion of trial, offends the guarantee of personal liberty under Article 21 of the Constitution. It is this submission which the Court proposes to examine first.

2. CONSIDERATION OF PROLONGED INCARCERATION AND THE CONSTITUTIONAL PLEA UNDER ARTICLE 21.

24. During the course of arguments advanced before this Court, a fervent plea was addressed on behalf of the appellants resting on constitutional grounds. It was primarily urged that prolonged incarceration, coupled with the absence of any realistic prospect of early conclusion of trial, rendered continued detention constitutionally impermissible and mandate of Article 21 of the Constitution is at peril. At the outset, it was repeatedly stated that the appellants did not seek an examination of the merits of the prosecution case, and that the consideration ought to remain confined to the issue of delay alone.

25. It was submitted that the appellants had been in custody for a substantial length of time; that the progress of trial had been slow; and that the complexity of the prosecution rendered the likelihood of its early conclusion uncertain. Reliance was placed on decisions of this Court recognising that personal liberty cannot be sacrificed at the altar of procedural stagnation, and that prolonged pretrial incarceration may, in appropriate cases, justify constitutional intervention notwithstanding statutory restrictions on bail. These submissions, though pressed individually, were broadly common in substance.

26. As the hearing progressed, however, it became evident that the plea of delay could not be examined in abstraction. In the course of submissions and rejoinder, reference was necessarily made to the nature of the allegations, the statutory framework invoked, and the role attributed to individual appellants. This was not a departure from the original submission, but a reflection of the legal reality that the constitutional question of delay does not arise in a

vacuum. To allay the concern expressed that the appeals would be decided without adequate delineation of governing principles, this Court considers it appropriate to set out the framework within which the issues are addressed.

27. Accordingly, before turning to the case of each appellant, it becomes necessary to first address certain questions of general application. These include the manner in which pleas founded on delay are to be assessed in prosecutions under special statutes, the contours of the statutory restraint embodied in the Unlawful Activities (Prevention) Act, 1967, and the principles governing the formation of prima facie satisfaction under Section 43D(5) of the Act. This exercise is intended to provide the legal setting within which individual roles and allegations are thereafter examined.

28. At the threshold, it is necessary to clarify the legal contours within which the plea of delay operates in prosecutions under the UAPA. Delay engages Article 21 at two distinct constitutional planes. First, delay may be of such magnitude and character that continued detention becomes per se unconstitutional, irrespective of the strength of the prosecution case. Second, delay may be pressed as a circumstance to contend that the statutory satisfaction under Section 43D(5) stands diluted or displaced. The present case, on an examination of the record, does not meet either threshold. The inquiry that follows is therefore confined to whether the delay alleged is of such a nature as to constitutionally eclipse the statutory embargo, and not whether delay exists in the abstract.

29. We may at the outset clarify the limited compass of the present discussion. This Court is not engaged in any abstract comparison between the Constitution and a statute, nor in declaring that delay must invariably prevail over statutory restrictions, or that delay can never warrant constitutional relief. The question is more precise: in prosecutions under the UAPA, when delay and prolonged incarceration are invoked as grounds for bail, what is the principled approach by which a constitutional court is to examine such a plea.

30. Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment.

31. At the same time, Article 21 has never been understood as operating in isolation from law. The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair. The expression "procedure established by law"

reflects that balance. The UAPA, as a special statute enacted to address offences alleged to affect the security of the State and the stability of civic life, represents a legislative judgment as to the conditions under which bail may be granted at the pre-trial stage. Section 43D(5) of UAPA embodies the exercise of that judgment.

32. In *Union of India v. K.A. Najeeb*², this Court recognised a constitutional safeguard that cannot be ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.

33. The same decision, however, does not indicate as laying down a mechanical rule under which the mere passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.

34. The constitutional inquiry into delay is not an inquiry into guilt. It is an inquiry into whether continued detention remains constitutionally permissible in the circumstances of the case. That inquiry is necessarily contextual. Context includes the nature of the allegation, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to delay, and the risks attendant upon release. Delay cannot be detached from these considerations and treated as a solitary determinant.

35. The proper constitutional question, therefore, is not whether Article 21 is superior to Section 43D (5). The proper question is how Article 21 is to be applied where Parliament has expressly conditioned the grant of bail in relation to offences alleged to implicate national security. The law does not contemplate an either-or approach. Nor does it contemplate an unstructured blending of statutory and constitutional considerations. What is required is disciplined judicial scrutiny that gives due regard to both.

36. The appellants have urged that their continued incarceration over a prolonged period, coupled with the pace at which the trial has progressed, warrants their enlargement on bail notwithstanding the statutory embargo contained in Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967. Prolonged custody undoubtedly implicates the constitutional guarantee of personal liberty under Article 21 of the Constitution, and such a plea cannot be rejected on the basis of duration alone without a careful and fact-

sensitive examination. At the same time, the Court is required to examine whether the narrative of delay, as projected, is borne out by the record, and whether such delay is of a nature that constitutionally displaces the statutory mandate.

37. The present prosecution arises out of FIR No. 59 of 2020 and involves multiple accused persons, voluminous documentary and electronic evidence, and allegations of a structured and continuing conspiracy. The record reflects that compliance under Section 207 of the Code of Criminal Procedure was completed only on 05.08.2023, after which the Trial Court directed that arguments on charge would commence on a day-to-day basis from 11.09.2023 onwards. The nature of the prosecution, the number of accused, and the breadth of material necessarily render the proceedings complex and time-consuming. The mere passage of time, therefore, cannot be viewed in isolation.

38. What assumes significance is that the procedural history and order sheets do not support the assertion that the delay is attributable to prosecutorial inaction or judicial inaction. The common counter affidavit and the Trial Court's orders record that, at various stages, the prosecution expressed readiness to proceed, including readiness to commence arguments on charge, while objections, requests for deferment, and issues relating to sequencing of arguments were raised on behalf of the accused.

At the stage of compliance under Section 207 CrPC itself, the Trial Court noted that despite repeated directions, certain accused declined to receive copies of the charge-sheet in the manner directed, insisted on alternate modes of supply, or filed successive applications, necessitating further procedural orders and contributing to delay at the pre-charge stage. These aspects emerge from the record and are not matters of conjecture.

39. The plea of delay has also undergone judicial scrutiny in respect of a coaccused arising out of the very same FIR. In *Tasleem Ahmed v. State* (NCT of Delhi)³, the High Court of Delhi undertook a detailed examination of the Trial Court order-sheets and, after tabulating the procedural history, recorded categorical findings that the alleged inordinate delay could not be attributed either to the prosecution or to the Trial Court.

The High Court noted repeated adjournments sought on behalf of the accused, reluctance to commence arguments on charge despite directions for day-to-day hearing and recorded the Trial Court's expression of distress at the inability to move forward notwithstanding consensus schedules arrived at amongst the defence. The High Court expressly rejected the contention that bail under Section 43D (5) of the UAPA could be granted solely on the

ground of delay in such circumstances, holding that the statutory embargo cannot be permitted to be circumvented by delay attributable, at least in part, to the manner in which the defence conducted the proceedings.

40. This Court is conscious that the appellants in the present appeal may not stand on identical factual footing in all respects with the co-accused whose appeal was considered by the High Court. Nevertheless, the findings recorded therein are relevant insofar as they arise from the same trial, the same order-sheets, and the same procedural milieu. They negate the overarching portrayal that the appellants have remained in custody solely on account of prosecutorial inertia or a dormant trial.

41. At the same time, the Court does not proceed on the assumption that the entire delay can be laid at the door of the accused, nor does it characterise the proceedings as free from institutional or systemic constraints. This is not a casual prosecution, nor one involving a narrow factual canvas. The law has taken its course, albeit at a pace dictated by the complexity of the case, the number of accused, and the nature of issues raised. The constitutional concern arising from prolonged custody is therefore acknowledged, but it does not, on the present record, translate into a finding that continued detention has become punitive or unconscionable solely by reason of delay.

42. The approach of addressing delay-related concerns through calibrated judicial supervision, rather than automatic enlargement on bail, stands reinforced by the decision of this Court in *Union of India v. Saleem Khan*.⁴ In that case, despite the accused having remained in custody for over five years and the trial not having commenced, this Court declined to interfere with the rejection of bail *qua* one accused, while upholding bail granted to another, thereby reiterating that delay-based pleas must necessarily be adjudicated on an accused-specific footing.

Significantly, even while acknowledging the constitutional imperative of a speedy trial, the Court did not eclipse the statutory rigour under Section 43D(5) of the UAPA but instead directed expeditious conclusion of the trial and cautioned against any conduct on the part of the accused that may further protract the proceedings. The decision thus affirms that prolonged custody, though a matter of concern, does not operate as an automatic ground for grant of bail where the statutory threshold continues to be attracted.

43. Viewed cumulatively, the record does not support the absolute proposition that the appellants have remained "innocently incarcerated" without any contribution to delay, nor does it disclose a situation where the delay is so wholly unjustified as to override the statutory embargo contained in Section 43D(5). The appropriate constitutional response, at this stage, lies in ensuring

vigilant oversight of the trial and its expeditious progression, rather than in eclipsing the statutory mandate governing bail in offences of the present nature. The plea of delay in the facts of the particular case, therefore, does not warrant enlargement on bail, though it justifies continued judicial emphasis on the timely conduct of the proceedings.

44. It is in this sense that the plea of delay must first be examined to see whether it arises in a manner that warrants constitutional scrutiny of continued custody. Broadly stated, the Court must consider whether the custody undergone is substantial, whether the proceedings have made meaningful progress, and whether there exists a realistic prospect of conclusion of trial within a reasonable period. The Court must also take note of the causes contributing to delay, including whether delay is attributable to the inherent complexity of the prosecution or to the conduct of parties, including the accused.

45. A finding that these circumstances exist does not, by itself, compel bail. It merely calls for the next level of constitutional consideration. At that stage, the Court is required to examine whether, notwithstanding delay, continued detention remains constitutionally justified having regard to the statutory context and the facts of the case. This examination is not a free-ranging balancing exercise; it is structured by legally relevant considerations.

46. One such consideration is the gravity of the alleged offence in its statutory setting. Under the UAPA, Parliament has legislatively characterised certain conduct as implicating the security of the State and the peace of society. That legislative characterisation does not conclude the judicial inquiry, but it is not constitutionally irrelevant. It forms part of the context in which the Article 21 claim is assessed.

47. A closely allied consideration is the role attributed to the accused. Prosecutions under the UAPA may allege varying degrees of participation, ranging from peripheral acts to strategic, organisational, or ideological centrality. The constitutional significance of prolonged incarceration cannot be assessed uniformly for all accused regardless of role. Where the attribution suggests a central or organising role in the alleged design, the need for circumspection before constitutional intervention displaces a statutory embargo is correspondingly greater. Conversely, where the role is peripheral or episodic, prolonged incarceration may more readily assume a punitive character.

48. Another consideration is the prima facie strength of the accusation at the limited threshold contemplated by Section 43D(5). At this stage, the Court does not weigh evidence, test defences, or conduct a mini trial. Yet, the

constitutional inquiry cannot proceed as if all allegations are identically situated. Whether the prosecution material, taken at its highest, discloses a prima facie nexus between the accused and the statutory ingredients is a circumstance that informs the assessment of continued detention.

49. Consideration must also be given to the integrity of the trial process and the risks associated with release. Depending on the nature of the case, these may include the possibility of influencing witnesses, tampering with evidence, or undermining the fairness of the proceedings. In prosecutions alleging organised activity, the assessment of such risks may differ from that in ordinary criminal cases. This is not to presume guilt, but to recognise that bail decisions are necessarily forward-looking in terms of ensuring an effective trial.

50. The Court must also bear in mind that it is not confined to a binary choice between continued custody and unconditional release. Where delay becomes a matter of constitutional concern, appropriate directions for expeditious trial, prioritisation of witnesses, or periodic review of progress may be issued. Such measures are constitutionally significant responses that address the vice of delay while respecting the statutory framework. The liberty to renew a prayer for bail upon continued stagnation may also be preserved.

51. There is a further constitutional aspect that warrants articulation. Article 21 protects individual liberty. It also, within the same guarantee of life, reflects the State's obligation to protect the life and security of the community. In prosecutions alleging threats to public order and national security, the Court cannot be unmindful that both dimensions are engaged. The constitutional order is not served by an approach that treats liberty as the sole value and societal security as peripheral. Both must be accommodated through reasoned adjudication.

52. The consequence of the above is that *Najeeb*(supra) must be understood as a principled safeguard against unconscionable detention. Prolonged incarceration is a matter of serious constitutional concern and carries great weight. It is not, however, the sole determinant. The Court must consider, in totality, whether continued detention has become constitutionally unjustifiable, having regard to the role attributed, the statutory context, the limited prima facie material, the trajectory of the trial, the causes of delay, and the availability of intermediate remedies.

53. This approach does not dilute Article 21. It gives Article 21 structured content in a field where the Constitution itself recognises competing interests. Nor does it render Section 43D(5) absolute. It recognises that statutory restraint must yield in an appropriate case where detention becomes punitive

by reason of unreasonable and unjustified delay. What it excludes is a mechanical override based on time alone, divorced from legal context.

54. Having set out the above governing approach, this Court, in the later part of this judgment would apply these principles in a calibrated manner viz. to the claim of each of the appellants. The Court will examine, in relation to each appellant, the role attributed and whether the statutory threshold under Section 43D(5) is attracted on the prosecution material taken at its highest. Thereafter, where the plea of delay and prolonged incarceration is pressed, the Court will consider whether the circumstances warrant constitutional intervention in terms of the principles noticed above, or whether appropriate directions for expeditious trial would adequately address the concern expressed under Article 21.

55. It is in this disciplined manner, and in faithful regard to both statutory design and constitutional principle, that the present appeals are proposed to be adjudicated.

56. It therefore becomes necessary to state, with clarity, the governing approach. In prosecutions alleging offences which implicate the sovereignty, integrity, or security of the State, delay does not operate as a trump card that automatically displaces statutory restraint. Rather, delay serves as a trigger for heightened judicial scrutiny. The outcome of such scrutiny must be determined by a proportional and contextual balancing of legally relevant considerations, including (i) the gravity and statutory character of the offence alleged, (ii) the role attributed to the accused within the alleged design or conspiracy, (iii) the strength of the prima facie case as it emerges at the limited threshold contemplated under the special statute, and (iv) the extent to which continued incarceration, viewed cumulatively in the facts of the case, has become demonstrably disproportionate so as to offend the guarantee of personal liberty under Article 21.

57. Thus, when the composite evaluation yields a clear conclusion that continued detention has crossed the bounds of constitutional permissibility that the Court may justifiably intervene notwithstanding statutory restrictions.

58. In *Gurwinder Singh v. State of Punjab*⁵, this Court expressly cautioned against the mechanical invocation of prolonged incarceration as a ground for bail in cases involving serious offences under special enactments. The judgment reiterates that the gravity of the offence, the legislative context, and the prima facie material on record cannot be eclipsed merely because the trial has taken time.

59. This Court in *CBI v. Dayamoy Mahato* reiterated that while Article 21 remains paramount, it does not operate in a vacuum divorced from competing constitutional interests. The Court emphasized that claims to liberty must be examined in the totality of circumstances, particularly where allegations implicate organised criminality or matters of public interest. Delay, though undoubtedly significant, was held not to assume the character of an absolute or solitary determinant. The emphasis, once again, was on structured judicial reasoning rather than on formulaic outcomes.

60. Read together, these decisions do not dilute the constitutional guarantee of personal liberty; they explain the manner in which it is to be applied. They do not support an approach of automatic displacement of statutory restraint, but instead emphasise a contextual and measured exercise of judicial scrutiny.

61. To read *Najeeb* (supra) as mandating bail solely on account of prolonged incarceration, irrespective of the statutory context or the nature of the allegations, would be to attribute to the decision a consequence it neither intended nor supports. Such a construction would also lead to an interpretive absurdity, whereby a special statute enacted by Parliament to address offences implicating the sovereignty, integrity, and security of the State would stand effectively neutralised by the mere passage of time, even at a pre-trial stage. Such an outcome cannot be countenanced in constitutional adjudication. Accordingly, the finding in *Najeeb* (supra) is properly situated as a constitutional safeguard to be invoked in appropriate cases, and not as a mathematical formula of universal application.

62. Before parting with the discussion on delay, it is clarified that the observations herein are confined to the present stage of the proceedings. The constitutional concern arising from prolonged custody has been duly considered on the basis of the record as it presently stands. In the event of continued and unexplained stagnation of the trial, it shall remain open to the appellants to avail such remedies as are permissible in law. The Trial Court is expected to accord due priority to the matter and ensure that the proceedings are carried forward with reasonable expedition.

63. The discussion thus far has been confined to the constitutional plea founded on delay and prolonged incarceration. That inquiry, though necessary, does not conclude the consideration of the present appeals. The question that now arises is the manner in which the prayer for bail is to be examined where the prosecution is governed by a special statutory regime.

3. STATUTORY FRAMEWORK OF SECTION 43D(5) AND THE SCOPE OF JUDICIAL INQUIRY AT THE BAIL STAGE

64. The issues arising before this Court at the stage of consideration of bail engage multiple facets of law, including the nature of the statutory framework, the limits of judicial scrutiny at the pre-trial stage, and the manner in which allegations under a special enactment are required to be assessed. In order to address these aspects in a structured and principled manner, it becomes necessary to examine the scheme of the Unlawful Activities (Prevention) Act, 1967, and in particular the scope and content of Section 43D(5), which regulates the exercise of judicial discretion in such matters. An understanding of this framework provides the necessary foundation for evaluating the material placed on record and the role attributed to each accused in accordance with law.

65. The Unlawful Activities (Prevention) Act, 1967, is a special statute enacted to address forms of criminal conduct which, by their very nature, transcend ordinary breaches of penal law and implicate the sovereignty, integrity, and security of the State. Parliament, in framing the Act and in subsequently strengthening its provisions, has proceeded on the legislative understanding that such offences are rarely confined to isolated acts, but are more often the culmination of organised, sustained, and conspiratorial activity unfolding over time.

66. The statutory scheme of the Act reflects this understanding. Chapters IV and VI do not confine criminal liability to the final execution of a terrorist act alone. They extend culpability to preparatory conduct, facilitation, abetment, and conspiracy, recognising that the threat sought to be addressed by the statute often materialises long before any overt act of violence is committed. The law thus proceeds on a process-based conception of criminality rather than an event-based one.

67. It is within this legislative backdrop that Section 43D(5) assumes significance. The provision constitutes a conscious departure from the general principles governing the grant of bail under the Code of Criminal Procedure. Parliament has imposed a calibrated restriction on the power of courts to grant bail in respect of offences under Chapters IV and VI, reflecting its assessment that the ordinary presumption in favour of pre-trial liberty requires modification where allegations pertain to activities threatening the foundations of the State.

68. At the same time, Section 43D(5) does not exclude judicial scrutiny. Nor does it mandate denial of bail by default. The restriction operates only upon the Court being satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true. The provision thus preserves the judicial function, while carefully defining its contours at the pre-trial stage.

69. This Court has, on several occasions, examined the scope and application of Section 43D(5) in diverse factual settings. Decisions such as *National Investigation Agency v. Zahoor Ahmad Shah Watali*⁷, *Vernon v. State of Maharashtra*⁸, *Shoma Kanti Sen v. State of Maharashtra*⁹, *Athar Parwez v. Union of India*¹⁰, and *Jalaluddin Khan v. Union of India*¹¹ disclose a consistent judicial approach to the provision, notwithstanding variations in factual context. The present analysis seeks not to restate those authorities individually, but to distil the governing principles that emerge from them and to apply those principles in a structured and coherent manner.

70. The expression "prima facie true", which lies at the heart of Section 43D(5), does not invite a detailed examination of evidence, nor does it require the Court to assess the probability of conviction. Equally, it does not reduce the judicial role to a mechanical acceptance of the prosecution's assertions. The statutory standard contemplates a threshold inquiry of limited but real content.

71. At this stage, the Court is required to examine whether the material relied upon by the prosecution, taken at face value and without rebuttal, discloses the essential ingredients of the offences alleged against the accused. The inquiry is one of statutory plausibility, not evidentiary sufficiency. The Court tests the allegations against the legal ingredients of the offence, not against possible defences or competing factual narratives.

72. The discipline imposed by Section 43D(5) necessarily circumscribes the nature of judicial scrutiny permissible at the bail stage. The Court is not called upon to weigh the probative value of evidence, to assess its admissibility, or to determine whether the prosecution version will ultimately withstand trial. Any exercise approximating a mini-trial at this stage would transgress the statutory boundary deliberately drawn by Parliament.

73. Such premature adjudication is not merely procedurally inappropriate; it carries institutional consequences. It risks prejudging issues reserved for trial, distorting the adversarial process, and undermining the legislative intent underlying the special bail regime. Section 43D(5) therefore demands judicial restraint, not judicial abstention, at the pre-trial stage.

74. A salient feature of Section 43D(5) is its express reference to "such person". The statutory text mandates an inquiry that is accused-specific rather than case-centric. The provision does not permit a collective or undifferentiated approach to bail merely because multiple accused are arraigned in the same prosecution or alleged conspiracy.

75. The Court is thus required to examine the role attributed to the individual accused, as emerging from the prosecution material, and to determine whether such attribution bears a prima facie nexus to the offences under Chapters IV or VI. This inquiry does not involve ranking degrees of culpability or pronouncing upon guilt. It serves the limited purpose of determining whether the statutory threshold is crossed qua the accused before the Court.

76. In cases alleging conspiratorial conduct, it becomes necessary to distinguish between the existence of a conspiracy and the position occupied by an accused within the alleged framework. While conspiracy may supply the overarching context, Section 43D(5) requires attention to the nature, extent, and character of participation attributed to the individual.

77. At the threshold stage, the inquiry is directed towards whether the prosecution material suggests conspiratorial centrality or merely conspiratorial association. Conduct which, on the prosecution's own showing, reflects conceptualisation, direction, orchestration, or mobilisation of unlawful activity or terrorist activity, stands on a different footing from conduct alleged to be episodic, peripheral, or substitutable. This distinction does not determine guilt; it informs the statutory assessment of whether continued restraint on liberty is justified at the pre-trial stage.

78. The cumulative effect of the statutory scheme and the jurisprudence of this Court is that Section 43D(5) operates as a gatekeeping provision. It requires the Court to undertake a focused, accused-specific, and legally disciplined inquiry, confined to determining whether the prosecution material, taken at its highest, satisfies the statutory threshold of prima facie truth.

79. Any departure from this calibrated approach, whether by converting the bail stage into a forum for adjudicating defences or by treating the invocation of the statute as determinative of the outcome, would unsettle the careful balance struck by Parliament. The provision demands neither mechanical denial nor casual grant of bail, but a principled application of the statutory standard within its clearly defined limits.

80. From the foregoing discussion, certain propositions governing the application of Section 43D(5) emerge with clarity. First, the provision embodies a deliberate legislative departure from ordinary bail jurisprudence, premised upon the distinctive nature of offences under Chapters IV and VI of the Act. Second, the expression "prima facie true" mandates a threshold judicial inquiry which is neither perfunctory nor adjudicatory, requiring the Court to examine whether the prosecution material, taken at face value, discloses the essential statutory ingredients of the alleged offence.

Third, the inquiry is necessarily accused-specific, directed to the role and attribution qua the individual, and does not admit of collective or undifferentiated treatment merely because allegations arise from a common transaction or conspiracy. Fourth, the bail stage under Section 43D(5) is not a forum for evaluating defences, weighing evidence, or conducting a mini-trial; judicial restraint at this stage is not an abdication of duty but a fulfilment of the statutory mandate. These propositions, read together, define the contours of judicial power and responsibility under the provision.

81. The correct application of Section 43D(5), therefore, requires the Court to undertake a structured inquiry confined to the following:

- i. whether the prosecution material, accepted as it stands, discloses a prima facie case satisfying the statutory ingredients of the offence alleged;
- ii. whether the role attributed to the accused reflects a real and meaningful nexus to the unlawful activity or terrorist activity proscribed under the Act, as distinguished from mere association or peripheral presence; and
- iii. whether the statutory threshold is crossed qua the individual accused, without embarking upon an assessment reserved after full-fledged trial.

82. Where these requirements are met, the statutory restraint on the grant of bail must operate with full force; where they are not, the embargo stands lifted. This approach preserves the legislative purpose of the Act, and ensures that the exceptional nature of the bail regime under Section 43D(5) is neither diluted by overreach nor distorted by mechanical application.

83. The discussion thus far has been directed to the manner in which the statutory threshold under Section 43D(5) is to be applied at the stage of bail. That inquiry sets out how the Court is to examine the prayer for bail under a special enactment. The inquiry must now turn to what the accusation is that is sought to be tested against that threshold. This necessarily requires an examination of the statutory meaning and scope of a "terrorist act" under the Act.

4. SCOPE OF "TERRORIST ACT" UNDER SECTION 15 AND THE STATUTORY CONTEXT

84. During the course of arguments, a fervent and sustained debate emerged not merely on the threshold under Section 43D(5), but on a more foundational premise, namely, what the statute itself comprehends as a "terrorist act" and, correspondingly, the legal character of the allegations sought to be brought within Chapters IV and VI of the Act. On behalf of the appellants, it was urged that the prosecution narrative, even if taken at its highest, discloses at

best a situation of public disorder, and that the invocation of the UAPA proceeds on an overstretched understanding of terrorism.

The prosecution, on the other hand, contended that the statutory definition is not confined to conventional forms of violence, and that Parliament has consciously employed a broader formulation to capture conduct which threatens the unity, integrity, security, including economic security, or sovereignty of India, and which disrupts civic life in the manner contemplated by the Act. The submissions, in substance, invited the Court either to proceed on assumed notions of what constitutes terrorism, or to anchor its analysis firmly in the legislative definition enacted by Parliament.

85. In this backdrop, and before proceeding to an accused-specific evaluation of the material on record, it becomes necessary to clarify the statutory meaning and setting of Section 15. The prima facie satisfaction contemplated by Section 43D(5) is not a matter of impression or gravity alone; it is a satisfaction referable to defined statutory ingredients.

Unless the legal contours of the offence alleged are first identified, the subsequent assessment of individual role risks proceeding without a clear statutory reference point, and may result in either an unduly restrictive or an unduly expansive application of the threshold. It is for this reason that the Court considers it appropriate to briefly notice the scope of Section 15, and its inter-relationship with allied provisions, so that the analysis which follows proceeds on a clear legal foundation and is thereafter applied, with the necessary care and precision, to each appellant individually.

86. Section 15 of the Act defines what constitutes a "terrorist act" for the purposes of the statute. The definition is structured around two essential elements. First, the act must be done with intent to threaten, or be likely to threaten, the unity, integrity, security, including economic security, or sovereignty of India, or with intent to strike terror in the people or any section thereof. Second, the act must be of such a nature as to cause, or be likely to cause, the consequences enumerated in the provision.

87. The means by which such acts may be committed are not confined to the use of bombs, explosives, firearms, or other conventional weapons alone. Parliament has consciously employed the expression "by any other means of whatever nature", which expression cannot be rendered otiose. The statutory emphasis is thus not solely on the instrumentality employed, but on the design, intent, and effect of the act. To construe Section 15 as limited only to conventional modes of violence would be to unduly narrow the provision, contrary to its plain language.

88. The consequences contemplated under Section 15 further illuminate the legislative understanding of terrorism. Apart from death or destruction of property, the provision expressly encompasses acts which disrupt supplies or services essential to the life of the community, as well as acts which threaten the economic security of the nation. This reflects Parliament's recognition that threats to sovereignty and security may arise through conduct that destabilises civic life or societal functioning, even in the absence of immediate physical violence.

89. The Act further recognises that such acts may be the result of collective and coordinated effort. Section 18 makes punishable conspiracy, attempt, abetment, advice, incitement, and knowing facilitation of a terrorist act, as also acts preparatory to its commission. The statutory scheme thus contemplates that terrorist activity may involve multiple actors performing different roles towards a common unlawful objective.

90. Read together, Sections 15 and 18 disclose a legislative design wherein Section 15 defines the nature of acts which Parliament has characterised as terrorist acts, while Section 18 ensures that criminal liability is not confined only to the final execution, but extends to those who contribute to the commission of such acts through planning, coordination, mobilisation, or other forms of concerted action. Whether particular conduct ultimately attracts Section 15 directly, or Section 18 read with Section 15, depends upon the role attributed and the statutory ingredients alleged to be satisfied.

91. At the stage of consideration under Section 43D(5), the Court is not required to finally classify the conduct or determine the precise provision under which liability would ultimately arise. The inquiry is confined to whether, on the prosecution material taken at face value, there are reasonable grounds for believing that the accused's conduct bears a prima facie nexus to a terrorist act as defined under the Act, whether as a direct participant or as a conspirator or facilitator.

92. In light of the foregoing discussion, the plea of delay stands addressed at a general level. The consideration that follows is therefore confined to the individual role attributed to each appellant and the prima facie satisfaction recorded against them under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, without reopening the issue of delay except to the extent it bears upon individual attribution.

93. The Court has thus traversed the submissions on prolonged incarceration and the constitutional framework within which such pleas are to be examined in prosecutions under a special statute. The contours of the statutory restraint contained in Section 43D(5) have been delineated, and the scope and meaning

of a "terrorist act" under Section 15 of the Act, read with the allied provisions, have also been clarified.

94. The arguments before us made it evident that while certain submissions were urged on common grounds, the ultimate determination cannot rest on general propositions alone. The application of the law must necessarily turn on the role attributed to each accused, the nature of the material relied upon, and the manner in which the courts below have appreciated the same.

95. It therefore becomes necessary to examine each appeal independently, bearing in mind the statutory framework already discussed, and to assess whether the threshold contemplated under Section 43D(5) is attracted in the case of each appellant and, if so, whether the facts of the individual appeal warrant any departure on constitutional grounds. It is this exercise that the Court would now propose to undertake.

5. INDIVIDUALISED ROLE AND DIFFERENTIATION IN TREATMENT OF THE PRIME CONSPIRATORS WITH OTHERS.

96. Before we proceed to individually analyse each of the role attributed to each of the accused, we would like to reiterate the obvious but very important distinction while considering the bail applications in general and under special statutes like UAPA.

97. The record discloses that all the appellants do not stand on an equal footing as regards culpability. The allegations against the principal accused indicate a central and directive role in conceptualising, planning, and coordinating the alleged terrorist act, whereas the material against certain co-accused reflects conduct of a subsidiary or facilitative nature. The hierarchy of participation, emerging from the prosecution's case itself, requires the Court to assess each application individually, rather than proceed on the premise of equivalence. Such differentiation is intrinsic to criminal adjudication and operates irrespective of the uniformity of charges framed.

98. In the case of the alleged masterminds i.e., Sharjeel Imam and Umar Khalid, the prosecution material comprises direct, corroborative, and contemporaneous evidence, including recoveries, digital communication trails, and statements indicative of managerial responsibility. In contrast, the involvement of others is sought to be established mainly through associative or peripheral conduct. The Court cannot ignore that where evidentiary strength varies materially between accused persons, the need for continued detention likewise varies. Detention that remains necessary to secure ongoing prosecutorial objectives for the principal offenders may not retain the same necessity for those of limited attribution.

99. The alleged masterminds are stated to have exercised command authority and to possess the ability to mobilise or influence individuals within and outside their immediate circle. Such allegations, when supported by preliminary material, compel heightened caution regarding the possibility of interference with witnesses or reactivation of dormant networks. As against this, co-accused with no independent capacity to mobilise resources or exert organisational leverage do not present the same systemic risk. The logic of detention cannot be applied homogenously where the risk profiles of the accused are markedly dissimilar.

100. The gravity of the alleged act is unquestionably serious however, public interest and national security concerns may be engaged to a materially different degree depending on the role of each accused. The continued detention of those alleged to be the architects of the conspiracy may be required to safeguard broader security interests and deter future acts, whereas the rationale for continued incarceration of minor participants is comparatively attenuated once the investigative purpose is exhausted. The Court is therefore justified in calibrating its approach, ensuring that the pursuit of security does not eclipse the principle of proportionality.

101. It is well recognised that Article 21 rights, though not absolute, require the State and the Court to justify continued custody with reference to the specific individual before it. Treating all accused identically irrespective of their roles would risk transforming pre-trial detention into a punitive mechanism divorced from individual circumstances. The constitutional mandate demands a differentiated inquiry: where prolonged custody disproportionately burdens those whose roles are limited, the balance between individual liberty and collective security may call for conditional release, while the same balance may tilt differently for those alleged to have orchestrated the offence.

102. The statutory restrictions under special enactments do not preclude the Court from recognising distinctions between accused persons based on the quality of material, the nature of involvement, and the necessity of further detention.

103. At this stage, the Court must be careful not to confuse two distinct legal exercises. One is the determination of criminal liability, which belongs to trial. The other is the regulation of personal liberty pending trial, which is the limited concern of bail. The law of conspiracy explains how several persons, acting at different levels and at different points of time, may be bound together by a common design. That doctrine answers the question of liability. It does not answer, by itself, the separate question of how long and on what

basis the liberty of each individual may be restrained before guilt is proved. Bail adjudication therefore necessarily proceeds on a different plane.

It requires the Court to look at what is attributed to each accused, how that attribution fits within the statutory ingredients, and whether continued detention, at that stage, serves a legitimate purpose recognised by law. This exercise does not dismantle the prosecution case of conspiracy, nor does it rank culpability. It merely ensures that pre-trial detention does not become indiscriminate or automatic, and that statutory restraint operates with reason, proportion, and fidelity to individual attribution. Seen thus, differentiation is not an exception to conspiracy law, but a constitutional discipline imposed upon the exercise of bail jurisdiction.

104. A cumulative and comparative reading of the FIR and the successive charge-sheets discloses a discernible differentiation in the nature, scope, and hierarchy of roles attributed to the accused persons. The prosecution narrative itself delineates Umar Khalid and Sharjeel Imam as occupying a position distinct from the remaining accused, both in terms of conceptual involvement and command over the alleged conspiracy.

105. At the outset, Umar Khalid and Sharjeel Imam are prima facie attributed a central role and alleged to be ideological drivers of the alleged conspiracy. The material relied upon against them is predominantly in the nature of speeches, meetings, digital communications, and alleged strategic deliberations, commencing immediately after the passage of the CAB/CAA. The charge-sheets attribute to them the role of formulating the protest strategy, including the alleged transition from sit-in demonstrations to chakka jams, selection of locations, and articulation of the broader political objective sought to be advanced. Their alleged acts are thus situated at the planning and preparatory stage, extending over a prolonged period.

106. In contradistinction, the remaining accused namely Gulfisha Fatima, Meeran Haider, Shifa-ur-Rehman, Mohd. Saleem Khan, Shadab Ahmad, Athar Khan, and others are consistently described as local-level facilitators. Their alleged involvement is site-specific and operational, confined to particular localities such as Seelampur, Jafrabad, Chand Bagh, Jamia, and Shaheen Bagh. The allegations against them relate primarily to on-ground mobilisation, logistical coordination, funding at the local level, stockpiling of materials, and execution of directions allegedly received from above, rather than formulation of the overarching strategy.

107. The charge-sheets further reveal a vertical chain of command, wherein conspiratorial - level decisions and strategic directions are alleged to have emanated from the top, while implementation was carried out through

intermediaries such as DPSG members, JCC coordinators, and protest site organisers. This internal structuring of the prosecution case itself negates any suggestion of homogeneous or indivisible culpability among all accused. The distinction between those alleged to have exercised centralised command and control and those alleged to have acted as field-level operatives is repeatedly emphasised through the attribution of roles, reliance on different categories of evidence, and the geographical confinement of acts.

108. Even in the narrative concerning escalation into violence, the role attributed to the remaining accused is largely proximate and reactive, arising from developments at specific protest sites. Umar Khalid and Sharjeel Imam, on the other hand, are alleged to have operated remotely away from the sites of violence, with no direct attribution of participation in acts of arson, assault, or destruction of property. The prosecution case thus proceeds on the footing that the former category of accused were involved in facilitating execution, whereas the latter were involved in conceptualisation and supervision.

109. This differentiation assumes critical legal significance. Once the prosecution itself projects varying degrees of proximity, control, and participation, the law mandates an individualised assessment of culpability, particularly in the context of stringent penal provisions. The alleged role of an accused at the level of ideological articulation or protest coordination cannot, without a demonstrable and proximate nexus to acts of violence, be equated with the role of those alleged to have engaged in facilitation of riots or violent acts.

110. Accordingly, the material placed on record, when examined in its entirety, establishes that Umar Khalid and Sharjeel Imam stand on a qualitatively different footing from the remaining accused, both in the prosecution narrative and in the evidentiary basis relied upon. This structural distinction cannot be ignored and must inform any judicial determination relating to culpability, parity, or the applicability of penal provisions requiring a heightened threshold of intent and participation. Having thus delineated the structural and evidentiary differentiation emerging from the prosecution case itself, it becomes necessary for the Court to examine the bail pleas in an accused-specific manner.

The exercise that follows is not one of adjudicating culpability, which lies exclusively within the domain of trial, but of assessing whether the statutory threshold governing pre-trial liberty is attracted qua each appellant. It is in this limited but essential context that the Court now proceeds to consider the submissions advanced on behalf of each accused individually, bearing in mind the role attributed, the nature of material relied upon, and the stage of the proceedings.

6. SHARJEEL IMAM - APPELLANT IN SLP (CRL.) NO. 14030 OF 2025

6.1. SUBMISSIONS ON BEHALF OF APPELLANT:

111. Learned Senior Counsel for the appellant Sri Siddhartha Dave submits that the appellant is a final year Ph.D. scholar of Jawaharlal Nehru University, with an established academic background including B.Tech and M.Tech degrees, Masters in Modern History and Philosophy, and having cleared the National Eligibility Test. It is urged that the appellant had no criminal antecedents whatsoever prior to 2020, and that his involvement in the present set of cases stems solely from speeches and protest-related activities undertaken during the anti-CAA movement.

112. It is submitted that the present proceedings arise out of FIR No. 59 of 2020, pertaining to an alleged conspiracy relating to the incidents in North-East Delhi in February 2020. The FIR was initially registered under IPC provisions alone, and only subsequently were offences under Chapters III, IV and VI of the UAPA, along with serious IPC offences, added. It is pointed out that at the inception of the FIR, only one individual was named, and the appellant was not among them.

113. Learned Senior Counsel emphasized that, as a matter of record, the appellant was not in Delhi after the second week of January 2020, and had already been taken into custody on 28 January 2020 in another case. Despite this admitted position, the appellant was arrayed as an accused in the present FIR through a supplementary charge sheet and was arrested on 25 August 2020, nearly six months after registration of the FIR.

114. It is submitted that the prosecution case against the appellant in the present FIR is founded entirely on material recovered in FIR No. 22 of 2020, namely four speeches delivered at different places, the formation of a WhatsApp group titled "Muslim Students of JNU", alleged involvement in the Shaheen Bagh protest, and pamphlets opposing the Citizenship Amendment Act. These very acts, it is urged, already form the subject matter of a separate prosecution, in which the appellant has been granted bail, and in respect of which judicial findings exist that the speeches do not contain any call for violence.

115. Learned Senior counsel submitted that even on the prosecution's own showing, there is no allegation against the appellant of having participated in any meeting where violence was planned, of having discussed use of arms, of any recovery of weapons or incriminating material from him, or of his presence at any site of violence in North-East Delhi. It is further submitted

that there is no allegation of any communication or connectivity between the appellant and the other accused persons, including participation in WhatsApp groups such as DPSG, Pinjra Tod or JCC.

116. The learned Senior Counsel for the appellant submitted that the record demonstrates that the appellant repeatedly spoke against violence as a means of protest, that he was already in custody well before the incidents of February 2020, and that even the prosecution witnesses do not place him at Shaheen Bagh or any protest site after the first week of January. It is further pointed out that the WhatsApp group "Muslim Students of JNU" is stated to have become inoperative after mid-January 2020, and that the appellant is not an accused in any FIR relating to the actual incidents of rioting or violence.

117. Learned Senior Counsel submits that, in these circumstances, the statutory threshold under Section 43D(5) of the UAPA is not met. It is urged that protest-related speech, pamphleteering, and mobilisation for non-violent demonstrations, even if assumed to be politically charged, do not by themselves disclose offences under Chapters IV or VI of the UAPA, absent any proximate intent, preparation, or nexus to violence as contemplated under Section 15 of the Act.

118. It is further submitted that the scale of the prosecution itself demonstrates the oppressive nature of continued incarceration. The prosecution has filed multiple charge sheets, the case involves twenty accused persons, proposes to examine more than nine hundred witnesses, and relies upon voluminous documentary material. The matter remains at the stage of arguments on charge, and there is no proximate progression to trial in the conventional sense.

119. Learned Senior Counsel then places reliance on the principle of parity. It is pointed out that several co-accused in the same FIR, including Natasha Narwal, Devangana Kalita, Asif Iqbal Tanha, Safoora Zargar, Faizan Khan and Ishrat Jahan, have already been granted bail, some on merits. It is submitted that challenges to these bail orders have been dismissed by this Court, and it has been clarified that co-accused are entitled to rely on parity.

120. It is urged that the appellant stands on a better footing than those already on bail. Unlike them, the appellant is not alleged to have been present in Delhi during the relevant period, not alleged to be present near the sites of violence, not shown to be connected with any of the co-accused through calls or messages, and not alleged to have participated in any meeting where violence was discussed. Even the solitary meeting attributed to him is stated, on the prosecution's own material, to have been confined to mobilisation for chakka jam and not violence.

121. Learned Senior counsel therefore submits that continued incarceration of the appellant, despite the absence of allegations of violence-related conspiracy, lack of proximity to the incidents in question, and parity with co-accused already on bail, cannot be sustained either on the statutory framework of the UAPA or on constitutional principles. It is urged that the impugned judgment proceeds on an impermissible conflation of dissent and protest with terrorist activity, warranting interference.

6.2. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

122. Learned ASG Sri S.V. Raju appearing for the Respondent submitted that the appellant is not sought to be prosecuted merely for participation in protests or expression of dissent, but for his distinct and foundational role in the genesis, planning and execution of a larger criminal conspiracy which ultimately culminated in widespread violence in Delhi. It is urged that the prosecution material, as analysed in detail by the High Court, clearly establishes that the conspiracy did not originate in February 2020 as a spontaneous reaction, but was set in motion in a calibrated and phased manner from early December 2019 onwards, with the appellant being one of its principal architects from the inception itself.

123. It is submitted that the appellant's role is traceable to the first phase of the conspiracy, which involved deliberate mobilisation, radicalisation and preparation of ground conditions through organised chakka jams, blockage of arterial roads, and disruption of essential services. The High Court has noted that this phase was not spontaneous, but involved prior planning, coordination and dissemination of instructions, and that the appellant played a central role in conceptualising and operationalising this strategy through meetings, digital platforms and public speeches.

124. Learned ASG Sri S.V. Raju submitted that the prosecution relies upon contemporaneous electronic evidence, including WhatsApp chats recovered from the appellant's device, which demonstrate that the appellant created and administered the WhatsApp group "Muslim Students of JNU". This group, as recorded by the High Court, functioned as a coordinating mechanism for mobilisation, identification of protest sites, dissemination of protest strategy and synchronisation of chakka jams across locations. The appellant's leadership role in this group is corroborated by witness statements and digital footprints forming part of the charge-sheet material.

125. It was further submitted that the appellant was involved in the drafting, printing and circulation of pamphlets in early December 2019, which deliberately invoked communally sensitive themes such as Babri Masjid, Kashmir and alleged existential threats to the Muslim community. The High

Court has relied upon statements of the printer and other witnesses who have attributed authorship and coordination of these pamphlets to the appellant. It is urged that these pamphlets were not neutral political literature but were designed to mobilise crowds through emotive and incendiary narratives, thereby laying the foundation for mass unrest.

126. Learned ASG Sri S.V. Raju submitted that the appellant's speeches form a crucial link in the chain of conspiracy. In particular, the High Court has noted that in his speech at Jamia Millia Islamia on 13 December 2019, delivered shortly before violence erupted in the area, the appellant articulated a strategy of choking Delhi through organised chakka jams, including blocking roads and disrupting essential supplies such as water and milk. It is urged that the speech reflects conscious awareness that such disruption would inevitably escalate into violence, and that the appellant framed such escalation as an acceptable and necessary consequence of the agitation.

127. It was submitted that the appellant's repeated assertion of opposing violence cannot be examined in isolation. The High Court has correctly observed that conspiracy is to be inferred from cumulative conduct, and that a conspirator may outwardly disavow violence while simultaneously engaging in acts designed to create conditions where violence becomes unavoidable. The appellant's conduct in planning road blockades, paralysing public movement and provoking confrontation with law enforcement must therefore be viewed cumulatively and not in a compartmentalised manner.

128. Learned ASG Sri S.V. Raju further submitted that the appellant attended and participated in conspiratorial meetings at Jangpura and within the JNU ecosystem, where the strategy of chakka jam and escalation of protests was discussed. The High Court has relied upon witness statements, photographic material and call-detail and location evidence to record the appellant's presence and participation in these meetings. It is urged that following these meetings, further coordination groups were created, evidencing a clear progression from planning to execution.

129. It was submitted that the appellant's role was not geographically confined to Delhi. Acting as a mobiliser and ideologue, the appellant travelled to Aligarh and other locations to replicate and export the protest model, aligning regional protests with the broader Delhi-centric strategy. The High Court notes that this was done in coordination with other conspirators, demonstrating that the conspiracy was pan-regional in conception and execution, and not localised or spontaneous.

130. Learned ASG Sri S.V. Raju submitted that the appellant played a decisive role in the creation and sustenance of the Shaheen Bagh protest site,

which evolved into a prolonged 24x7 blockade of a major arterial road. The High Court records that the appellant issued instructions, addressed gatherings, and consciously distinguished between symbolic protest and disruptive blockade, opting for the latter. It is urged that the sustained nature of the blockade evidences intentional paralysis of civic life, squarely attracting the mischief contemplated under Chapter IV of the UAPA.

131. It was submitted that the argument of the appellant's absence from Delhi during February 2020 does not exculpate him at the bail stage. The High Court has correctly noted that the appellant's role was foundational and preparatory, and that liability for conspiracy does not require physical presence at the scene of violence once the plan has been set in motion. The riots, it is urged, were the logical culmination of the earlier phases of mobilisation and disruption in which the appellant played a central role.

132. Learned ASG Sri S.V. Raju submitted that the statutory threshold under Section 43D(5) of the UAPA is clearly satisfied. When the prosecution material is taken at face value, as mandated at the bail stage, it discloses acts intended to threaten the unity, integrity and security of the nation by paralysing the National Capital through orchestrated disruption and violence. The High Court's finding that the appellant's role is grave and foundational cannot be characterised as speculative or perverse at this stage.

133. It was further submitted that the plea of parity is misconceived. The High Court has distinguished the appellant's role from that of other accused who have been granted bail, noting that the appellant stands apart as a planner, mobiliser and ideological driver whose actions pre-date and shape the later stages of the conspiracy. Parity cannot be invoked mechanically to neutralise a qualitatively distinct and graver role.

134. Learned ASG Sri S.V. Raju finally submitted that the prosecution material, taken cumulatively, satisfies the "prima facie true" test under Section 43D(5) of the UAPA, and that this is not a fit case for grant of bail. The State accordingly prays that the appeal be dismissed.

6.3. FINDINGS OF THE TRIAL COURT:

135. The Trial Court vide order dated 11.04.2022, passed in IA. No. 81/2021 in SC 163/2020 dismissed the bail application filed by the Appellant. The Court held that the material on record disclosed prima facie involvement of the appellant in a deep-rooted and well-orchestrated criminal conspiracy relating to the North- East Delhi riots of February 2020.

On a cumulative reading of the charge-sheet, witness statements under Sections 161 and 164 Cr.P.C., WhatsApp chats of coordinated groups, and

other documentary and electronic evidence, the Court found that the protests were not spontaneous but were deliberately planned, escalated into chakka-jam, and thereafter converted into targeted violence, including attacks on police and destruction of public and private property. At the stage of bail, the Court emphasized that it was sufficient if the prosecution material, taken at face value, disclosed the appellant's complicity in the conspiracy, without a detailed appreciation of evidence.

136. A decisive ground for rejection of bail was the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967. Applying the principles laid down in *NIA v. Zahoor Ahmad Shah Watali* (supra), the Trial Court held that once there exist reasonable grounds for believing that the accusations are prima facie true, bail must be refused. The Court recorded that the prosecution material satisfied this threshold, showing the appellant's role in initiating, shaping, and sustaining the conspiracy, and therefore the bar under Section 43D(5) squarely applied. This embargo, read with the seriousness of the offences alleged, disentitled the appellant to the discretionary relief of bail.

137. The Trial Court also rejected the defence submissions that the appellant's acts were protected speech or mere calls for peaceful protest. It held that speech, meetings, and mobilization efforts cannot be examined in isolation, and must be assessed in the context of the entire chain of events and the object of the conspiracy. The prosecution case, at this stage, showed that calls for chakka-jam were not benign but were strategically designed to create confrontation, paralyse civic life, provoke law-and-order breakdown, and culminate in communal violence, thereby attracting offences under UAPA and the IPC. Issues relating to intent, interpretation of speeches, admissibility of evidence, and alleged exaggeration were held to be matters for trial, not bail.

138. Lastly, the Trial Court noted that the gravity of the offences, the manner of execution of the conspiracy, the scale of violence, and the societal impact weighed heavily against the grant of bail. It reiterated that at the bail stage, the Trial Court is not required to test the prosecution case for proof beyond reasonable doubt, but only to see whether a prima facie case exists. Finding that the accusations against the appellant were supported by substantial material and that the statutory restrictions under UAPA were attracted, the Court concluded that the appellant was not entitled to bail, and accordingly dismissed the bail application.

6.4. FINDINGS OF THE HIGH COURT:

139. The High Court in the impugned order held that the material on record prima facie showed Sharjeel Imam as one of the principal ideologues and early architects of the conspiracy, who allegedly set the process of mobilisation in motion immediately after the CAB/CAA developments.

It was noted that he was attributed the role of creating and administering WhatsApp groups, printing and circulating large numbers of pamphlets with communal overtones, and delivering speeches across multiple locations calling for disruptive chakka-jams and paralysing essential services. The High Court found that these acts, when read together with subsequent events, demonstrated planning, preparation, and incitement, and that conspiracy liability does not depend on physical presence at riot sites once foundational planning and instigation are prima facie established.

140. Invoking Section 43D(5) of the UAPA, the High Court held that the accusations against Sharjeel Imam crossed the threshold of prima facie truth, thereby statutorily barring bail. The argument that his conduct amounted at best to an offence under Section 13 UAPA, or that his speeches were protected expression, was rejected at the bail stage. The High Court further held that his judicial custody prior to the actual riots did not dilute his alleged role, since the prosecution case was that the conspiracy had already been conceptualised and operationalised by then. Pleas of parity, delay in trial, and evidentiary weaknesses were found insufficient to override the statutory embargo, resulting in dismissal of his bail appeal.

6.5. DISCUSSION ON ROLE AND FINDINGS:

141. On 04.12.2019, immediately after the Cabinet Committee accorded approval to the Citizenship Amendment Bill, 2019 (for short, "CAB"), a WhatsApp group by the name Muslim Students of JNU (MSJ) was created. The charge-sheet discloses that the formation of the said group was the "brainchild" of accused Sharjeel Imam.

It is further alleged that, in his chats with Arshad Warsi, a student of Jamia Millia Islamia University (JMI), Sharjeel Imam indicated that he was in contact with a radical communal group known as Students of Jamia (SOJ). According to the charge-sheet, the said group was engaged in distributing pamphlets in various mosques in Delhi against the verdict of this Court in the Babri Masjid matter, which pamphlets were allegedly aimed at mobilising students of Jamia Millia Islamia University to participate in a protest proposed to be held on 06.12.2019 at 4:30 p.m. at the Polytechnic Lawn, JMI, against the introduction of the CAB.

142. The charge-sheet further reveals that on 06.12.2019, pamphlets were distributed in the areas of Jama Masjid and Nizamuddin by Sharjeel Imam along with members of SOJ, which, according to the prosecution, allegedly contained content capable of creating fear and insecurity among the Muslim community. The pamphlets also carried a call to join a protest organised by United Against Hate (UAH) on 07.12.2019 at Jantar Mantar. Chats exchanged between Sharjeel Imam and Arshad Warsi allegedly indicate Sharjeel Imam's intention to participate in the Jantar Mantar protest and his plan to mobilise students from Aligarh Muslim University (AMU) and Delhi University (DU) with the assistance of MSJ.

The chats of the "Core Members of MSJ" further reveal that on 08.12.2019, Sharjeel Imam was invited to a meeting organised by Yogendra Yadav at the basement of premises bearing No. 6/6, Jangpura Extension, Delhi. The said meeting was allegedly convened with the objective of conspiring to incite a "Chakka Jam", and Umar Khalid is stated to have attended the said meeting. The charge-sheet further states that on 10.12.2019, upon the CAB being passed by the Lok Sabha and becoming law, members of MSJ burnt a copy of the Citizenship Amendment Act (CAA) within the JNU campus.

Another WhatsApp group titled "CAB TEAM" was formed on 08.12.2019, and chats exchanged therein allegedly disclose a conspiracy to organise protests on 10.12.2019 at Jantar Mantar against the CAA. The said protest allegedly drew significant attention and was attended by several students, including Umar Khalid. On 10.12.2019, Nadeem Khan (one of the top conspirators and a close associate of Umar Khalid, who is also a mentor of Sharjeel Imam) directed Sharjeel Imam to visit Aligarh Muslim University to mobilize the students for the protest.

143. On 10.12.2019, Nadeem Khan, stated to be a close associate of Umar Khalid and a mentor to Sharjeel Imam, allegedly directed Sharjeel Imam to visit Aligarh Muslim University for mobilising students for the protests. On 11.12.2019, Sharjeel Imam allegedly reached Aligarh. As per the charge-sheet, on 12.12.2019, in furtherance of the alleged common conspiracy, Asif Iqbal Tanha, an accused in the case and a prominent member of the Student Islamic Organisation of India (SIO), issued a call for a protest march to Parliament from JMI against the CAA, scheduled for 13.12.2019.

Pursuant thereto, a new WhatsApp group titled Muslim Students of JNU_1 was created at the behest of Sharjeel Imam. It is alleged that on 13.12.2019, members of MSJ were directed by Sharjeel Imam to reach Jamia Millia Islamia University, following which protests took place at the said campus. Call Detail Record (CDR) analysis is stated to reveal Sharjeel Imam's presence at Jamia Millia Islamia University on the said date.

144. On 13.12.2019, Sharjeel Imam is alleged to have distributed pamphlets and delivered a provocative speech. The charge-sheet reproduces certain portions of the speech, which, according to the prosecution, instigated the gathering, and reads as follows:

“हमारी ख्वाहिश और हमारी आरजू यह है की दिल्ली में चक्का जाम हो ““यह तो आज हुआ है, यह चिंगारी थी इसमें 4000 लोग-3000 लोग थे | अगर organised way में हो, और लोग आएंगे”

“(देश की राजधानी है) जो लोग गुमराह कर रहे हैं, अरे ये दिल्ली है भाई| ये flyover गिर जरा, पूरी दुनिया को खबर होगी | समझ रहे हैं ना ?”

“यह चिंगारी कहा जाएगी ?आग कै से लगेगी ?”
“ लेकिन goal क्या है ?हमें चक्का जाम करना चाहते हैं | हिल्ली के मोहल्लो में दूध बंद करना चाहते हैं, पानी बंद करना चाहते हैं | खुलकर बोहलए यार (बिलकुल)|”

145. The charge-sheet further alleges that riots occurred on 13.12.2019 at Jamia Gate No. 7, during which civilians and approximately 20 police personnel sustained injuries, public and private property was damaged, and essential services were disrupted. FIR No. 296/2019 was registered in respect of the said incident. In relation to the speech delivered at Jamia Millia Islamia University, FIR No. 22/2020 was also registered against Sharjeel Imam at Police Station Crime Branch.

146. It is further alleged that on 15.12.2019, Sharjeel Imam convened a meeting of the MSJ Core Committee at Teflas, a dhaba located within the JNU campus, where further plans of action were discussed. The charge-sheet alleges that Sharjeel Imam sought to involve organisations such as the Popular Front of India (PFI), Jamaat-e-Islami Hind (JIH), SIO, and other groups in furtherance of the conspiracy. On the same date, violent protests allegedly took place in Jamia Nagar and New Friends Colony, resulting in injuries to 45 police personnel and 95 civilians.

Two police booths were allegedly burnt, three police motorcycles and one QRT Gypsy were damaged, and three DTC buses along with eight private buses were also damaged. CDR analysis is stated to show the presence of Sharjeel Imam at the site of the protests. FIR No. 242/2019 was registered at

Police Station New Friends Colony and FIR No. 298/2019 at Police Station Jamia in relation thereto. The charge-sheet further alleges that Sharjeel Imam, along with members of SOJ, facilitated the establishment of a 24x7 protest site at Shaheen Bagh, allegedly at his behest, despite opposition from local residents. This is stated to mark the conclusion of the first phase of the alleged conspiracy.

147. The second phase of the alleged conspiracy is stated to have commenced on 02.01.2020, when Sharjeel Imam allegedly posted content on his Facebook page advocating a "Chakka Jam". On 09.01.2020, he is alleged to have conspired with Afreen Fatima to organise a meeting at Teflas, JNU, on 10.01.2020, aimed at mobilising crowds from JNU, Jamia, Old Delhi, and Seelampur to establish protest sites similar to Shaheen Bagh.

The stated objectives of these protest sites were allegedly to enforce chakka jams and engineer riots. On 13.01.2020, Nadeem Khan is alleged to have sent Saiful Islam and Asif Iqbal Tanha to meet Sharjeel Imam at Jamia Millia Islamia University. CDR analysis is stated to confirm Sharjeel Imam's presence at JMI at the relevant time. It is further alleged that Sharjeel Imam facilitated Nadeem Khan in raising and securing the Khureji protest site.

148. On 16.01.2020, Sharjeel Imam is alleged to have delivered another provocative speech, portions of which have been extracted in the charge-sheet, wherein he purportedly referred to blocking access to the North-East and advocated organised action through chakka jams.

“ये मैं पहले भी शायद अर्ज कर चुका हूँ के 5 लाख लोग हमारे पास हो organised तो हम हिंदुस्तान और नॉर्थ ईस्ट को permanently cut कर सकते हैं,”

“असम को काटना हमारी जिम्मेदारी है असम और इंडिया काट कर अलग हो जायें, तभी ये हमारी बात सुनेंगे”

अगर हमें असम की मदद करनी है, तो हमें असम का रास्ता बंद करना होगा, फ़ौज के हलए, समझ रहे हैं ? फ़ौज के लिए और जीतने भी जो भी यहा से सप्लाई जा रहा है

बंद करो और वो बंद कर सकते है क्योंकि chicken neck मुसलमानो का है, वो जो इलाका है वो मुस्लिम अकसररयत है”

149. The charge-sheet further alleges that Sharjeel Imam delivered similar speeches at Asonal and Chakand on 22.01.2020 and 23.01.2020, respectively, wherein he is stated to have provoked sections of the Muslim population by inciting them to participate in disruptive chakka jams.

150. According to the prosecution, these speeches, taken cumulatively, led to the establishment of the Shaheen Bagh protest site, which is alleged to be the first successful model of a "Chakka Jam". Thereafter, several such protest sites were allegedly created in parts of North-East Delhi. In furtherance of the alleged conspiracy, riots are stated to have occurred in North-East Delhi in the last week of February 2020. The charge-sheet thus attributes responsibility to Sharjeel Imam, Umar Khalid, and their associates for the protests and consequential riots that occurred on 23rd, 24th, and 25th February 2020, resulting in loss of life and damage to public property.

151. The Court is conscious that the present appeal is argued at length on the theme that the appellant is sought to be prosecuted for speeches and protest mobilisation, and that continued incarceration, in the teeth of delay and the scale of the trial, would be oppressive. At the same time, the Court cannot lose sight of the limits of the bail stage enquiry under a special statute. The task is neither to decide guilt nor to pronounce upon the correctness of competing interpretations of evidence. The enquiry is confined to determining whether, on the prosecution material as it stands and taken at face value, there

exist reasonable grounds for believing that the accusations against the appellant are prima facie true, thereby attracting the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967.

152. The appellant has urged, broadly, that he was not in Delhi after the second week of January 2020, that he was already in custody from 28.01.2020 in another case, that he was not present at the sites of the February 2020 riots, that no weapons were recovered from him, that he did not participate in meetings where violence was planned, and that the prosecution against him is substantially founded on speeches, pamphlets and a WhatsApp group which, according to him, are already the subject matter of a separate FIR wherein bail has been granted with observations that the speeches do not contain a call for violence. These submissions are supplemented by a plea of parity with several co-accused who have been enlarged on bail.

153. The State, on the other hand, has consistently urged that the appellant is not being prosecuted for dissent or protest as such, but for a distinct and foundational role in what is alleged as a calibrated conspiracy, which commenced in the first week of December 2019 and progressed through identifiable phases. The prosecution theory, at least at this stage, does not treat the riots of February 2020 as a sudden eruption. It treats them as the culmination of earlier phases of mobilisation, blockade and disruption, in which the appellant is alleged to have acted as an organiser and ideational driver.

154. In considering these rival positions, the Court must keep in view two controlling principles already delineated earlier in the judgment. First, the prosecution material must be read cumulatively, in its total setting, and not in isolated fragments. Second, the Court does not, at this stage, reject prosecution material by adopting defence explanations or by testing reliability, admissibility or credibility as though conducting a trial. Those aspects remain within the province of final adjudication.

155. The role attributed to the appellant in the charge-sheet narrative is not episodic. The prosecution seeks to place him at the inception of a mobilisation strategy and traces a continuing course of conduct from early December 2019 through January 2020. The charge-sheet refers, inter alia, to the creation of the WhatsApp group "Muslim Students of JNU" and its "core members", to mobilisation through pamphlets distributed in specific localities, to participation in meetings, to the delivery of speeches at multiple places, and to efforts aimed at establishing or sustaining blockade style protest sites.

156. The High Court's individual role note also proceeds on the basis that the appellant engineered the first phase of events from 13.12.2019 to 20.12.2019,

and relies upon contemporaneous electronic records in WhatsApp groups and chats as part of the material pointing towards planning and mobilisation. The same note refers to chats dated 07.12.2019 suggesting planning for mass mobilisation and links that planning to the commencement of the first phase of events on 13.12.2019.

157. At this stage, the Court is not called upon to finally pronounce on the evidentiary worth of each digital artefact. Yet, where the prosecution places reliance on contemporaneous electronic communications to attribute a coordination and mobilisation role, the Court cannot treat such material as irrelevant merely because the defence disputes its ultimate probative value.

158. The appellant has attempted to frame the allegation as one resting solely on speech. The record, at least as placed by the prosecution, does not permit such reduction. The prosecution case is of a chain comprising:

- (i) creation and administration of mobilisation platforms;
- (ii) dissemination of written material intended to galvanise participation;
- (iii) meetings and coordination; and
- (iv) public exhortations articulating a strategy of disruption. At the bail stage, the Court is concerned with whether this chain, taken at face value, is coherent and whether it reflects a real nexus to the offences alleged.

159. A significant part of the material relied upon relates to 13.12.2019 at Jamia Millia Islamia. The High Court records that the presence of the appellant in Jamia Millia Islamia is reflected by CDR location of his mobile number. It further records that the appellant organised a "chakka jam" and that this chakka jam was differentiated from a "dharna", as reflected in the statement of a protected witness.

160. The statement of the protected witness under Section 164 Cr.P.C., as reproduced in the High Court note, attributes to Umar Khalid the act of explaining the difference between "chakka jam" and "dharna", and issuing directions to the appellant to start "chakka jam" at Shaheen Bagh on a 24x7 basis, with an expressed intent to commence similar activity in other areas at the "right time". This material, if accepted at face value as the bail stage requires, supports the prosecution's contention that the conduct alleged is not ordinary protest, but a planned and differentiated method of blockade and disruption.

161. The same note records, with reference to the main charge-sheet pages, that the appellant's speech of 13.12.2019 targeted Delhi as the capital, used

the illustration of a flyover collapse drawing worldwide attention, and exhorted Jamia and JNU students to execute disruptive chakka jam to such an extent that essential services like milk and water would be paralysed or choked.

162. The defence has urged that the speech contains no direct incitement to violence and is protected. That contention cannot be adjudicated in the manner the defence invites at this stage. The statutory enquiry is not whether the Court, after a full trial, would accept the prosecution's interpretation. The enquiry is whether the prosecution's reading is *prima facie* plausible on the face of the material and whether, read cumulatively with the other links, it contributes to a coherent narrative of planned disruption.

163. The Court is also mindful of the appellant's reliance on the assertion that he opposed violence. Such an assertion does not, at the bail stage, neutralise an allegation of conspiracy and preparatory orchestration. A conspirator may outwardly couch the conduct in the language of non-violence while engaging in acts intended to create conditions of confrontation and escalation. The prosecution case is that sustained blockade, choking of essential supplies, and deliberate paralysis of civic life are not benign political acts but steps in a planned trajectory, which then culminated in violence.

164. The appellant's absence from Delhi after the second week of January 2020 and his custody from 28.01.2020 are not ignored. However, these facts do not conclude the matter in a prosecution founded on conspiracy and preparatory roles. The prosecution case, as analysed by the courts below, is that the appellant's role is foundational, operating at the stage of mobilisation, organisation and strategy, and that physical presence at the scene of the final violence is not a condition precedent for attributing conspiracy liability.

165. At the present stage, therefore, the absence argument cannot be treated as exculpatory. It is a matter to be tested at trial in the light of complete evidence. The bail stage enquiry cannot be converted into a determination that once the appellant is not physically present during the February riots, his earlier attributed role becomes legally irrelevant.

166. The appellant has urged that the case against him is built entirely on speech, pamphlets and protest related activity. The Court does not accept that characterisation as complete. The prosecution material, as presently placed, alleges a combination of organisational acts, coordination through digital groups, meetings and differentiated strategy of chakka jam and blockade.

167. Further, even within the speech related material, the prosecution emphasis is not on ideological disagreement with the State or on political

criticism. The emphasis is on a proposed method of paralysing civic life and choking essential supplies, articulated as a deliberate strategy and linked to a wider mobilisation narrative. Whether this ultimately crosses the final line from protected expression to criminal conduct, and whether the prosecution's interpretation withstands trial scrutiny, are matters for final adjudication. They cannot be conclusively decided at the bail stage without trespassing into forbidden terrain.

168. It is necessary to record expressly that issues such as: (i) admissibility of electronic material; (ii) compliance with procedural requirements; (iii) reliability of witness statements; (iv) interpretative nuances of speeches; and (v) whether any part of the prosecution case is overstated, are all matters to be addressed at trial. At the stage of Section 43D(5), the Court proceeds on the material as it stands.

169. When the structured inquiry delineated earlier in the judgment is applied to the appellant, the following features assume significance. First, the prosecution material, taken at face value, does not depict the appellant as an accidental or peripheral participant. It depicts him as a coordinator and mobiliser at the inception and in the first phase. Second, there is specific material placing him at Jamia on 13.12.2019 through CDR location. Third, there is a protected witness statement relied upon by the prosecution, attributing directions to the appellant to commence a differentiated chakka jam at Shaheen Bagh on a 24x7 basis, with a plan to expand to other areas at the right time. Fourth, the prosecution relies on the appellant's speech exhorting disruptive chakka jam and choking of essential services.

170. Taken cumulatively, these elements reflect a role attribution which is not of mere association, presence, or protest participation. The allegation is of deliberate mobilisation, planned blockade strategy, and intentional disruption of civic life. On the prosecution's case, such conduct is relied upon as having a direct nexus to the unlawful activity alleged under the Act, whether as preparatory acts, facilitation, or conspiracy.

171. Once the prosecution material, taken as it stands, crosses that threshold, the statutory embargo under Section 43D(5) operates with full force. The Court cannot then enlarge the appellant on bail by proceeding as though the statutory restraint were a matter of discretionary balancing. The statutory design, as already noted earlier in the judgment, requires the Court to refuse bail where there exist reasonable grounds for believing that the accusation is prima facie true.

172. The plea of parity, though pressed with emphasis, cannot override the statutory conclusion. Parity is not applied by numerical comparison. It is

applied by similarity of role, similarity of attribution, and similarity of the material relied upon. The courts below have treated the appellant's role as qualitatively distinct, and the material noticed above indicates why the prosecution alleges a foundational role at the early stage. In such circumstances, parity cannot be invoked mechanically to dilute the statutory embargo.

173. The plea of delay has already been addressed at a general level in the earlier portion of the judgment. In the appellant's case, the Court remains mindful of the scale of the trial. Yet, once the prima facie threshold is crossed, the appropriate judicial response is to ensure prioritisation and expedition, not to grant bail in disregard of the statutory mandate. The remedy for stagnation lies in calibrated judicial supervision and directions for expeditious progress, not enlargement on bail where the embargo is attracted.

174. The Court accordingly finds that the prosecution material, read cumulatively and taken at face value, discloses reasonable grounds for believing that the accusations against the appellant are prima facie true. The material relied upon is not confined to abstract ideology. It comprises digital coordination, attribution of planning and mobilisation, presence supported by location records, a protected witness statement describing differentiated chakka jam strategy, and speech material exhorting disruption and choking of essential services.

175. In view of this prima facie satisfaction, the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 stands attracted. The Court is therefore left with no lawful option but to decline the prayer for bail.

176. For the reasons aforesaid, the appeal preferred by Sharjeel Imam arising out of SLP (Crl.) No. 14030 of 2025 is dismissed. The prayer for bail is rejected.

177. It is clarified that the observations herein are confined to the present stage of consideration under Section 43D(5) of the Act and shall not be construed as an expression on the merits at trial. The Trial Court shall accord due priority to the matter and ensure that the proceedings are carried forward with reasonable expedition.

7. UMAR KHALID - APPELLANT IN SLP (CRL.) 14165 OF 2025:

7.1. SUBMISSION ON BEHALF OF APPELLANT:

178. Learned Senior Counsel Sri Kapil Sibal, appearing on behalf of the appellant, Umar Khalid, submitted that the prosecution record does not

attribute any overt act of violence to the appellant in relation to the incidents that occurred in North-East Delhi between 22.02.2020 and 25.02.2020. It was pointed out that, as borne out from the charge-sheet itself, the appellant was not present in North- East Delhi during the period when violence ensued and, on certain crucial dates, was not even in Delhi. No witness statement places the appellant at the site of any rioting, arson, assault, or destruction of public or private property during the relevant period, nor is any FIR relied upon to attribute such acts to him.

179. It was further submitted that no recoveries whatsoever have been effected from the appellant or at his instance. The record does not disclose recovery of any weapons, arms, ammunition, explosives, inflammable substances, funds, or other incriminating articles. No physical, forensic, or electronic evidence connects the appellant with any violent act. Despite registration of a large number of FIRs in connection with the riots, the prosecution has not relied upon any recovery or witness statement from those FIRs to link the appellant with actual violence. Apart from the present FIR, the appellant was arraigned in only one other FIR arising from the same period, in which he was granted bail and subsequently discharged.

180. Learned Senior Counsel submitted that the prosecution alleges criminal conspiracy primarily on the basis of the appellant's alleged participation in meetings and protests and his alleged association with certain WhatsApp groups. It was pointed out that the appellant neither created nor administered the WhatsApp groups relied upon by the prosecution and was not a member of some of the principal groups alleged to have been used for coordination.

The record indicates that the appellant did not send any message calling for violence, arson, or unlawful acts. The messages attributed to him are confined to sharing location pins of protest sites on dates when no violence occurred and to communications relating to a call received from a police official. No material on record demonstrates that any decision to commit violence was taken, conveyed, or implemented at the instance of the appellant through such groups.

181. It was further submitted that the prosecution relies upon the alleged presence of the appellant at various meetings and protests held between December 2019 and February 2020. For several such meetings, no supporting witness is cited; for others, the statements relied upon are hearsay in nature or contradicted by the appellant's call detail records. Photographs relied upon by the prosecution show the presence of several persons who have not been arraigned as accused. The record does not disclose any material to show that these meetings involved planning, preparation, or execution of violence or

that the appellant exercised any command, control, or direction over participants.

182. Learned Senior Counsel submitted that the only overt act specifically attributed to the appellant is a public speech delivered by him at Amravati on 17.02.2020. The transcript of the speech, as placed on record, contains repeated references to non-violence, civil disobedience, non-cooperation, constitutional methods of protest, and Gandhian principles. The speech does not exhort violence, destruction of property, or unlawful action. The prosecution record does not disclose any material establishing a proximate or causal nexus between the said speech and the incidents of violence that occurred in Delhi several days later.

183. It was lastly submitted that, on facts, the prosecution seeks to invoke Sections 15, 16 and 18 of the UAPA by treating the appellant's speech, meeting participation, and protest activity as constituting a "terrorist act", without alleging use of bombs, explosives, firearms, hazardous substances, or any other lethal means enumerated in Section 15. The record reflects that the prosecution relies solely on the residual expression "by any other means of whatever nature" to bring the appellant's acts within the definition of a terrorist act.

No factual material is placed on record to show that the appellant caused, attempted to cause, or intended to cause death, injuries, destruction of property, or disruption of essential services by any violent or hazardous means. Apart from speech, association, and alleged presence, no factual act is attributed to the appellant to demonstrate commission of offences under Chapter IV of the UAPA.

7.2. SUBMISSIONS ON BEHALF OF RESPONDENT:

184. Learned ASG Sri S.V. Raju appearing for the respondent submitted that the prosecution case, read as a whole, discloses the active and central role of the appellant, Umar Khalid, in a larger criminal conspiracy which culminated in widespread violence, disruption of essential services, and communal riots in North-East Delhi. It was contended that the case against the appellant does not rest on isolated incidents or stray speeches, but on a continuous and coordinated course of conduct beginning from December 2019, involving meetings, organisational planning, mobilisation, and execution of a strategy of "chakka jam" distinct from peaceful protest, with the deliberate object of escalating tensions and paralysing the city.

185. It was submitted that the appellant was not a peripheral participant but an ideologue and organiser who conceptualised and propagated the strategy of

"chakka jam", differentiating it from a conventional dharna. Reliance was placed on statements of protected witnesses recorded under Section 164 Cr.P.C., electronic records, photographs, and call detail records, which prima facie show that the appellant directed and guided co-accused persons including Sharjeel Imam, Asif Iqbal Tanha and Saiful Islam.

The State submitted that meetings held at Jangpura, Jamia, Shaheen Bagh, Indian Social Institute, Gandhi Peace Foundation and Seelampur demonstrate sustained involvement of the appellant in planning and coordination, including the creation of protest committees, WhatsApp groups, and mobilisation teams operating across multiple locations in Delhi. 186. Learned ASG Sri S.V. Raju further submitted that the appellant's role extended beyond ideological advocacy to operational coordination.

The prosecution relies upon evidence indicating that protest sites were deliberately expanded, made permanent on a 24x7 basis, and strategically located at arterial roads and sensitive areas. It was contended that WhatsApp groups such as DPSG, JCC, and Jamia Awareness Campaign Team were used to disseminate instructions, coordinate sites, and ensure uniform execution of decisions taken at higher levels. The appellant, it was submitted, was a member of, and exercised influence over, these groups, with witnesses stating that decisions were taken at his instance and subsequently ratified by ground-level organisers.

187. The State submitted that the appellant's presence at Jamia on 13.12.2019 and 15.12.2019 coincided with incidents of violence resulting in injuries to police personnel and civilians and damage to public and private property. Call detail records were relied upon to establish his presence in the area at relevant times. It was contended that witness statements attribute to the appellant directions to initiate chakka jam at Jamia Gate No. 7 and Shaheen Bagh, and to expand such activity to other Muslim-dominated areas. The prosecution further relies upon meetings at Shaheen Bagh and Seelampur where, according to protected witnesses, instructions were issued to mobilise women, stockpile materials such as stones, bottles, acids and chilli powder, and prepare for escalation at an opportune moment.

188. Learned ASG Sri S.V. Raju submitted that the appellant's speech delivered at Amravati on 17.02.2020 forms part of this larger factual matrix. The State contended that the speech cannot be viewed in isolation, but must be read in conjunction with prior meetings, subsequent coordination, and the timing of events. It was urged that the speech, delivered without requisite permission, called for nationwide disruption, invocation of civil disobedience, and collective defiance, which, when coupled with the contemporaneous conspiracy and subsequent violence, prima facie establishes intentional

incitement and preparation. The State submitted that the speech reinforced the operational strategy already put in motion.

189. It was further submitted that the offences invoked under Sections 15, 16 and 18 of the Unlawful Activities (Prevention) Act are attracted not merely by use of weapons or explosives, but also by acts intended to threaten the unity, integrity, security and economic stability of the nation, including by disruption of essential services and creation of widespread fear. The prosecution contended that the deliberate blocking of roads, mobilisation at sensitive sites, coordination across districts, and incitement to escalate protests into violent confrontation constitute, at the prima facie stage, acts falling within the expansive definition of a terrorist act under Section 15, particularly when read with the expression "by any other means of whatever nature".

190. Learned ASG Sri S.V. Raju lastly submitted that the appellant's role cannot be assessed in isolation from the collective conduct of the conspiracy. It was urged that absence of direct recovery or individual acts of violence is not determinative at this stage, as conspiracy by its very nature operates through division of roles. The State contended that the prosecution material, when taken cumulatively and at face value, discloses reasonable grounds for believing that the accusations against the appellant are prima facie true, and that the statutory bar under Section 43D(5) stands attracted.

7.3. FINDINGS OF THE TRIAL COURT:

191. The Trial Court vide order dated 28.05.2024, rejected the second bail application (IA No. Bail Application Registration No. 441/2024 in SC No. 163/2020) filed by the appellant primarily on the ground that no genuine change in circumstances had been shown since the rejection of the first bail application vide order dated: 24.03.2022, I.A. No. 92/2021 in SC No. 163/2020. Although the appellant asserted change in circumstances, the Court noted that none were specifically pleaded or substantiated. Withdrawal of the SLP before the Supreme Court on the ground of "change in circumstances" did not, by itself, create a fresh cause for reconsideration of bail, especially when earlier findings had attained finality.

192. The plea of delay in trial and prolonged incarceration was also rejected. The Court found that there was no delay attributable to the prosecution rather, proceedings were held up due to objections and applications moved by the accused persons themselves. Relying on recent Supreme Court precedent, the Court held that in cases under the UAPA, delay alone cannot justify grant of bail considering the gravity of the offences and the restrictive statutory framework.

193. The Court further held that reliance on *Vernon v. State of Maharashtra* did not advance the appellant's case. It observed that the judgment did not dilute the embargo under Section 43D(5) UAPA and that the Delhi High Court, while dismissing the earlier appeal, had already carried out the required "surface analysis" of the probative value of evidence and concluded that the accusations against the appellant were prima facie true. Subsequent Supreme Court judgments had reaffirmed the law laid down in *Watali* and *Gurvinder Singh*.

194. Finally, the Court held that it was bound by the concurrent findings of the Trial Court and the Delhi High Court rejecting bail, which had attained finality after withdrawal of proceedings before the Supreme Court. The plea of parity with co-accused was rejected, as the appellant's role had already been independently examined and distinguished. In view of the statutory bar under Section 43D(5) UAPA and the prima facie findings on record, the Court found no merit in the application and dismissed it.

7.4. FINDINGS OF THE HIGH COURT:

195. The Court held that the prosecution material, taken cumulatively, disclosed prima facie involvement of Umar Khalid as a key conspirator and mobiliser in the larger conspiracy that culminated in the February 2020 Delhi riots. It was noted that he allegedly played a central role in conceptualising and directing mass mobilisation against the CAA/NRC through coordinated meetings, formation and control of multiple WhatsApp groups (including JCC and DPSG), and delivery of speeches at various locations. The Court found that the prosecution narrative attributed to him a leadership role in escalating protests into disruptive chakkajaams and, thereafter, into violence, including alleged directions to intensify agitation during strategically sensitive periods. At the bail stage, the Court emphasised that conspiracy must be assessed holistically and not by isolating individual acts or speeches.

196. Applying the statutory embargo under Section 43D(5) of the UAPA, the Court held that there were reasonable grounds for believing that the accusations against Umar Khalid were prima facie true, thereby barring the grant of bail. The pleas of protected speech, absence from riot sites, lack of recoveries, parity with co-accused, change in circumstances, and prolonged incarceration were rejected. The Court clarified that the bail orders granted to other co-accused were expressly directed by the Supreme Court not to operate as precedents and that Umar Khalid's alleged role was qualitatively graver. Issues relating to credibility of witnesses, admissibility of evidence, and interpretation of speeches were held to be matters for trial, leading to dismissal of the bail appeal.

7.5. DISCUSSION ON ROLE AND FINDINGS:

197. Umar Khalid is described in the FIR as the principal conspirator behind the larger conspiracy which, according to the prosecution, culminated in the riots during the last week of February 2020. The charge-sheet alleges that Umar Khalid progressed from being a propagator of the slogan "Bharat Tere Tukde Honge, Insha Allah Insha Allah" to playing a central role in the formulation and execution of the present criminal conspiracy, which is alleged to constitute a terrorist act.

The first overt act attributed to Umar Khalid, as per the charge-sheet, is stated to have occurred on 05.12.2019, when, acting on his directions, Sharjeel Imam created the WhatsApp group Muslim Students of JNU (MSJ). It is further alleged that Umar Khalid participated in the protest held on 07.12.2019 at Jantar Mantar, where he, along with Yogendra Yadav and Sharjeel Imam, purportedly agreed to utilise social media as a platform for large-scale indoctrination and mobilisation of youth for the purpose of enforcing a "Chakka Jam" as a mode of protest against the Citizenship Amendment Act.

198. On 08.12.2019, Umar Khalid is alleged to have attended a meeting held at premises bearing No. 6/6, Jangpura Extension, Delhi. The said meeting, which was led by Yogendra Yadav, is stated in the charge-sheet to have resulted in a decision to further the alleged conspiracy of enforcing "Chakka Jams" with the objective of engineering riots. The charge-sheet is stated to contain a photograph of the meeting attended by Umar Khalid on 08.12.2019 at the aforesaid premises. After the conclusion of the meeting, a WhatsApp group titled "CAB Team" was allegedly created for the purpose of organising anti-CAA protests and for mass mobilisation of the Muslim community. In furtherance of the discussions held in the said group, a protest is stated to have taken place on 10.12.2019 at Jantar Mantar, Delhi, which was also attended by Umar Khalid.

199. On 13.12.2019, in furtherance of the alleged conspiracy, Sharjeel Imam is stated to have been introduced by Umar Khalid to students of Jamia Millia Islamia University. It is further alleged that Umar Khalid stated that he had explained to Sharjeel Imam the distinction between a dharna and a chakka jam, and that, at the relevant point of time, they were planning to enforce chakka jams across Delhi with the stated objective of overthrowing the Government, which, according to the prosecution, was described by them as a "Hindu Government" acting against the Muslim community. Umar Khalid is further alleged to have directed Sharjeel Imam, Saif-ul-Islam, and Asif Iqbal Tanha to initiate a chakka jam at Gate No. 7 of Jamia Millia Islamia

University and to have instructed Sharjeel Imam to commence a chakka jam at Shaheen Bagh.

200. On 15.12.2019, Umar Khalid is alleged to have visited Jamia Millia Islamia University in furtherance of the common conspiracy. At Jamia, he is stated to have instigated a gathering of local students, which allegedly culminated in rioting. Thereafter, Sharjeel Imam, acting on the directions of Umar Khalid, is alleged to have moved to Shaheen Bagh and blocked Road No. 13 at Shaheen Bagh. On 16.12.2019, Umar Khalid is further alleged to have directed Asif Iqbal Tanha and Saif-ul-Islam to constitute a student body for organising anti CAA/NRC protests at Jamia in a planned and organised manner.

On 17.12.2019, in furtherance of the alleged conspiracy and on the directions of Umar Khalid, students of Jamia Millia Islamia University, including other appellants herein, namely Shifa-ur-Rehman and Meeran Haider, are stated to have gathered at Gate No. 7 of the University. On further directions of Umar Khalid and Nadeem Khan, the Jamia Coordination Committee (JCC) is alleged to have been formed by Asif Iqbal Tanha and Saiful Islam. The charge-sheet describes the JCC as the brainchild of Umar Khalid and Nadeem Khan, allegedly created to mobilise a larger number of students for the protests.

On 19.12.2019, a protest march organised by "Hum Bharat Ke Log" (Swaraj Abhiyan and United Against Hate) from the Red Fort to Shaheed Park, ITO, and a separate protest march organised by Left parties at Mandi House, allegedly took place. Despite denial of permission and imposition of prohibitory orders under Section 144 CrPC in the area, Umar Khalid, Yogendra Yadav, and others are stated to have participated in the protest march and were detained along with 293 other persons.

201. On 20.12.2019, Saif-ul-Islam and Asif Iqbal Tanha are alleged to have constituted another committee, namely the Jamia Awareness Campaign Team (JACT), on the directions of Umar Khalid, with the stated objective of maximising mobilisation of the Muslim population in Muslim-dominated areas of Delhi for establishing 24Ã—7 protest sites aimed at enforcing "Chakka Jams". As per the statements of protected witnesses, Umar Khalid, along with Nadeem Khan, is alleged to have directed one Amanullah to visit Muslim-dominated localities and mobilise residents for the protests, while also encouraging greater participation of women and children, with the purported intent that the presence of women and children would deter the police from dismantling the protest sites.

It is further alleged that on 26.12.2019, a meeting was held at the Indian Social Institute, Lodhi Colony, which was attended by Umar Khalid and others, in continuation of the alleged conspiracy. Subsequently, on 28.12.2019, another WhatsApp group titled Delhi Protest Support Group (DPSG) was created for the purpose of disseminating decisions taken by its members among organisers of various protest sites for execution of the alleged conspiracy. Umar Khalid is stated to have been a member of the said group.

202. On 02.01.2020, a meeting was convened by the administrator of the DPSG, namely Rahul Roy, at the Gandhi Peace Foundation, which was attended by Umar Khalid. As per the charge-sheet, it was reiterated in the said meeting that more protest sites, similar to Shaheen Bagh, be established, with women and children placed at the forefront so as to avoid police action. On 08.01.2020, Khalid Saifi, associated with DPSG and United Against Hate (UAH), is alleged to have organised a meeting at the office of the Popular Front of India (PFI) at Shaheen Bagh, which was attended by Umar Khalid and Tahir Hussain.

The charge-sheet relies upon chats dated 20.01.2020 and 21.01.2020 exchanged in the DPSG group, which are stated to have led to the creation of three 24Ã—7 sitting protest sites, with Umar Khalid and Nadeem Khan allegedly exercising control over the said sites. On 23.01.2020 and 24.01.2020, in furtherance of the alleged conspiracy, Umar Khalid is stated to have visited the Seelampur protest site and addressed the gathering assembled there.

Thereafter, he is alleged to have held a clandestine meeting with Natasha Narwal, Devangana Kalita, Tasleem, and others, during which, according to the prosecution, Umar Khalid instigated local women of Seelampur to stockpile knives, bottles, acid, stones, chilli powder, and other dangerous articles with the intent to engineer riots. Statements of protected witnesses have been relied upon in the charge-sheet in respect of the meeting allegedly held on 23.01.2020.

203. The charge-sheet further alleges that Umar Khalid attended a meeting organised by the Welfare Party of India (WPI) at Jantar Mantar, Delhi, on 10.02.2019. In the said meeting, Umar Khalid is alleged to have instructed residents of Jahangirpuri to instigate illegal Bangladeshi residents of the area to participate in the activities forming part of the alleged conspiracy.

204. On 17.02.2020, Umar Khalid is alleged, as per the charge-sheet, to have delivered a provocative speech at Amaravati, Maharashtra. It is stated that although he was not among the persons permitted to address the gathering, he

nevertheless made a speech. In the said speech, he is alleged to have exhorted people to take to the streets and to demonstrate, during the visit of the then President of the United States of America, Donald Trump, what was portrayed as the ill-treatment of minorities by the Government of India.

205. The charge-sheet further alleges that on 22.02.2020 and 23.02.2020, acting upon the speeches of Umar Khalid and in accordance with the directions issued by him and other alleged executors of the conspiracy, protesters under the guise of women-led 24Ã—7 sit-in protests near Madina Masjid, Seelampur, moved and occupied the 66 Foot Road near Jafrabad Metro Station, thereby completely blocking traffic, constituting a "Chakka Jam". Thereafter, in pursuance of and in furtherance of the common conspiracy, on 23.02.2020, protesters from other protest sites in North-East Delhi and other parts of the city are alleged to have moved from their respective sites to pre-decided points on major roads and blocked, or attempted to block, traffic entirely, thereby enforcing coordinated chakka jams.

The charge-sheet states that these blockade points were strategically selected so as to effect a simultaneous and coordinated traffic paralysis across large parts of the city. According to the prosecution, the intent behind these blockades "was not to create traffic chaos but to ensure communal skirmish, as is evident from the movement from predominantly minority clusters, where 24Ã—7 sit-in dharnas were being held, to areas of mixed population for causing the chakka jam."

206. On 23.02.2020, it is alleged in the charge-sheet that protesters from various sites moved in a coordinated manner to pre-designated locations to block traffic across the city. In furtherance of the common conspiracy, and subsequent to the enforcement of the chakka jams, the conspirators are alleged to have launched attacks on police personnel and non-Muslims, and to have caused extensive damage to government and private property through arson, vandalism, and other violent acts, thereby engineering large-scale riots.

The charge-sheet alleges that firearms, petrol bombs, acid, sharp-edged weapons, iron rods, sticks, stones hurled through pre-fabricated large-sized slingshots, and other means were employed to attack and kill police personnel, government employees, and members of the public. It is further alleged that a petrol pump was set ablaze in an attempt to cause a large-scale explosion, which could have resulted in mass casualties and created widespread terror. Access to essential services, including hospitals, medical stores, the Delhi Metro Rail Corporation (DMRC), other public transport systems, schools, colleges, and universities, is stated to have been severely

disrupted, leading to the postponement of board examinations and deprivation of essential supplies to the general public.

207. The charge-sheet further states that on 24.02.2020, disillusioned by the scale and magnitude of the violence unleashed by the key conspirators, certain members of the DPSG WhatsApp group threatened to expose all those responsible for the riots. According to the prosecution, several telephonic conversations took place between Umar Khalid and Nadeem Khan during this period.

Among these, reliance is placed on a call between Jahanvi Mittal and Tabrez, wherein Jahanvi Mittal is alleged to have warned Tabrez who had allegedly arranged the presence of approximately 300 women protesters to maintain silence regarding the transportation of women from Jahangirpuri to Seelampur-Jafrabad and their alleged participation in the riots on the previous day. The cumulative effect of these communications, as per the charge-sheet, is stated to indicate that the conspirators, having panicked due to the conduct of certain members of their group, decided to adopt what is described as an "ultimate guerrilla strategy" of attributing the violence and resultant carnage to law enforcement agencies.

208. The charge-sheet ultimately attributes the orchestration of the protests and the resultant riots to Umar Khalid, describing him as the principal architect of the events that unfolded.

209. The appellant presses, in substance, three propositions: first, that no overt act of violence is attributed to him and no recoveries have been effected; second, that his alleged presence in meetings, association with groups, and a speech at Amravati cannot be transmuted into offences under Chapters IV and VI of the UAPA; and third, that the prosecution case is an impermissible conflation of protest with terrorism. These submissions are framed with care. Yet they must be tested against the only inquiry open to this Court at this stage: whether the prosecution material, taken as it stands and read cumulatively, furnishes reasonable grounds for believing that the accusations against the appellant are prima facie true, thereby attracting the statutory restraint under Section 43D(5).

210. Two foundational clarifications are necessary. One, the Court is not assessing whether the prosecution will ultimately succeed; it is assessing whether the prosecution case, as presented, crosses the statutory threshold at the bail stage. Two, conspiracy cases, particularly those alleged to unfold in phases, do not disclose themselves through a single piece of evidence; they are built through a chain of circumstances, organisational decisions, communications, and role allocation. The law does not demand that every

conspirator execute the terminal act; it demands a prima facie nexus between the accused and the unlawful design, inferred from cumulative conduct.

211. The prosecution narrative, as pleaded, is not episodic. It is architectural. It asserts a phased progression: mobilisation and indoctrination; institutionalisation through committees and digital platforms; expansion of protest sites into permanent blockades; preparation for escalation; and culmination in coordinated chakka jams and widespread violence. The role attributed to Umar Khalid is not of a late entrant nor of a peripheral sympathiser. It is that of an organiser and coordinator who, according to the prosecution, supplied the "method", the "timing", and the "linkage" between dispersed sites and actors.

212. The factual record placed by the prosecution repeatedly returns to a distinction that is central to the case: the differentiation between a conventional dharna and a chakka jam. This is not treated as semantics. It is treated as strategy. A dharna may be expressive; a chakka jam, as alleged, is disruptive by design. The prosecution case is that the sustained choking of arterial roads, replication of blockade sites, and the movement of crowds from minority clusters into mixed population areas were not accidental expressions of dissent, but calibrated acts meant to generate confrontation, overwhelm law enforcement, and create conditions for violence.

213. It is in this backdrop that the material regarding 13.12.2019 at Jamia is relied upon. The prosecution relies upon a protected witness statement that the appellant explained the distinction between dharna and chakka jam, projected certain co-accused as his "team", and issued directions for initiation of chakka jam at Gate No. 7 of Jamia and at Shaheen Bagh, with an express reference to expansion "at the right time". At this stage, the Court does not test whether the witness is truthful; it tests whether, if the statement is taken at face value, it links the appellant to the alleged design in a meaningful manner. It does. It is not a statement of mere association; it is a statement of direction and role allocation.

214. The appellant urges that he was not present at riot sites in the critical period. That submission, even if assumed correct, does not answer the prosecution case, because the prosecution does not pitch him as an executor of the terminal violence; it pitches him as a person involved in shaping the method and seeding the strategy earlier. In a phased conspiracy, physical absence at the final scene is not the end of the inquiry; it may, at best, shift the inquiry upstream, to see whether the accused is linked to the preparatory and coordinating stages.

215. The appellant emphasises lack of recoveries, absence of weapons, and absence of forensic linkage. In ordinary IPC bail jurisprudence, these factors often have weight. Under a special statute alleging a wider conspiracy with distributed roles, these factors cannot be made decisive. A conspiracy organiser may leave no recoveries because the organisers do not carry the instruments that the executors use. If recoveries were treated as a universal requirement, conspiracy cases would be structurally immunised at the bail stage for those who organise rather than execute. The statute does not contemplate such a result.

216. The law does not require the prosecution to demonstrate, at the bail stage, that the accused personally caused death or destruction, or personally stocked explosives, before Section 43D(5) can apply. It requires the Court to see whether the material discloses a prima facie case of involvement in the unlawful activity alleged. Here, the prosecution material is pressed to show that the appellant's role is traced through meetings, committees, instructions, coordination mechanisms, and alleged preparation for escalation. If that chain is prima facie visible, the absence of recoveries does not break it.

217. The appellant's submissions treat meetings as innocuous, and committees as routine protest organisation. The prosecution case treats them as the infrastructure of the conspiracy. The Court must therefore ask: does the material suggest continuity of role across time, rather than episodic presence? The chargesheet material, as summarised in the accused-wise narrative already set out, places the appellant at repeated decision points: the Jangpura meeting of 08.12.2019; the Jamia phase of mid-December; the formation and functioning of JCC/JACT as mobilisation structures; the creation and operation of DPSG as a dissemination mechanism; the meetings at ISI, Gandhi Peace Foundation and Shaheen Bagh; and the January Seelampur phase alleged to involve preparation for escalation.

218. At this stage, the Court does not decide whether each meeting was conspiratorial. But where multiple meetings across weeks and months are alleged, and where witness material and electronic records are pressed to place the same accused at several of these junctures, the Court is entitled to view continuity itself as a relevant circumstance. Continuity is the difference between a participant and an organiser in the prosecution narrative.

219. The appellant says he did not create certain WhatsApp groups. That may be ultimately matter of trial. At the bail stage, it is not determinative. The prosecution does not allege that guilt arises from creating a group; it alleges that groups functioned as coordination platforms through which decisions taken at higher level were transmitted to multiple sites for execution.

Membership, participation, and the alleged influence exercised through or around such platforms is what the prosecution presses.

220. The record, as placed, indicates that the appellant is shown as a member of DPSG and that protected witness material speaks to the coordinating character of such groups. Whether the appellant sent incriminating messages is not the only relevant factor. In a coordination structure, some speak, others steer. A conspirator's role may be inferred from where he is placed in the architecture, not only from what he typed in a chat window.

221. The appellant places heavy reliance on the Amravati speech, urging that it repeatedly invokes non-violence and constitutional protest. The prosecution urges that the speech forms part of a larger matrix of mobilisation and was delivered in temporal proximity to the culminating phase. At this stage, the Court must resist from committing two errors. The first is to criminalise speech merely because it is politically charged. The second is to immunise a continuing course of conduct merely because it contains language of non-violence.

222. In conspiracy jurisprudence, outward disavowal and inward design may co-exist; public caution does not necessarily negate private preparation. That is why the law insists on cumulative assessment. The speech, in isolation, cannot decide the case. Equally, the speech cannot be extracted from the timeline and used as a complete answer to allegations of meetings, directions, and preparatory acts alleged over months. The Court therefore treats the speech as one circumstance in a chain, to be evaluated with other material, not as a standalone verdict of innocence or guilt.

223. The prosecution case places emphasis on "timing" and "trigger". It alleges that sustained blockades were designed to mature into a coordinated paralysis across the city, and that the Jafrabad blockade and movement to strategic points occurred on 22-23 February in a synchronised manner. It further alleges that the escalation into violence was not incidental but contemplated. The appellant's absence from the riot scene therefore does not end the inquiry; the inquiry shifts to whether the prosecution material *prima facie* links him to the strategy that was executed when the "right time" arrived.

224. At this stage, the charge-sheet narrative and the protected witness statements relied upon are pressed to show that the appellant was engaged at earlier phases in shaping the method and expanding the sites, and that preparatory discussions in January included alleged directions for stockpiling and readiness for escalation. The Court cannot pronounce on their truth. It

can, however, record that such material, if accepted as the prosecution places it, links the appellant to the alleged design and the timing of its culmination.

225. The appellant urges that continued incarceration is oppressive. This Court has already addressed delay as a constitutional concern and has indicated that the remedy for stagnation lies in judicial supervision and expedition, not automatic enlargement on bail. In the case of the present appellant, the record also discloses that his earlier bail rejection has been subjected to judicial scrutiny and has not been displaced by any subsequent event affecting the prosecution's core attribution. When a statute imposes a high threshold and the case is conspiracycentric, repeated bail reconsideration on the same material is not the norm. A meaningful change in circumstances must be shown. Save delay, which has been addressed separately, none is shown.

226. Delay can warrant a more searching constitutional scrutiny. But it does not authorise the Court to dilute the statutory threshold by undertaking credibility findings. The balance must be maintained: constitutional concern is real, but statutory restraint is equally real. Where the prima facie threshold continues to be crossed, delay is met through expeditious trial directions and continued judicial monitoring, not by negating Section 43D(5).

227. It is necessary, at this juncture, to clarify the juridical distinction between ordinary public disorder, which may arise even in the course of legitimate protest, and the prosecution's pleaded case of systemic disruption. Not every disruption of traffic, not every blockade, and not every law-and-order incident engages the statutory framework of the UAPA. The statute is attracted only where the conduct alleged, taken cumulatively, is capable of being understood as threatening the unity, integrity, security, or sovereignty of the nation, or as creating a climate of fear and paralysis transcending ordinary disorder.

228. The prosecution case, as placed before this Court, does not proceed on the footing that the protests merely inconvenienced commuters or strained policing resources. It proceeds on the footing that a deliberate method of agitation was conceived and executed, namely sustained and replicated "chakka jams" at strategically selected arterial locations, with the object of choking movement across the National Capital, disrupting essential services, and overwhelming the administrative capacity of the State.

229. The factual narrative placed on record repeatedly emphasises that the blockade points were not randomly selected. The prosecution alleges that they were deliberately located so as to (i) cut off major transit routes, (ii) bring protest activity from minority-dominated clusters into areas of mixed population, and (iii) ensure that disruption was not localised but city-wide.

The pleaded movement of protesters from established sit-in sites to pre-designated choke points across North-East Delhi on 22nd and 23rd February 2020 is pressed as evidence of this systemic design.

230. At the bail stage, the Court does not pronounce on whether this design is ultimately proved. It asks whether the prosecution material, taken at face value, supports the allegation that the disruption was not episodic, but coordinated, sustained, and scalable. When viewed through that lens, the allegations of meetings, directions, replication of protest sites, and synchronised movement across locations assume a significance distinct from ordinary protest activity.

231. The Court is therefore unable, at this stage, to accept the characterisation of the events as mere public disorder incidental to protest. The prosecution case, as pleaded, is that the blockade strategy itself was the instrument of coercion, designed to paralyse civic life and generate confrontation. That distinction is material at the stage of applying Section 43D(5).

232. A further dimension of the prosecution case concerns communal harmony, which lies at the heart of public order in a plural society. The prosecution does not merely allege that violence occurred in areas of mixed population. It alleges that the movement of protest activity into such areas was itself deliberate, with the intent to trigger confrontation and skirmish.

233. The factual narrative already set out records the prosecution's assertion that protesters moved from predominantly minority clusters, where 24–7 sit-in protests were being held, into mixed-population areas at pre-selected times and locations. This movement is alleged to have been accompanied by stockpiling of potentially harmful materials, as per protected witness statements, and by preparations to escalate confrontation when police intervention or countermobilisation occurred.

234. At the bail stage, the Court cannot test whether the protected witness statements regarding stockpiling or inducement of local residents will ultimately withstand scrutiny. What the Court can do is to examine whether, if those statements are accepted as they stand, they support an allegation that the agitation was not confined to symbolic protest, but contemplated engineered confrontation along communal fault lines.

235. The prosecution case, taken cumulatively, pleads precisely this: that the blockade strategy was designed not merely to inconvenience, but to provoke, to polarise, and to create a breakdown of communal peace. Where such an allegation is supported, at least prima facie, by statements, chronology, and

alleged coordination, the Court cannot trivialise it as an inevitable by-product of protest.

236. It is this pleaded design to fracture communal harmony, rather than the expression of dissent per se, which distinguishes the prosecution case from a narrative of innocent protest. Whether that design is ultimately proved is a matter for trial. Its prima facie articulation is sufficient to inform the bail-stage inquiry.

237. The prosecution further places the events within a broader security context. It alleges that the sustained and coordinated disruption of major arterial routes, combined with the timing of escalation, was intended to create a perception of instability in the National Capital, impair the functioning of essential services, and project an image of administrative paralysis.

238. The factual narrative records allegations of disruption to transport networks, obstruction of access to hospitals and medical facilities, interruption of public transport services including the metro, and interference with the normal functioning of civic institutions. The prosecution also alleges that the timing of escalation was calibrated to coincide with a period of heightened international attention, thereby magnifying the impact of the disruption.

239. At the bail stage, the Court does not determine whether these allegations ultimately satisfy the ingredients of a "terrorist act" under Section 15. What the Court examines is whether the prosecution has pleaded a case that goes beyond localised violence or protest-related disorder, and whether the alleged acts are capable, at least prima facie, of engaging the statutory conception of threats to security and public order at a national level.

240. When sustained blockades are alleged to be executed across multiple locations, when essential civic life is alleged to be paralysed, and when violence is alleged to erupt in a coordinated manner following such blockades, the Court cannot, at this stage, rule out the applicability of the statutory framework merely because the acts are couched in the language of protest.

241. The appellant has urged that his conduct must be viewed through the prism of political dissent and constitutional protest. This Court reiterates that dissent and protest occupy a protected space in a constitutional democracy. That protection, however, does not extend to a pleaded design which, if accepted as true, involves systemic disruption, engineered confrontation, and preparatory steps towards violence.

242. The prosecution does not rely on a single speech, a single meeting, or a single blockade. It relies on a course of conduct, spread over weeks, involving repeated meetings, formation of coordinating bodies, issuance of directions, and alleged preparations for escalation. The Court cannot, at the bail stage, segregate this course of conduct into isolated benign fragments and assess each in abstraction.

243. To do so would amount to substituting a compartmentalised analysis for the cumulative approach mandated by law in conspiracy cases, particularly under a special statute. The correct inquiry is whether the material, taken as a whole, discloses a prima facie case that the accused was part of an agreement or design to engage in unlawful activity of the nature alleged. On the prosecution material placed before us, that inquiry must be answered in the affirmative.

244. Having regard to the prosecution material as placed, including the chronology of meetings, the alleged articulation and propagation of the chakka jam strategy, the operation of coordinating committees and groups, the protected witness statements alleging preparatory and escalation-related discussions, the pleaded movement of protest activity into mixed-population zones, and the alleged systemic disruption of civic life in the National Capital, this Court is satisfied that reasonable grounds exist for believing that the accusations against Umar Khalid are prima facie true.

245. The defence submissions, though weighty and articulated with care, would require this Court to adjudicate upon credibility, resolve factual disputes, and choose between competing inferences. That exercise lies beyond the permissible limits of a bail inquiry under Section 43D(5).

246. The statutory embargo is therefore attracted. The appeal filed by Umar Khalid in SLP (Crl.) No. 14165 of 2025 is dismissed. The prayer for bail is rejected.

247. It is clarified that the observations herein are confined to the consideration of bail and shall not influence the Trial Court in the adjudication of the matter on merits. The Trial Court shall endeavour to proceed with the trial expeditiously.

8. SHIFA UR REHMAN - APPELLANT IN SLP (CRL.) 14859 OF 2025

8.1. SUBMISSIONS ON BEHALF OF THE APPELLANT:

248. Learned Senior Counsel Sri Salman Khurshid for the appellant submitted that the impugned judgment dated 02.09.2025, whereby the High Court declined to enlarge the appellant on bail, suffers from a fundamental infirmity

inasmuch as it overlooks the undisputed fact that the appellant has been in continuous custody since 26.04.2020. It was urged that the appellant has already undergone more than five years and six months of pre-trial incarceration, while the trial has not progressed beyond the stage of framing of charges.

Learned senior counsel submitted that the prosecution case rests on an extraordinarily voluminous record, consisting of a main charge-sheet and two supplementary charge-sheets running into more than twenty thousand pages, with several hundred witnesses cited, rendering the likelihood of an early conclusion of trial wholly illusory. It was contended that the prolonged incarceration of the appellant, in such circumstances, assumes a punitive character and offends the guarantee of personal liberty under Article 21 of the Constitution.

249. Learned Senior Counsel further submitted that the appellant is a person of clean antecedents and has never misused the liberty granted to him. Attention was invited to the fact that the appellant was granted interim bail on two occasions by the Special Court, on 25.11.2023 and 11.11.2024, and on both occasions he surrendered within time and strictly complied with all conditions imposed. It was emphasized that there is not even an allegation that the appellant attempted to abscond, tamper with evidence, or influence witnesses. Learned senior counsel submitted that the appellant did not contribute to the delay in the proceedings, having concluded his arguments on charge in a single sitting and having not sought unrelieved documents, and therefore, continued detention cannot be justified on grounds traditionally recognised in bail jurisprudence.

250. It was then submitted that even on a prima facie appreciation of the prosecution material, the essential ingredients of the offences under Sections 2(o) and 15 of the Unlawful Activities (Prevention) Act are not made out qua the appellant. Learned senior counsel submitted that the appellant is not a member of the DPSG WhatsApp group, which forms the fulcrum of the alleged conspiracy.

His inclusion in one JCC group was, at best, incidental and subject to a clear restriction that alumni members would neither chair meetings nor speak. It was contended that there is no material to indicate that the appellant incited violence, facilitated riots, or indulged in any act intended to threaten the unity, integrity, or sovereignty of the nation, and that participation in protests against a parliamentary enactment, by itself, cannot be elevated to the level of terrorist activity.

251. Learned Senior Counsel further submitted that the prosecution seeks to sustain continued incarceration of the appellant on the basis of statements recorded under Section 161 CrPC and certain call detail records, which, at this stage, do not constitute substantive evidence. It was urged that even the statements of protected witnesses, read in their entirety, do not attribute any specific overt act of violence, financing, or conspiratorial role to the appellant. With regard to the allegation of a meeting dated 22.02.2020 at the AAJMI office, learned senior counsel submitted that the material does not establish either the presence or the participation of the appellant, as the statements refer generally to "office bearers" without singling him out.

252. It was lastly submitted that the principle of parity has been completely overlooked by the High Court. Learned senior counsel pointed out that coaccused, against whom allegations of equal or greater gravity were levelled, have been enlarged on bail, and that the role attributed to the appellant is neither distinguishable nor more serious so as to warrant continued detention. It was urged that denial of bail to the appellant alone, despite prolonged incarceration and parity with similarly placed co-accused, results in manifest inequality and is contrary to the settled principles governing bail under Article 21.

253. In conclusion, learned Senior Counsel submitted that statutory rigours cannot be permitted to eclipse constitutional guarantees, particularly where incarceration has become unduly long and the conclusion of trial is not foreseeable in the near future. It was urged that the appellant is the sole breadwinner of his family, comprising his elderly mother, wife, and two young children, and that continued detention would cause irreparable hardship without advancing the ends of justice. Learned Senior Counsel therefore prayed that this Court may be pleased to interfere with the impugned order and enlarge the appellant on bail on such terms and conditions as may be deemed appropriate.

8.2. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

254. Learned ASG Sri S.V. Raju for the State submitted that the present case does not concern a mere protest or dissent, but a carefully planned and executed criminal conspiracy which culminated in large-scale violence, arson, and loss of life during the North-East Delhi riots of February 2020. It was urged that the appellant, Shifa-ur-Rehman, was not a peripheral or incidental participant, but played a significant and decisive role in furtherance of the conspiracy. The State submitted that the impugned order correctly appreciates the gravity of the offences, the nature of the allegations, and the material collected during investigation, and therefore does not warrant interference.

255. Learned ASG Sri S.V. Raju further submitted that the appellant, being the President of the Alumni Association of Jamia Millia Islamia and a member of the Jamia Coordination Committee, functioned as a key financier and logistic facilitator of the protest sites which were subsequently escalated into violent "Chakka Jaam" and riot situations. Statements of several protected witnesses recorded under Section 164 CrPC consistently disclose that the appellant collected funds in cash, distributed money to organisers and participants, arranged daily wages, and ensured uninterrupted functioning of multiple protest sites across Delhi. These acts were not isolated but formed part of a concerted design to sustain and escalate unrest.

256. It was then submitted that the appellant was in continuous coordination with the principal conspirators, including Umar Khalid and other co-accused, during the relevant period. Call detail records and WhatsApp communications placed on record demonstrate sustained contact between the appellant and other conspirators at crucial stages. Learned counsel submitted that secret meetings were held at the AAJMI office, including the meeting dated 22.02.2020, where decisions were taken to intensify protests and trigger violence in North-East Delhi. The appellant's presence and role in these meetings is supported by sworn statements of protected witnesses and corroborative electronic material.

257. Learned ASG Sri S.V. Raju for the State further submitted that the plea of prolonged incarceration cannot be considered divorced from the seriousness of the offences and the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act. At the stage of bail, the Court is only required to assess whether the accusations are prima facie true and not to conduct a detailed evaluation of evidence. The material on record, including witness statements, documentary evidence, recoveries, seizure of fake bills, and evidence of cash transactions routed through the appellant, clearly satisfies the threshold of prima facie involvement. The delay in trial, it was urged, is attributable to the magnitude and complexity of the case involving multiple accused, voluminous records, and hundreds of witnesses.

258. It was also submitted that the plea of parity is misconceived and unsustainable. Bail jurisprudence mandates an assessment of individual role, and parity cannot be claimed mechanically. The appellant's role as the financial backbone of the conspiracy, ensuring funds and logistics for sustained protest and eventual violence, places him in a distinct and graver category. The State submitted that the appellant cannot equate himself with other accused who may have been granted bail on different factual considerations and on materially different roles.

259. Lastly, learned ASG Sri S.V. Raju submitted that the offences alleged strike at the very foundations of public order and societal peace. The riots were not spontaneous but the outcome of a calibrated plan executed under the guise of protest, resulting in loss of innocent lives, injuries to police personnel, and widespread destruction of property. Grant of bail in such circumstances would undermine the statutory object of the special enactment and erode public confidence in the administration of justice. The State, therefore, prayed that the appeal be dismissed and the impugned order refusing bail be upheld.

8.3. FINDINGS OF THE TRIAL COURT:

260. The Trial Court vide order dated 07.04.2022, passed in IA. No. 73/2021 in SC 163/2020 dismissed the bail application filed by the Appellant. The Court found that the material placed on record, including the charge-sheet, statements of witnesses recorded under Sections 161 and 164 Cr.P.C., electronic evidence, and WhatsApp chats of coordinated groups, disclosed prima facie involvement of the accused in a deep-rooted and well-orchestrated criminal conspiracy relating to the North-East Delhi riots of February 2020. On a cumulative reading of the prosecution material, the Court held that the protests were not spontaneous but were deliberately planned, escalated into chakka-jam, and thereafter converted into organised violence, including attacks on police personnel and destruction of public and private property.

261. The Trial Court emphasised that at the stage of bail it was not required to undertake a meticulous examination of evidence or conduct a mini-trial. Applying the settled principles governing bail in cases under the Unlawful Activities (Prevention) Act, the Court held that the prosecution material must be taken at face value and assessed in its totality. On such assessment, the Court was satisfied that there existed reasonable grounds for believing that the accusations against the accused were prima facie true, thereby attracting the statutory restrictions on grant of bail.

262. The Trial Court rejected the submissions of the accused based on parity, absence of direct overt acts, and alleged exercise of the right to protest. It held that in a case of conspiracy, individual roles are not to be viewed in isolation and that it is sufficient if the material indicates conscious participation in the common design. The Court further held that claims of peaceful protest and lack of direct violence did not neutralise the prima facie case of involvement in a larger conspiratorial framework leading to riots.

263. A decisive ground for rejection of bail was the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, read with the restrictions under Section 437 Cr.P.C. In light of the gravity of the

offences, the nature and scale of the alleged conspiracy, and the prima facie satisfaction regarding the accusations, the Trial Court held that it was legally barred from granting bail and accordingly dismissed the bail application.

8.4. FINDINGS OF THE HIGH COURT

264. The High Court in the impugned order held that the prosecution material, taken cumulatively, disclosed prima facie involvement of Shifa-ur-Rehman as a key financier and organiser in the execution of the larger criminal conspiracy culminating in the North-East Delhi riots. Being the President of AAJMI, he was alleged to have misused his position to facilitate and sustain multiple protest sites across Delhi by raising and disbursing funds, including cash transactions, and by allowing AAJMI premises to be used for JCC meetings, planning, and logistical coordination.

Witness statements, recoveries of documents, and bank and cashtrail material were held to prima facie indicate that funds were mobilised not merely for peaceful protest but for sustaining chakka-jaams and their escalation. At the bail stage, the Court found that his role as a financial enabler and organiser was integral to the operationalisation of the conspiracy.

265. Applying the statutory embargo under Section 43D(5) of the UAPA, the Court held that there were reasonable grounds to believe that the accusations against Shifa-ur-Rehman were prima facie true, thereby barring bail. The pleas that AAJMI was a lawful organisation, that the funds were used only for legitimate protest expenses, that there was no direct incitement, and that parity existed with co-accused released on bail were rejected. The Court clarified that the role attributed to Shifa-ur-Rehman as a fundraiser and coordinator was qualitatively distinct and more serious, and that questions regarding source, quantum, and use of funds are matters for trial. Consequently, the bail appeal was dismissed.

8.5. DISCUSSION ON ROLE AND FINDINGS:

266. According to the charge-sheet, Shifa-ur-Rehman, stated to be the President of the Alumni Association of Jamia Millia Islamia (AAJMI), is alleged to have played an active role in the funding and execution of the riots in Delhi. The charge-sheet alleges that Shifa-ur-Rehman was entrusted with significant responsibilities in furtherance of the alleged conspiracy hatched by Umar Khalid and Sharjeel Imam. It is further alleged that he collected funds and distributed the amounts so collected for the purpose of engaging women, children, and girls to assemble at protest sites, with the intent that the presence of such groups would deter the police from taking stringent action at the protest locations.

267. The charge-sheet further alleges that Shifa-ur-Rehman was closely associated with Umar Khalid, described as the principal conspirator, and that he remained in constant contact with him. It is alleged that Shifa-ur-Rehman also attended secret conspiratorial meetings. The charge-sheet records several instances of fund-raising activities conducted at the office of AAJMI in connection with the protests.

268. It is further alleged that Shifa-ur-Rehman, along with other co-accused, was instrumental in the establishment of 24Ã—7 protest sites. According to the charge-sheet, he regularly visited these protest sites and instigated participants to organise chakka jams under the guise of peaceful protests. Call Detail Records (CDRs) are relied upon to assert his frequent presence at the protest sites.

269. Statements of protected witnesses "Alpha", "Bond", "James", and "Hector" are relied upon to allege that, in his capacity as President of AAJMI, Shifa-ur-Rehman was responsible for raising substantial funds to finance the protests. The charge-sheet further alleges that, in order to avoid detection and to leave no financial trail, Shifa-ur-Rehman fabricated false bills of expenditure in the name of AAJMI. Copies of the purportedly fabricated bills have been produced along with the charge-sheet. It is alleged that Shifa-ur-Rehman collected a minimum amount of Rs. 7-8 lakhs, the majority of which was received in cash.

270. The charge-sheet further alleges that Shifa-ur-Rehman was among the principal individuals responsible for sourcing and sustaining the protests. Apart from his alleged role in funding, it is stated that he participated in a conspiratorial meeting held on 22.02.2020, wherein it was purportedly agreed that the protests should be escalated to the next stage by enforcing chakka jams and engineering violent riots.

271. According to the prosecution, the primary role attributed to Shifa-ur-Rehman was to provide financial and logistical support to all protest sites. The charge-sheet asserts that the funding and logistical assistance allegedly provided by him played an instrumental role in the riots that occurred in Delhi between 23.02.2020 and 26.02.2020, under the ostensible cover of protests against the CAA/NRC.

272. Upon a prima facie consideration of the material presently relied upon by the prosecution, the role attributed to Shifa-ur-Rehman does not disclose participation at the level of conceptualisation or strategic command of the alleged conspiracy. The allegations principally pertain to logistical facilitation, fundraising, and coordination at identified protest sites, premised upon directions purportedly originating from persons situating themselves

above him in the asserted hierarchy. In the absence of demonstrable material suggesting that he exercised autonomous decision-making authority over the alleged broader design, his continued incarceration as a pre-trial measure does not presently appear warranted.

273. The prosecution asserts that Shifa-ur-Rehman was associated with fundraising activities and implementation of protest-site requirements however, the evidentiary material does not indicate that he retained control over the deployment of such funds, nor that he exercised selective discretion over strategic decisions concerning escalation. The record discloses that the appellant's actions were derivative in nature, aligned to instructions transmitted by others, and largely confined to sustaining logistics rather than shaping the trajectory of the protests. Such attribution, while relevant to trial, does not justify indefinite pre trial detention when weighed against the limited and executory nature of his alleged role.

274. The State's apprehension that the appellant may re-establish operational linkages or interfere with witnesses must be evaluated in light of present circumstances. There is no material to demonstrate that the appellant retains any functional capacity to mobilise resources or coordinate activities independent of the structures that, according to the prosecution itself, acted under higher-level guidance and have since ceased to exist in the form alleged. The risks articulated by the State can be effectively neutralised through conditions restricting public engagement pertaining to the case, prohibiting contact with witnesses, and mandating regular court attendance.

275. While the seriousness of the events culminating in violence during the relevant period cannot be discounted, this Court is mindful that gravity alone cannot eclipse the constitutional requirement of individualized examination of the necessity of pre-trial detention. The appellant's role, as narrated, is not linked to instigation of violence, procurement of weapons, or direct involvement in acts of physical aggression. In the absence of a proximate and continuing nexus between the appellant and the capacity to compromise the integrity of the proceedings, further incarceration would assume a punitive character incompatible with settled constitutional jurisprudence under Article 21.

276. The Court is also conscious that pre-trial detention serves limited and clearly defined purposes securing the presence of the accused, preventing obstruction of justice, and safeguarding public interest where demonstrable risk persists. In the present case, none of these objectives appear incapable of being achieved through calibrated restrictions short of incarceration. The absence of material suggesting an enduring organisational infrastructure

capable of being reactivated through the appellant's efforts weighs significantly against the necessity of continued custody.

277. It is further noted that the prosecution's submissions rely substantially on the appellant's positional proximity to individuals alleged to have played a strategic role. Mere associative proximity, without corresponding evidence demonstrating capacity to exert influence or direction, does not satisfy the threshold required to curtail liberty at the post-investigative stage. The appellant's purported involvement in facilitative tasks, while forming part of the evidentiary matrix to be assessed at trial, cannot be a standalone basis for extending pre-trial detention where imposition of protective conditions offers an adequate safeguard.

278. Where the prosecution narrative itself draws a distinction between strategic architects and operational facilitators, judicial scrutiny at the bail stage must remain attentive to proportionality in attribution. The material presently relied upon depicts the appellant as a conduit within a hierarchically structured mobilisation, rather than as a node of independent initiative. Elevating such a role to one warranting prolonged custodial deprivation would risk diluting the constitutionally embedded principle that pre-trial restraint must correlate to demonstrated necessity rather than inferred association.

279. Finally, while the evidentiary record merits thorough adjudication at trial, the Constitution mandates that liberty be curtailed only where compelling grounds grounded in present necessity exist. The prosecutorial hypothesis of a broader conspiracy, though serious, cannot become a charter for undifferentiated incarceration of all alleged participants irrespective of their individual function or continuing capacity. In the circumstances disclosed, and given the availability of stringent safeguards to address the apprehensions raised, the balance of constitutional considerations favours the appellant's release on terms ensuring non-interference with the proceedings and adherence to all conditions imposed by the Court.

280. Having regard to the differentiated standing that the prosecution narrative itself assigns to the appellant, particularly when contrasted with the alleged principal conspirators Umar Khalid and Sharjeel Imam, and in view of the absence of any present investigative requirement necessitating custodial detention, this Court finds that pre-trial liberty can be secured without prejudicing the administration of justice. Accordingly, subject to conditions designed to ensure his availability for trial, prevent any contact with prosecution witnesses, and restrain public commentary bearing upon the merits, the appellant is held entitled to be enlarged on bail. It is clarified that

the observations herein are confined to the determination of bail and shall not be construed as expressing a view on the merits of the prosecution's case.

9. SALEEM KHAN - APPELLANT IN SLP (CRL.) NO. 15335/2025

9.1. SUBMISSIONS ON BEHALF OF THE APPELLANT:

281. Learned Counsel Sri Gautam Khazanchi appearing for the appellant submitted that the appellant, Mohd. Saleem Khan, aged about 54 years, is a permanent resident of Chand Bagh, Delhi, carrying on business, with deep roots in society, and has been in continuous judicial custody for over five years in FIR No. 59 of 2020 registered by the Crime Branch, Delhi, arising out of the North- East Delhi riots of February 2020 . It was submitted that the appellant has no criminal antecedents except three FIRs arising out of the same incident, and in two of those FIRs, namely FIR No. 60 of 2020 and FIR No. 136 of 2020, the appellant has already been granted regular bail by competent courts, on substantially the same material relied upon by the prosecution.

282. He further submitted that the gravamen of the allegation against the appellant in the present FIR is one of conspiracy under the UAPA, without any allegation of commission of a terrorist act, use of arms or weapons, funding of violence, delivery of inflammatory or hate speeches, or direct participation in acts of arson or rioting. Learned Senior Counsel submitted that the prosecution case itself records that the appellant is not a member of any of the WhatsApp groups such as JCC, DPSG, MSJ or SOJ, which form the backbone of the alleged conspiracy narrative, and that the appellant has not sent a single message, directly or indirectly, in any of those groups . It was urged that there is no documentary evidence whatsoever in the form of messages, emails or call records to show any communication between the appellant and the so-called principal conspirators.

283. Learned Counsel submitted that the allegation of the appellant having attended so-called "secret meetings" is founded entirely on belatedly recorded statements of witnesses, recorded months, and in some instances nearly a year, after the arrest of the appellant. It was submitted that even these allegations are contradicted by the prosecution's own material, including CCTV footage, which does not show the presence of the appellant at the alleged meetings on crucial dates. These aspects, it was urged, are matters for trial and cannot be treated as conclusive at the stage of bail, particularly to justify prolonged incarceration.

284. He further submitted that the only overt allegation sought to be pressed against the appellant is that he allegedly turned away or dislocated a CCTV

camera with the aid of a wiper. Learned Senior Counsel submitted that this very allegation formed part of FIR No. 60 of 2020, in which the appellant was granted regular bail by the High Court after a detailed consideration, holding that such footage by itself was insufficient to prolong incarceration and that the extent of conspiracy, if any, could only be determined at trial. It was submitted that the prosecution cannot be permitted to rely upon the same material repeatedly to justify continued detention of the appellant in multiple proceedings.

285. Learned Counsel further submitted that the appellant's conduct throughout has been exemplary. The appellant has been granted interim bail on six occasions by the Trial Court and the High Court for various humanitarian and family reasons, including medical needs of his children and family obligations. On each occasion, the appellant surrendered punctually, without seeking extension, and there is not a single allegation of misuse of liberty, tampering with evidence, influencing witnesses, or attempting to evade the process of law. It was submitted that the appellant, therefore, fully satisfies the triple test governing grant of bail.

286. On the aspect of delay, learned Counsel submitted, briefly, that despite filing of the main charge-sheet and four supplementary charge-sheets, charges have not yet been framed, the prosecution proposes to examine more than 850 witnesses, and the trial is at the stage of arguments on charge, rendering early conclusion wholly illusory.

287. He lastly submitted that the principle of parity has been completely overlooked. Co-accused Devangana Kalita, Natasha Narwal and Asif Iqbal Tanha, against whom far graver and more direct allegations of conspiracy, mobilisation and instigation were levelled, have been granted bail by the High Court, which orders have been affirmed by this Hon'ble Court. The appellant, whose alleged role is demonstrably peripheral and significantly weaker, continues to remain incarcerated, resulting in manifest arbitrariness and unequal treatment.

288. Learned Counsel, therefore, prayed that this Court may be pleased to enlarge the appellant on bail on such terms and conditions as may be deemed fit, in the interest of justice, liberty and parity.

9.2. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

289. Learned ASG Sri S.V. Raju appearing on behalf of the respondent submitted that the present case is not one of mere presence at a protest or passive association, but of deep and active participation in a well-orchestrated criminal conspiracy which culminated in large-scale violence, arson,

destruction of public and private property, and loss of multiple innocent lives during the North-East Delhi riots of February 2020. It was submitted that the appellant, Mohd. Saleem Khan (Accused No. 14), played a pivotal local role in executing the conspiracy at Chand Bagh and adjoining areas, acting in coordination with members of the DPSG and other key conspirators.

290. It was submitted that the material on record, clearly establishes that the appellant was not a peripheral actor but an integral ground-level executor of the conspiracy. Protected witnesses VENUS and GOLD have categorically deposed that the appellant was one of the initiators and organisers of the Chand Bagh protest site from mid-January 2020 onwards, along with other accused persons, and that he actively participated in mobilising crowds, delivering inflammatory speeches, and sustaining the protest infrastructure, including arrangements for food, shelter and logistics.

291. Learned ASG further submitted that on the intervening night of 16-17 February 2020, at around 2:00 AM, a secret conspiratorial meeting was held at the Chand Bagh protest site, which was attended by the appellant along with other key accused including Athar, Shadab, Saleem Malik @ Munna, Gulfisha Fatima, Devangana Kalita and others. In this meeting, the roadmap for escalating peaceful sit-ins into disruptive chakka-jam at strategically chosen arterial roads was finalised, with the express objective of provoking confrontation with police and engineering riots. This meeting is corroborated by multiple protected witnesses including BRAVO, JOHNY and KILO, whose statements consistently name the appellant as a participant in the deliberations.

292. It was submitted that in furtherance of the conspiracy, another meeting was held in the intervening night of 20-21 February 2020 at Ayaz's office in Chand Bagh, which the appellant attended along with DPSG members. Protected witness PLUTO has deposed that during this meeting, explicit exhortations were made to "set Delhi on fire", that weapons, petrol and finances were ready, and that violence on a large scale was inevitable unless roads were blocked and clashes ensued. The appellant's presence and participation in this meeting are specifically spoken to by PLUTO in his statement under Section 164 CrPC .

293. Learned ASG Sri S.V. Raju submitted that the conspiracy moved from planning to execution on 22 February 2020, when, pursuant to these meetings, chakka-jam was first enforced at Jafrabad Metro Station by mobilising crowds from Chand Bagh and Seelampur. This was followed by meetings convened and attended by the appellant on the night of 22 February 2020 at Ayaz's basement, where organisers of various protest sites were informed that chakka-jam had been successfully executed at Jafrabad and were directed to

replicate the same in their respective areas. CCTV footage and witness testimonies establish the appellant's role in convening and attending these meetings.

294. It was further submitted that on 23 February 2020, the appellant, along with Athar, Shadab and Saleem Malik @ Munna, physically shifted the Chand Bagh protest from a side location to the main Wazirabad-Ghaziabad road, thereby enforcing chakka-jam at a critical arterial road and deliberately moving protests from Muslim-majority lanes to mixed-population areas to maximise confrontation. Protected witnesses BRAVO and HECTOR have deposed that this coordinated action directly led to escalation of violence, stone-pelting, arson and attacks on police personnel and civilians.

295. Learned ASG Sri S.V. Raju emphasised that when the conspirators realised that the scale of violence was being curtailed due to CCTV surveillance, another conspiratorial meeting was held on the night of 23 February 2020, wherein it was decided that CCTV cameras must be destroyed or disabled. Witness RADIUM has categorically stated that Athar informed the group that the task of breaking CCTV cameras had been assigned to the appellant and Saleem Malik @ Munna. In pursuance thereof, CCTV footage demonstrates that on 24 February 2020, multiple CCTV cameras in the area were systematically dislocated or covered, including one instance where the appellant himself is seen dislocating a CCTV camera.

296. It was submitted that once CCTV surveillance was neutralised, large-scale violence erupted on 24 February 2020, resulting in brutal attacks on police personnel, including the killing of Head Constable Ratan Lal, grievous injuries to senior police officers, and the murder of Intelligence Bureau officer Ankit Sharma, besides widespread arson and destruction. The State submitted that the appellant is not only charged in the present conspiracy case but is also an accused in connected cases relating to murder and rioting, reflecting the gravity and continuity of his role.

297. On the issue of parity, learned ASG Sri S.V. Raju submitted that parity cannot be claimed in abstract, divorced from individual role. The appellant's role, as borne out from multiple independent protected witnesses, electronic evidence, CCTV footage and chain-of-command analysis, is materially distinct and far more direct than those accused who have been granted bail. The appellant functioned as a key local executor translating strategic conspiracy into physical action on the ground.

298. On delay, learned ASG submitted briefly that the complexity of the case, the multiplicity of accused, the scale of violence, and the volume of evidence, including hundreds of witnesses and electronic records, necessarily require

time, and such delay cannot be used to dilute the statutory embargo under Section 43D(5) of the UAPA where a strong prima facie case exists.

299. Learned ASG therefore submitted that, on a cumulative assessment of the material, there are reasonable grounds for believing that the accusations against the appellant are prima facie true, that his release would pose a serious threat to public order and the integrity of the trial, and that the present case does not warrant exercise of discretion in favour of bail. The State accordingly prayed for dismissal of the appeal.

9.3. FINDINGS OF THE TRIAL COURT:

300. The Trial Court vide order dated 22.03.2022, passed in IA. No. 96/2021 in SC 163/2020 dismissed the bail application filed by the Appellant. The Trial Court found that the prosecution material disclosed prima facie involvement of the appellant in a large-scale, deep-rooted criminal conspiracy connected with the North-East Delhi riots of February 2020.

On a holistic reading of the charge sheet, supplementary charge-sheets, CCTV analysis, witness statements (including protected witnesses), and WhatsApp group communications (DPSG/JCC), the Court held that the riots were not spontaneous but were systematically planned to escalate protests into chakka-jam and thereafter into organised violence, including attacks on police, destruction of CCTV cameras, arson, and use of deadly weapons. At the stage of bail, the Court emphasised that the individual role of the accused cannot be viewed in isolation and must be assessed in the context of the entire chain of conspiracy.

301. A decisive reason for rejection of bail was the statutory bar under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, read with the additional restriction under Section 437 Cr.P.C. The Court applied the principles laid down in *NIA v. Zahoor Ahmad Shah Watali* (supra) and *Thwaha Fasal v. Union of India* (supra), holding that if, on a perusal of the charge-sheet and case diary, there exist reasonable grounds for believing that the accusations are prima facie true, the accused cannot be released on bail. The Court recorded that the prosecution material, taken at face value, crossed this statutory threshold, thereby attracting the embargo on bail.

302. The Trial Court rejected the defence contentions relating to delay in arrest, clean antecedents, alleged absence of independent public witnesses, and claims that the accused was merely a spectator or a peaceful protester. It held that criminal conspiracy is rarely proved by direct evidence and is ordinarily established through circumstantial evidence, conduct of the accused, and the cumulative effect of surrounding circumstances. Alleged

contradictions in witness statements, admissibility of evidence, and the defence plea that the accused was not part of WhatsApp groups or meetings were held to be matters for trial, not for determination at the bail stage.

303. Finally, the Trial Court underscored the gravity and societal impact of the offences, noting the loss of life, large-scale damage to public and private property, and serious threat to public order. It reiterated that at the bail stage, the Court is not required to conduct a mini-trial or weigh evidence meticulously, but only to assess broad probabilities. Taking a cumulative view of the prosecution material and the statutory restrictions under UAPA and Cr.P.C., the Court concluded that the appellant had failed to dislodge the prima facie case against him, and consequently held that he was not entitled to bail, leading to dismissal of the bail application.

9.4. FINDINGS OF THE HIGH COURT:

304. The High Court in the impugned order found that the prosecution material prima facie established Mohd. Saleem Khan's role as a local executor of the conspiracy, particularly in relation to events at Chand Bagh during 23-24 February 2020. He was alleged to have participated in secret meetings where plans were discussed to escalate protests into violence and, significantly, to have acted upon instructions to disable government-installed CCTV cameras.

The Court noted that CCTV footage and witness statements prima facie showed Saleem Khan physically dislocating CCTV cameras, which was considered a crucial preparatory act enabling rioters to operate with impunity. His role was thus viewed as facilitating the transition from protest to large-scale violence, including the attacks that resulted in deaths and grievous injuries to police personnel.

305. Invoking Section 43D(5) of the UAPA, the Court held that the accusations against Saleem Khan met the threshold of prima facie truth, creating a statutory bar to bail. The arguments that he was not a member of major WhatsApp groups, that he had already been granted bail in other FIRs (including one relating to CCTV damage), or that the evidence was insufficient, were rejected. The Court clarified that the present proceedings concerned a larger conspiracy FIR under the UAPA, and that acts such as disabling CCTV cameras assumed grave significance in that context. Issues relating to overlap of FIRs, alleged double jeopardy, and evidentiary weaknesses were held to be matters for trial, leading to dismissal of his bail appeal.

9.5. DISCUSSION ON ROLE AND FINDINGS:

306. Mohd. Saleem Khan is alleged by the prosecution to be one of the principal local actors who actively participated in the conspiracy and the violent protests that took place during the last week of February 2020.

307. According to the charge-sheet, Mohd. Saleem Khan was part of the group that established a 24×7 protest site at Chand Bagh. The members associated with the said protest site are alleged to have played a significant role in instigating and engineering the riots that occurred during the last week of February 2020. The statements of protected witnesses "VENUS" and "GOLD" are relied upon to disclose and corroborate the role attributed to Mohd. Saleem Khan in the orchestration of the riots.

308. It is further alleged that on 17.02.2020, Mohd. Saleem Khan attended a meeting held during the night hours at the Chand Bagh protest site, which was attended by members of the Delhi Protest Support Group (DPSG). As per the charge-sheet, approximately twenty persons attended the said meeting, including Saleem Khan. During the meeting, a roadmap for the execution of the final phase of the alleged conspiracy namely, the escalation of chakka jams into disruptive chakka jams and the organisation of violence and riots was purportedly outlined by co-accused Athar Khan.

309. According to the prosecution, there was a clear and cogent understanding among the key participants who attended the said meeting that the protest sites, then located on side lanes in Muslim-dominated areas, were required to be shifted and converted into chakka jams at carefully selected locations on arterial and busy roads situated in proximity to areas of mixed population. The stated objective of such relocation was to engineer riots and to paralyse the normal movement of traffic and the flow of public life.

It is further alleged that the enforcement of chakka jams, which would inevitably necessitate police intervention, was intended to be followed by confrontation with, and attacks upon, police personnel and members of the public, as well as damage to and destruction of public property through the use of firearms, deadly weapons, arson, and other means during the engineered riots. In support of these allegations, reliance is placed on the statement of protected witness "BRAVO".

310. The prosecution further alleges that Mohd. Saleem Khan attended another meeting held during the intervening night of 20/21.02.2020 at the office of one Ayaz in Chand Bagh, Delhi. According to the prosecution, the plan allegedly conspired by the participants of the meetings held on 17.02.2020 and between 20.02.2020 and 22.02.2020 was executed by protesters from Chand Bagh, including Mohd. Saleem Khan, when they

moved from the protest site to the Jafrabad Metro Station on the evening of 22.02.2020.

Statements of protected witnesses are relied upon to assert the presence of Saleem Khan at the protest held at Jafrabad Metro Station. It is further alleged that Saleem Khan invited persons to attend a conspiratorial meeting held at Chand Bagh on 22.02.2020, which allegedly culminated in the protest of 23.02.2020 on the main road near the Mazar and the enforcement of a chakka jam on the Wazirabad-Ghaziabad Road.

311. It is further alleged that on the night of 23.02.2020, after riots had erupted in North-East Delhi but were perceived to have fallen short of the intended scale of violence, a conspiratorial meeting was convened at the residence of one Mukhtyar in Chand Bagh by DPSG members Athar and Shadab Ahmad. The meeting is stated to have been attended by absconding accused Suleman Siddiqui and Ayub. During the said meeting, Athar is alleged to have conveyed that Nadeem Khan was dissatisfied with the limited escalation of violence due to the presence of CCTV cameras and had instructed that the cameras be covered and destroyed. It is alleged that Athar thereafter assigned Saleem Khan and Salim Malik alias Munna the task of damaging the CCTV cameras, while Shadab Ahmad stated that similar acts would be carried out through his own team.

312. The charge-sheet further relies upon reverse mapping of accused persons arrested for grave offences committed during the North-East Delhi riots, which is stated to trace their actions back to a clandestine conspiratorial meeting held at Chand Bagh on the intervening night of 16/17.02.2020, thereby revealing a clear chain of command. Several accused persons involved in offences of murder, rioting, arson, and attempts to murder, including those linked to the killings of Head Constable Ratan Lal, Rahul Solanki, and Ankit Sharma, are stated to have either attended the said meeting or remained in regular contact with its participants, particularly DPSG members Athar Khan, Shadab Ahmad, Gulfisha Fatima, and Khalid Saifi. The mapping is relied upon to demonstrate coordinated roles, including the destruction of CCTV cameras, assignment of specific targets, financing of weapons and ammunition, and operational execution, culminating in the framing of charges against key conspirators in multiple FIRs pertaining to mass violence and attacks on police personnel.

313. At the present stage of consideration, the allegations against Mohd. Saleem Khan primarily situate him as a local operative associated with meetings at the Chand Bagh protest site, allegedly tasked with site-level mobilisation in furtherance of directions issued by others. The record does not prima facie disclose autonomous authority over the larger conspiracy, nor any

material to suggest that he occupied a position from which strategic escalation or coordination across protest sites could be directed. In view of the differentiated role attributed to him, this Court finds that his continued pre-trial detention requires a more narrowly tailored justification than what is presently demonstrated.

314. While the prosecution places reliance on his alleged attendance at meetings preceding the escalation of protests into chakka jams, the material does not disclose that Saleem exercised control over either the initiation of such meetings or formulation of their outcomes. The attribution is largely derivative, reflecting execution of tasks discussed by others and limited to coordination within the Chand Bagh-Jafrabad cluster. The evidentiary foundation relied upon, even if taken at its highest, does not presently establish that Saleem possessed independent command capacity or strategic discretion warranting ongoing incarceration solely on the basis of his associative presence at key locations.

315. The assertion that Saleem participated in the destruction of CCTV cameras and in facilitating the movement of protestors to designated sites raises matters for trial, however, pre-trial detention cannot be perpetuated merely because violent acts are alleged in proximity to his presence, unless a direct and continuing ability to influence or repeat such conduct is shown. There is no material before this Court indicating that he presently retains access to organisational resources, communication networks, or mobilising power that could enable interference with the administration of justice. The legitimate concerns of the State can be sufficiently guarded by supervision and tailored restrictions.

316. It is settled that the seriousness of the alleged acts, while relevant, does not displace the constitutional requirement that pre-trial detention serve a demonstrable and continuing necessity. In the absence of any plea or evidence that Saleem's custodial presence is required for further investigation, and given that the prosecution narrative itself delineates him as an executor rather than an originator or planner of the alleged conspiracy, this Court is unable to conclude that the threshold of necessity under Article 21 remains satisfied. The balance between individual liberty and collective security therefore tilts in favour of conditional release.

317. The Court is cognisant that the architecture of the prosecution case relies on a theory of layered participation, wherein actions undertaken at individual protest sites are said to feed into a broader conspiratorial framework. Even assuming this structure to be correct for the limited purpose of bail, the role attributed to Saleem does not presently transcend the operational. His alleged activities do not indicate that he functioned as a conduit between the principal

architects and secondary actors beyond his immediate geographical sphere. In the absence of such interlinking conduct, imputing to him a continuing capacity to destabilise public order would be speculative rather than evidentiary.

318. Furthermore, the prosecution has not demonstrated that witnesses associated with the Chand Bagh protest remain vulnerable to intimidation or inducement at the hands of Saleem. In these circumstances, the apprehension of evidence tampering must be founded on concrete risks rather than on the mere gravity of the offences alleged.

319. The Court also notes that prolonged incarceration without demonstrable necessity risks conflating punitive detention with preventive detention, contrary to the settled constitutional position that the former cannot be imposed before conviction save to secure legitimate trial-related objectives. A restrictive reading of personal liberty is impermissible where targeted conditions could be imposed. The imposition of such calibrated measures achieves the dual purpose of safeguarding societal interests and upholding constitutional fidelity.

320. Lastly, the overarching narrative advanced by the prosecution emphasises the systemic nature of the alleged conspiracy. However, systemic allegations require systemic evidence an associative presence or execution of logistical tasks, without more, does not justify a presumption of continuing threat in the post-investigative stage. Judicial scrutiny at the bail stage must remain sensitive to the distinction between contextual participation and autonomous agency. In the present facts, this distinction militates against further curtailment of Saleem's liberty, and reinforces the principle that deprivation of liberty cannot be sustained without distinct and ongoing justification anchored in necessity rather than inference.

321. Having considered the differentiated attribution of roles among the accused, this Court notes that the prosecution places Umar Khalid and Sharjeel Imam at the apex of the alleged conspiracy, whereas Saleem is projected as a site level participant whose presence and conduct derive meaning primarily from directives purportedly issued by others. This structural distinction, coupled with the absence of ongoing investigative necessity and the availability of strict conditions to minimise any risk to the proceedings, persuades the Court that continued incarceration of Saleem would not be proportionate. Accordingly, he is held entitled to be released on bail subject to conditions enumerated below. Nothing herein shall be construed as an opinion on guilt or innocence.

10. MEERAN HAIDER - APPELLANT IN SLP (CRL.) 14132 OF 2025

10.1. SUBMISSIONS ON BEHALF OF APPELLANT:

322. Learned Senior counsel Sri Siddharth Aggarwal for the Appellant submits that the Appellant has been in continuous judicial custody since 01.04.2020 and has, as on date, undergone incarceration of over five years and five months as an under-trial prisoner in the present case. It is urged that investigation qua the Appellant stands concluded, as admitted by the prosecution before the Trial Court in August 2024, and that he is not required for any further custodial interrogation. It is contended that despite filing of multiple charge-sheets over a period of more than four years, the trial has not commenced and there is no realistic likelihood of its conclusion in the near future, particularly in view of the initially cited 960 witnesses and over 1200 relied-upon documents, even if the prosecution now claims that the witness list would be pruned.

323. It is further urged that the Appellant has been arrested exclusively in the present FIR and is not in custody in any other case. Learned counsel submits that the Appellant is a well-educated individual, aged about 34 years, having completed B-Tech, MBA and M-Phil, and has continued his academic pursuits even while in custody. It is contended that the Appellant satisfies the triple test for grant of bail, inasmuch as he is not a flight risk, has deep roots in society, has cooperated with the investigation throughout, and there is no allegation of tampering with evidence or influencing witnesses. Reliance is placed on the fact that when interim bail was granted for a short duration in August 2024, the Appellant strictly complied with all conditions.

324. On the aspect of parity, learned Senior Counsel submitted that several coaccused who were allegedly part of the core conspiracy, including those who were members of the principal WhatsApp groups relied upon by the prosecution, present in alleged secret meetings, or physically present at riot-affected areas, have been granted bail. It is argued that the Appellant stands on a better footing, as he is not alleged to have participated in any of the two secret meetings relied upon by the prosecution, was not present at any riot site, and there is no CCTV footage, recovery of weapons, or physical evidence connecting him to acts of violence. It is contended that parity is pressed strictly on factual comparison and not on any alleged dilution of statutory standards under the UAPA.

325. Learned Senior Counsel further submitted that even according to the prosecution's own case, as reflected in the charge-sheet, the Appellant has been categorised as having a comparatively lesser role, being placed in the third category out of four classes of accused. It is urged that this categorisation itself contradicts the finding in the impugned judgment that the Appellant played a "significant role" in the alleged conspiracy. It is argued

that the High Court failed to reconcile this internal inconsistency in the prosecution's own material.

326. On merits, it was submitted that the principal allegation against the Appellant relates to financing. Learned Senior Counsel contended that even as per the prosecution, the alleged contribution attributed to the Appellant is between Rs.2.33 lakhs and Rs.2.86 lakhs, out of an alleged total expenditure of approximately Rs.1.60 crores, constituting less than two percent of the total. It was urged that notwithstanding this, the Appellant has been described as a "key fundraiser", which is wholly disproportionate and unsupported by evidence.

It is further submitted that the Appellant has furnished a detailed explanation for the small sums reflected in the diary/register seized from him, stating that the amounts pertained to his proposed election campaign, personal expenses following the death of his mother and his father's medical treatment, and for providing food and water at protest sites. It is contended that no finding has been returned on this explanation.

327. Learned Senior Counsel submitted that the Appellant is not alleged to have been a member of the principal WhatsApp groups such as DPSG or MSJ, which are claimed by the prosecution to be central to the alleged conspiracy. It is urged that no incriminating message authored by the Appellant has been placed on record, read out, or relied upon. It is further submitted that mere membership of WhatsApp groups, absent any unlawful object or inciting content, cannot attract liability under the UAPA.

328. It was also submitted that none of the speeches attributed to the Appellant are provocative or inciteful. Learned Senior Counsel contended that the transcripts placed on record show that the speeches emphasise constitutional values, secularism, democracy and peaceful protest. It is urged that the specific allegation that the Appellant delivered a provocative speech on 22.02.2020 at Nizamuddin is demonstrably false, as no transcript of such speech has been placed on record by the investigating agency.

329. Learned Senior Counsel further submits that the Appellant was not present at any of the riot-affected sites, was not part of the alleged meetings at Chandbagh or Seelampur, and that there is no CCTV footage, still photograph, or recovery linking him to acts of violence. It is urged that statements recorded under Sections 161 and 164 CrPC do not disclose any overt act attributable to the Appellant that would constitute offences under the UAPA.

330. It was contended that the prolonged incarceration of the Appellant violates his right to life and personal liberty under Article 21 of the Constitution, particularly when he has already undergone more than half of the maximum sentence prescribed for several of the alleged offences. Learned Senior Counsel submitted that continued detention in the face of an indeterminate trial timeline amounts to punitive incarceration without adjudication of guilt.

331. On the embargo under Section 43D(5) of the UAPA, it was urged that the prosecution material, even if taken at face value, does not disclose a prima facie case of the Appellant's involvement in terrorist acts or conspiracy, and therefore the statutory bar is not attracted. It was submitted that the High Court has mechanically applied the embargo without undertaking the requisite prima facie evaluation of the material specific to the Appellant.

332. In conclusion, learned Senior Counsel submitted that the cumulative effect of prolonged custody, completion of investigation, absence of direct evidence, comparative parity with co-accused on bail, and lack of any likelihood of early trial, warrants grant of bail to the Appellant, and that denial thereof would result in grave and irreparable prejudice.

10.2. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

333. Learned ASG Sri S.V. Raju for the State submits that the present case does not arise from an isolated incident or a spontaneous law-and-order situation, but from a deep-rooted, premeditated and carefully orchestrated criminal conspiracy which culminated in large-scale violence in North-East Delhi in February 2020. The investigation in FIR No. 59 of 2020 has revealed that the conspiracy was executed in a phased manner beginning from December 2019, with the deliberate objective of converting protests into permanent sit-in sites, escalating them into disruptive chakka-jam, and thereafter triggering targeted violence. It is submitted that the acts forming part of this conspiracy were intended to create widespread fear, disrupt normal civic life and destabilise public order, thereby attracting the stringent provisions of the Unlawful Activities (Prevention) Act, 1967.

334. It was urged that the Appellant, Meeran Haider, Accused No. 3, was not a marginal or passive participant but an active conspirator from the inception. His involvement surfaces even during the first phase of riots in December 2019, prior to the February 2020 violence, and thus demonstrates continuity and depth of participation. The State submits that the material on record clearly establishes that the Appellant was embedded within the organisational framework executing the conspiracy.

He was a member of United Against Hate, a component of the Delhi Protest Support Group, and also a core member of the Jamia Coordination Committee, which functioned as the operational arm of the conspiracy. Statements of protected witnesses recorded under Section 164 CrPC name the Appellant as a regular participant in daily meetings and secret meetings concerning protest sites, mobilisation and logistics, thereby prima facie establishing his knowing and voluntary involvement.

335. Learned ASG Sri S.V. Raju submitted that the role of the Appellant was operational, supervisory and managerial in nature. He functioned as an organiser and administrator of multiple permanent protest sites, entrusted with their maintenance, coordination and continuity in furtherance of the common design. Electronic material recovered during investigation, including chats from the Appellant's own device, shows him identifying protest locations, assigning responsibilities and coordinating personnel across sites. It is further submitted that the Appellant actively participated in mobilisation and escalation, exhorting protestors to engage in chakka-jam and to confront police personnel, thereby facilitating the transition from protest to violence. These acts, it is urged, were integral to the execution of the conspiracy and cannot be characterised as protected dissent or lawful protest.

336. On the issue of financing and strategy, learned counsel submits that the Appellant actively collected, handled and channelled funds meant for sustaining protest sites and riot-related activities. Multiple witnesses examined under Sections 161 and 164 CrPC have stated that they handed over money to the Appellant during the relevant period, and cash recoveries were effected from concealed locations within his residence.

The State submits that the explanation now sought to be offered regarding the source and purpose of these funds raises disputed questions of fact which cannot be adjudicated at the stage of bail. It is further urged that the Appellant was privy to core strategic decisions of the conspirators, including internal role allocation and narrative management, and that he remained in real-time communication with key conspirators and footsoldiers during the critical period of 22-24 February 2020, monitoring execution and participating in coordinated attempts to shift blame and public perception once violence had erupted.

337. Learned ASG Sri S.V. Raju finally submitted that the absence of the Appellant from the physical site of rioting or the lack of recovery of weapons is immaterial in a conspiracy of this nature, where roles are distributed and liability attaches equally to planners, organisers, financiers and supervisors. The plea of parity is misconceived, as the Appellant is not similarly situated

to co-accused who have been granted bail, his role being distinct in nature and gravity.

It was urged that prolonged incarceration by itself cannot override the statutory embargo under Section 43D(5) of the UAPA once the accusations are prima facie true. At the stage of bail, the Court is not required to conduct a detailed evaluation of defence explanations. Learned ASG Sri S.V. Raju submitted that the material on record clearly discloses the Appellant's active and central involvement in the conspiracy, attracting the statutory bar to bail, and that any grant of bail at this stage would defeat the object of the special statute and undermine the administration of justice.

10.3. FINDINGS OF THE TRIAL COURT:

338. The Trial Court vide order dated 04.12.2024 in IA. No. 208/2024 in S.C. 163 of 2020, rejected the second bail application filed by the Appellant on the ground that, the order dated 05.04.2022 in IA No. 94/2021, dismissing the applicant's first bail application was passed after a detailed consideration of the facts and merits, wherein the Court, upon perusal of the charge sheet and accompanying documents, found the allegations against the applicant to be prima facie true.

The Court also rejected the contention that prolonged trial by itself warranted bail, held that the statutory embargo under Section 43(D) of the UAPA as well as Section 437 Cr.P.C. was applicable, and consequently found the applicant not entitled to bail. Since the said dismissal occurred after filing of the charge sheet and the stage of the case remains unchanged, the Court holds that entertaining the present bail application on the same grounds, notwithstanding submissions regarding changed circumstances and reliance on judgments, would amount to an impermissible review of the earlier order dated 05.04.2022. having noted the order of the trial court rejecting 2nd bail application, it becomes imperative for us to set out the reasons for dismissal of the 1st bail application of the appellant which is given in the subsequent paragraphs.

339. The Trial Court held that the material placed on record disclosed prima facie involvement of the appellant in a large-scale, deep-rooted and wellorchestrated criminal conspiracy culminating in the North-East Delhi riots of February 2020. On a holistic reading of the charge-sheet, its annexures, case diary, witness statements under Sections 161 and 164 Cr.P.C., WhatsApp chats (including DPSG/JCC), speeches, and other documentary and electronic material, the Court found that the protests against CAA/NRC were not organic but were strategically planned to escalate into chakka-jam and thereafter into widespread violence, targeting police, public order, and

property. At the bail stage, the Court emphasized that it was not required to conduct a detailed trial-like evaluation, and that the prosecution material, taken at face value, sufficiently connected the appellant to the conspiracy.

340. A decisive ground for rejection was the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, read with Section 437 Cr.P.C. Relying extensively on *NIA v. Zahoor Ahmad Shah Watali* (supra) and *Thwaha Fasal v. Union of India*¹², the Court reiterated that if, upon perusal of the charge-sheet and case diary, there are reasonable grounds for believing that the accusations are prima facie true, bail must be refused. Applying this standard, the Court concluded that the prosecution material crossed the statutory threshold and therefore the bar under Section 43D(5) squarely operated against the appellant.

341. The Trial Court rejected the defence contention that the appellant's acts were protected by Articles 19(1)(a) and 19(1)(b) of the Constitution as peaceful protest or dissent. It held that while the right to protest is sacrosanct, the chargesheet portrays a conspiracy under the guise of protest, aimed at paralysing civic life, blocking arterial roads, provoking confrontation, and ultimately triggering communal violence. The Court further held that issues relating to interpretation of speeches, credibility of witnesses, admissibility of documents, alleged absence from riot sites, and claimed lack of direct overt acts are matters for trial, and cannot dilute the prima facie satisfaction required at the bail stage in a UAPA case.

342. Lastly, the Trial Court noted the gravity and societal impact of the offences, the scale of violence, loss of life, and damage to public and private property, and reiterated that conspiracy is seldom proved by direct evidence and must be assessed cumulatively. Taking a holistic view of the material, the Trial Court held that the appellant's role could not be examined in isolation and that the prosecution had established reasonable grounds to believe that the accusations were prima facie true. In view of the statutory restrictions under UAPA and the additional bar under Section 437 Cr.P.C., the Court concluded that the appellant was not entitled to bail, and accordingly dismissed the bail application.

10.4. FINDINGS OF THE HIGH COURT:

343. The High Court in the impugned order found that the prosecution material prima facie established Meeran Haider's role as an active executor and fundraiser within the conspiracy, closely working with other conspirators and alleged masterminds. He was alleged to be a core JCC member, part of multiple WhatsApp groups receiving directions from DPSG, and to have

played a key role in mobilising protestors, managing protest sites, and raising and disbursing funds.

The Court noted recoveries of cash, registers recording monetary transactions, bank-account analysis, call-detail records, and witness statements suggesting that funds were received and utilised for sustaining protests and for escalating chakkajaams into violence. He was also alleged to have exhorted protestors to collect weapons and intensify confrontations with police, which, at the bail stage, was sufficient to connect him to the execution of the conspiracy.

344. Invoking Section 43D(5) of the UAPA, the High Court held that the accusations against Meeran Haider met the threshold of prima facie truth, creating a statutory bar to bail. The arguments based on completion of investigation, alleged change in circumstances, long incarceration, parity with co-accused granted bail, and claimed benign use of funds were rejected. The Court emphasised that funding and mobilisation form a critical preparatory stage of a conspiracy, and that the role attributed to Meeran Haider was distinct from those released on bail. Holding that evidentiary assessment and credibility issues must be tested at trial, the Court concluded that no case for bail was made out and dismissed the appeal.

10.5. DISCUSSION ON ROLE AND FINDINGS:

345. As per the charge-sheet, Meeran Haider, stated to be a member of United Against Hate (UAH), along with students of Jamia Millia Islamia University, is alleged to have played a significant role in the implementation of the protests that ultimately culminated in violence. The charge-sheet alleges that Meeran Haider was one of the core members of the Jamia Coordination Committee (JCC) and that he participated in clandestine meetings convened in relation to the establishment and management of protest sites. According to the charge-sheet and the statement of protected witness "Bond", Meeran Haider, Shifa-ur-Rehman, Arib Hassan, Asif Iqbal Tanha, Saiful Islam, and Safoora Zargar were the principal members of the JCC.

346. The charge-sheet further alleges that Meeran Haider acted as an organiser of several protest sites. Chats exchanged between Meeran Haider and Tasleem, dated 20.01.2020, are relied upon to show that Meeran Haider was responsible for managing eight protest sites as part of the alleged conspiracy. It is further alleged that he instigated participants at these sites to enforce chakka jams and thereafter to escalate the same into violent riots by attacking members of the general public and police personnel.

347. Statements of witnesses Akib Aman and "Platinum" are relied upon to allege that Meeran Haider collected funds for organising the protests that took

place during the first two months of 2020. According to protected witness "Robert", Meeran Haider collected funds and contributed the same to the corpus of AAJMI through its General Secretary, Areeb, for the purpose of facilitating riots.

348. The charge-sheet further records the recovery of an amount of ₹1,45,000 allegedly belonging to Meeran Haider, which is stated to have been kept by his sister, Shahjeen Khatoon, at his behest. Witness Shahjeen Khatoon is stated to have testified that the said amount was recovered upon the arrest of Meeran Haider. It is further alleged that Meeran Haider acted directly under the directions of Sharjeel Imam.

349. It is further alleged that on 22.02.2020 at approximately 22:17 hours, Tasleem Ahmed sent a message from Jafrabad to Meeran Haider reporting the commencement of a chakka jam. According to the charge-sheet, this communication indicates that Meeran Haider was responsible for coordinating certain protest sites.

350. On the night intervening 22.02.2020 and 23.02.2020, during the occurrence of the riots, Meeran Haider is alleged to have ensured the participation of Jamia students in the protests by circulating messages on WhatsApp groups. It is further alleged that after each chakka jam was executed, Meeran Haider would receive reports confirming the success of the particular blockade.

351. On 24.02.2020, following alleged threats by certain members of the DPSG to expose those responsible for the violence, the charge-sheet states that Umar Khalid called Meeran Haider to inform him about the next course of action.

352. A prima facie appraisal of the prosecution material indicates that the role ascribed to Meeran Haider is fundamentally that of an organiser and coordinator of designated protest sites within the Jamia network, acting largely upon instructions communicated through alleged higher-level actors. The record does not presently disclose that he possessed autonomous decision-making authority over the alleged overarching design, nor that he exercised strategic control over the escalation of protests. His alleged participation does not, on its face value, justify the continued curtailment of his liberty at the pre-trial stage.

353. The allegation that Meeran Haider coordinated protest sites and facilitated participation of students, including the organisation of resources, is materially distinct from assertions of conceptual leadership or command. Insofar as the evidentiary substratum does not presently establish that he

exercised meaningful discretion over the initiation of violence or the transition of protests into chakka jams, this Court is unable to hold that prolonged incarceration is necessary solely to reflect the gravity of the charge.

354. The apprehensions expressed by the State regarding the possibility of Meeran Haider re-mobilising student populations or exerting influence over former protest networks cannot be accepted in the abstract. No material has been placed to show that such organisational structures continue to operate or that the appellant retains access to resources or networks capable of compromising the integrity of the proceedings. The risks invoked by the prosecution can be effectively mitigated through stringent conditions prohibiting contact with prosecution witnesses, restricting participation in public assemblies touching the subject matter, and securing regular attendance before the trial court.

355. It is a settled principle that the seriousness of the allegations, though relevant, does not obviate the constitutional requirement that deprivation of liberty must be necessary for legitimate investigative or trial-related objectives. The prosecution does not assert that custodial interrogation of Meeran Haider is required at this stage, nor that his continued detention is indispensable for securing further evidence. Absent such necessity, the Court must ensure that preventive detention does not incrementally assume a punitive character, particularly where the role attributed to the appellant is situational and derivative rather than originating or directive.

356. The Court further recognises that the evidentiary framework relied upon does not, at this stage, attribute to the appellant any independent role in securing financial resources or channelling funds towards the alleged conspiracy beyond logistical facilitation incidental to protest management. The distinction between episodic facilitation and sustained financial stewardship bears directly on the question of continuing necessity, for it is only the latter that might prima facie justify custodial restraint on the ground of potential resource-based reactivation. In the absence of such linkage, the appellant's liberty cannot be curtailed merely on apprehensions rooted in past associations.

357. Moreover, the records placed before the Court indicate that critical electronic communications, organisational documents, and statements of witnesses forming the backbone of the prosecution narrative have already been secured. No plea has been advanced asserting that further custodial presence of the appellant is necessary to extract residual evidence or confront him with newly discovered material. Where the investigatory stage has effectively matured and the appellant's participation appears circumscribed by

directive structures no longer demonstrably operational, the constitutional presumption of liberty must regain primacy.

358. The Court also takes note that the prosecutorial depiction of a multi-layered mobilisation architecture requires careful calibration when translated into determinations of pre-trial necessity. If layered participation is accepted as the structural premise, proportionality requires that liberty restrictions correspond to the specific layer of agency attributed to the appellant. To conflate operational responsibility with command responsibility at the bail stage would risk imposing a regime of undifferentiated incarceration antithetical to the principle that liberty may only be withheld where contemporaneous and individualised grounds compel such curtailment.

359. In these circumstances, the Court finds that the objectives of securing the integrity of the trial, preventing witness influence, and guarding against remobilisation can be achieved through targeted restrictions rather than continued custody. Conditions such as periodic reporting, prohibition on participation in assemblies relating to the subject matter, and restraints on electronic communication with identified individuals are proportionate safeguards that align constitutional fidelity with legitimate State interests. Accordingly, subject to the imposition of such conditions, the balance of considerations favours enlargement on bail, without this Court expressing any view on the ultimate culpability of the appellant.

360. In light of the differentiated hierarchy of roles disclosed by the prosecution narrative wherein Umar Khalid and Sharjeel Imam are alleged to occupy a central, directive position, and Meeran Haider is alleged to have acted within an executory framework shaped by their directions this Court is persuaded that continued incarceration of the appellant is not proportionate to the limited attribution presently established. Accordingly, subject to conditions ensuring his presence during trial, non-interference with witnesses, and a restraint on public commentary touching the merits of the case, the appellant is held entitled to be enlarged on bail. It is clarified that the observations herein are limited to the determination of bail and shall not prejudice the trial in any manner.

11. SHADAB AHMED - APPELLANT IN SLP(CRL.) NO. 17055/2025

11.1. SUBMISSIONS ON BEHALF OF APPELLANT:

361. Learned Senior Counsel Sri Siddharth Luthra for the appellant submitted that the appellant has been in continuous custody since 20.05.2020 in FIR No. 59 of 2020, Police Station Crime Branch, arising out of the alleged larger conspiracy relating to the North-East Delhi riots. It was urged that the

appellant has undergone incarceration for more than five years and six months, while the case has not progressed beyond the stage of arguments on charge. The prosecution has cited about 835 witnesses and placed over 1,000 documents on record, apart from filing four supplementary charge-sheets, and the delay in commencement of trial is wholly unrelated to the conduct of the appellant.

362. Learned Senior Counsel submitted that the appellant's implication in the present FIR is founded primarily on FIR No. 60 of 2020, Police Station Dayalpur, relating to the death of Head Constable Rattan Lal, and FIR No. 136 of 2020, Police Station Dayalpur, relating to the burning of a Maruti showroom. It was pointed out that the appellant has already been granted bail in both these cases, the High Court having granted bail in FIR No. 60 of 2020 on 03.09.2021 and the Trial Court having granted bail in FIR No. 136 of 2020 on 21.12.2020, and therefore the continued incarceration of the appellant in the present case, which substantially rests on the same factual foundation, is wholly unjustified.

363. It was further submitted that even as per the prosecution case, the alleged mobilisation and violence at Chand Bagh occurred between noon and about 1:00 PM on 24.02.2020. The appellant's Call Detail Records, which form part of the charge-sheet, conclusively establish that the appellant was present at his residence in Jagatpuri till 12:19 PM and reached the vicinity of the alleged place of occurrence only at 1:13 PM, after the incident had concluded. In the absence of any CCTV footage, video recording or independent electronic material showing the appellant's presence or participation, the belated witness statements alleging instigation or violence are generic and omnibus and stand contradicted by the electronic evidence.

364. Learned Senior Counsel submitted that the prosecution has repeatedly shifted its stand to fill lacunae, initially alleging physical presence and instigation on 24.02.2020 and subsequently introducing a theory of an alleged meeting on 23.02.2020, sought to be supported by statements recorded more than a year after the incident. Reliance was placed on the decision of this Court in *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135, to submit that such delayed and shifting versions erode the credibility of the prosecution case. It was lastly urged that the appellant is entitled to bail on the ground of parity, as similarly situated co-accused, namely Asif Iqbal Tanha, Natasha Narwal and Devangana Kalita, have already been granted bail, and that continued detention of the appellant would be wholly disproportionate and unjustified.

11.2. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

365. Learned ASG Sri S.V. Raju for the State submitted that the appellant is a key conspirator and local executor of the larger criminal conspiracy which culminated in the organised and targeted violence in North East Delhi in February 2020. The material on record establishes that the appellant was an active member of the DPSG network and worked in concert with other core conspirators to escalate protests into disruptive chakka-jaam and thereafter into violent riots, particularly at Chand Bagh, pursuant to conspiratorial directions issued through meetings and coordinated communications.

366. It was submitted that the prosecution has placed cogent and consistent material showing the appellant's participation in a series of conspiratorial meetings, including meetings at the Indian Social Institute, Lodhi Road, and secret night meetings held on 16/17 February, 20/21 February and 23 February 2020 at Chand Bagh. These meetings were convened to finalise the roadmap for converting sit-in protests into disruptive chakka-jaam on arterial roads and thereafter engineering violence. Protected witnesses, including Jupiter, Silver, Gold, Bravo and Johny, have deposed that the appellant attended these meetings, issued directions to protest organisers, delivered inflammatory speeches and coordinated execution at the Chand Bagh protest site.

367. Learned ASG Sri S.V. Raju submitted that the reliance placed on Call Detail Records is wholly misconceived and ignores the settled law governing criminal conspiracy. Physical presence at the precise moment of violence is not determinative where the material establishes planning, coordination and assignment of roles. The evidence on record shows that in the conspiratorial meeting held on the night of 23.02.2020, the appellant undertook to get CCTV cameras covered or destroyed through his team. This is corroborated by protected witness Radium and supported by CCTV footage and forensic analysis showing systematic dislocation and covering of government cameras between 12:05 PM and 12:45 PM on 24.02.2020, immediately preceding the coordinated attack on the police at about 1:00 PM.

368. It was lastly submitted that the gravity of the offences, including murder of Head Constable Ratan Lal, brutal attacks on police officers, large-scale arson and destruction of public property, coupled with the appellant's central and operational role in the conspiracy, disentitle him to the discretionary relief of bail. The plea of parity is untenable, as the appellant's role is distinct and supported by a continuous chain of prima facie evidence. The State therefore prayed that the application for bail be rejected.

11.3. FINDINGS OF THE TRIAL COURT:

369. The Trial Court vide order dated 13.10.2022, passed in IA. No. 101/2022 in SC 163/2020 rejected the bail application filed by the Appellant. The Trial Court held that the charge-sheet and accompanying material disclosed prima facie involvement of the appellant in a large-scale, deep-rooted and meticulously planned criminal conspiracy which culminated in the North-East Delhi riots of February 2020.

On a holistic assessment of the prosecution case, including witness statements, protected witness testimonies, WhatsApp chats of DPSG/JCC, and CCTV analysis, the Court found that the protests were not organic or spontaneous but were strategically designed to escalate into chakkajam and thereafter into organised communal violence. The appellant's role was not to be viewed in isolation, and his participation in key meetings and coordination with other conspirators formed part of the larger conspiracy.

370. A decisive reason for rejection of bail was the statutory embargo under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, read with the additional restriction under Section 437 Cr.P.C. Relying extensively on NIA v. Zahoor Ahmad Shah Watali (supra) and Thwaha Fasal v. Union of India (supra), the Court reiterated that at the bail stage, it is sufficient if there are reasonable grounds for believing that the accusation is prima facie true, and that the degree of satisfaction required is lighter than at the stage of trial or discharge. Applying this standard, the Court concluded that the prosecution material, taken at face value, clearly crossed the statutory threshold, thereby barring the grant of bail.

371. The Court rejected the defence submissions that the appellant was merely a volunteer at a peaceful protest site, that DPSG was not a banned organisation, or that there was no direct evidence such as CCTV footage showing him committing violent acts. It held that criminal conspiracy is rarely proved by direct evidence and is ordinarily established through circumstantial evidence, conduct, and the cumulative effect of surrounding circumstances. Alleged inconsistencies in witness statements, delay in recording statements, admissibility of electronic evidence, and claims of false implication were held to be matters for trial, and could not be examined in depth at the bail stage.

372. Finally, the Court underscored the gravity, scale, and societal impact of the offences, noting the loss of lives, including that of a police officer, grievous injuries to several public servants, and extensive damage to public and private property. It reiterated that conspiracy cases require a holistic view of the entire chain of events, and that the appellant had failed to dislodge the prima facie case established by the prosecution. In view of the statutory restrictions under UAPA and Cr.P.C., and the serious nature of the

allegations, the Court held that the appellant was not entitled to bail and accordingly dismissed the bail application.

11.4. FINDINGS OF THE HIGH COURT:

373. The High Court in the impugned order held that the prosecution material, when assessed cumulatively, disclosed prima facie involvement of Shadab Ahmed as an active participant in the execution phase of the larger criminal conspiracy culminating in the North-East Delhi riots. He was alleged to be a member of the DPSG WhatsApp group, a regular attendee of key conspiratorial meetings (including those held at Chand Bagh in February 2020), and one of the organisers managing the Chand Bagh-Mustafabad protest site.

The Court noted that witness statements and electronic evidence prima facie indicated his role in mobilising protestors, coordinating chakka-jaams, and concurring with plans to escalate protests into violence, including discussions relating to arson, attacks on police, and destruction of public property. His role, though not that of a mastermind, was held to be integral to the operationalisation of the conspiracy.

374. Applying the statutory embargo under Section 43D(5) of the UAPA, the Court held that there were reasonable grounds for believing that the accusations against Shadab Ahmed were prima facie true, thereby barring the grant of bail. The Court rejected pleas based on lack of direct overt acts, alleged contradictions in protected witness statements, parity with co-accused enlarged on bail, and the fact that he had been granted bail in other FIRs arising out of the riots. It was clarified that the present case related to a larger conspiracy under the UAPA, distinct from other FIRs, and that evidentiary inconsistencies and credibility issues are matters for trial. Consequently, the bail appeal was dismissed.

11.5. DISCUSSION ON ROLE AND FINDINGS:

375. It was alleged that accused Shadab Ahmad and Athar Khan, both stated to be members of the Delhi Protest Support Group (DPSG) and participants in the DPSG WhatsApp group, functioned as local operatives executing the larger conspiracy allegedly orchestrated by the principal conspirators to engineer riots under the guise of protests. According to the prosecution, the plan involved a calibrated escalation of peaceful sit-ins into chakka jams, which were thereafter intensified into disruptive blockades accompanied by violence.

It is further alleged that both Shadab Ahmad and Athar Khan regularly attended DPSG meetings held at the Indian Social Institute, along with

members of the Jamia Coordination Committee (JCC) and leaders of various protest sites across Delhi. At these meetings, the progress of the alleged conspiracy was reviewed and operational directions were issued, including through the DPSG WhatsApp group. Documentary material relied upon by the prosecution is stated to indicate that twelve such meetings were held between December 2019 and February 2020.

376. Shadab Ahmad and Athar Khan are further alleged to have played an active role in executing the protest plan at Chand Bagh as devised by DPSG members. Statements of protected witnesses "Silver", "Gold", "Venus", and "Saturn" are relied upon to support the prosecution case regarding the execution of the plan and the specific role attributed to Shadab Ahmad therein.

377. It is further alleged that Shadab Ahmad was present at a meeting held at the Chand Bagh protest site at approximately 02:00 a.m. on 17.02.2020. According to the prosecution, this meeting played an instrumental role in shaping the protests that occurred between 22.02.2020 and 24.02.2020. Call Detail Record (CDR) analysis is relied upon to place Shadab Ahmad at the said meeting. Statements of protected witnesses "Bravo", "Johnny", "Lambda", and "Kilo" are also relied upon to describe the planning undertaken at, and the participation of Shadab Ahmad in, the meeting held on 17.02.2020.

378. The charge-sheet further alleges that Shadab Ahmad also participated in another meeting held during the intervening night of 20.02.2020 and 21.02.2020. As noted hereinabove, the said meeting is alleged to have played a significant role in the protests and incidents of violence that took place on 22.02.2020 and 23.02.2020.

379. According to the prosecution, the aforesaid meetings of 17.02.2020 and 20/21.02.2020 were crucial in the execution of the protests that culminated in violence on 22.02.2020 and 23.02.2020. Pursuant to these meetings, protesters are alleged to have carried out violent acts at the Jafrabad Metro Station. Statements of protected witnesses "Echo" and "Sodium" are relied upon to corroborate the occurrence of, and deliberations at, the conspiratorial meeting held on 20.02.2020 and 21.02.2020.

380. It is further alleged that on the night of 22.02.2020, DPSG members Shadab Ahmad and Athar Khan convened a meeting at the basement of one Ayaz in Chand Bagh, which was attended by organisers of various protest sites in North- East Delhi as well as persons who were later arrested in connection with riotrelated cases. At the said meeting, it is alleged that they informed the attendees that the Jafrabad chakka jam had been successfully

executed in furtherance of the conspiracy and directed them to replicate the same in their respective areas to trigger riots.

Thereafter, on 23.02.2020, Shadab Ahmad, Athar Khan, and others are alleged to have shifted the Chand Bagh protest to the main Wazirabad-Ghaziabad Road, resulting in a disruptive chakka jam, attacks on police personnel and civilians, and extensive damage to public and private property. As the violence allegedly did not escalate to the desired level, another conspiratorial meeting is stated to have been held that night at the residence of one Mukhtyar, where it was decided to destroy CCTV cameras to facilitate further violence. Specific tasks for disabling the cameras were allegedly assigned to identified members, with CCTV footage relied upon to corroborate the presence and coordination of the accused.

381. The charge-sheet further relies upon reverse mapping of persons arrested for grave offences committed during the North-East Delhi riots, which is stated to trace a clear chain of command to a clandestine meeting held at Chand Bagh at around 02:00 a.m. on 17.02.2020. According to the prosecution, several key perpetrators of murders, rioting, arson, and other serious offences were either present at the said meeting or remained in regular contact with its participants, particularly DPSG members Shadab Ahmad, Athar Khan, Gulfisha Fatima, and Khalid Saifi.

The mapping is relied upon to allege coordinated roles in the commission of murders, acts of rioting and arson, destruction of CCTV cameras, assignment of specific targets, and financing of weapons and ammunition, culminating in the framing of charges against core conspirators in FIR No. 60/2020 relating to mass violence and the killing of Head Constable Ratan Lal. It is further alleged that, after the alleged role of DPSG in the riots came to light, members were instructed to delete WhatsApp chats, following which Shadab Ahmad and Athar Khan were removed from the DPSG group after executing their purported roles in organising the riots in North-East Delhi.

382. Upon a prima facie assessment of the material relied upon by the prosecution, the role attributed to Shadab Ahmad appears to be that of a site-level executor associated with Chand Bagh and related protest clusters, whose presence at certain meetings is alleged to have facilitated operational coordination following directions emanating from others. The evidence presently placed on record does not disclose that he occupied an authoritative position in conceptualising the alleged conspiracy or that he exercised independent control over its strategic formulation. His alleged association with chakka jam planning, while relevant to trial, does not by itself sustain the continued deprivation of liberty at the pre-trial stage in the absence of

material showing autonomous command or unilateral decision-making authority.

383. The prosecution narrative stresses Shadab's attendance at late-night meetings and his participation in conveying instructions to organisers of protest sites. However, even taken at its highest, this depiction situates him as a conduit for information and coordination rather than as an architect of escalation. The allegations neither establish that he devised the strategy to engineer violence nor that he exercised discretion over the location, timing, or modality of the alleged unlawful acts. The attributed conduct is derivative and execution-centred, and the evidentiary record does not presently disclose that he shaped or altered the trajectory of the protests in a manner warranting further custodial curtailment.

384. The State expresses apprehension that Shadab's enlargement on bail may enable reactivation of dormant networks or interference with witnesses. However, there is no cogent material to suggest that he presently retains the organisational capacity or influence necessary to mobilise individuals or resources independent of the structures that, by the prosecution's own account, operated under a hierarchical command led by others. The risks articulated can be effectively addressed by imposing conditions restraining his interaction with co-accused and witnesses, restricting participation in assemblies concerning the subject matter, and ensuring regular attendance before the trial court.

385. The Court remains mindful that the alleged acts culminated in serious violence yet, the gravity of the incident cannot be the sole criterion to perpetuate detention when the individual's attributed role is operational rather than directive. The prosecution has not demonstrated that Shadab's custodial presence is required for ongoing investigation or that further evidence is contingent upon his continued incarceration. In the absence of such necessity, indefinite pre-trial detention would assume a punitive character inconsistent with constitutional guarantees of personal liberty under Article 21, particularly where the alleged conduct is neither shown to be ongoing nor presently repeatable in a manner jeopardising the proceedings.

386. The Court further notes that the documentary and electronic evidence forming the backbone of the prosecution case has already been secured and subjected to forensic processes, and no submission has been advanced suggesting that Shadab's custodial presence is indispensable for recovery of additional material. The absence of any pending investigative step requiring his confrontation or custodial interrogation weighs significantly against continued deprivation of liberty, for pre-trial detention cannot be justified

merely to await the vicissitudes of trial when the evidentiary record is substantially crystallised.

387. Moreover, while the prosecution advances the thesis of layered participation culminating in coordinated disruptions across multiple sites, it is incumbent upon the Court to maintain proportionality between the attributed layer of involvement and the nature of liberty restriction imposed. Insofar as Shadab is alleged to have functioned at an executory tier without demonstrated autonomy over escalation or violence, extending pre-trial detention would risk conflating operational participation with strategic authorship, contrary to the requirement that liberty be curtailed only upon individualised and contemporaneous necessity.

388. The Court is also persuaded that calibrated conditions can adequately address the State's concerns regarding potential interference with the administration of justice. In the absence of material demonstrating that measures would be insufficient, continued incarceration cannot be sustained.

389. In these circumstances and bearing in mind that the constitutional presumption favours liberty unless its curtailment is demonstrably necessary for legitimate and current purposes of investigation or trial, the Court finds no compelling grounds to justify the further confinement of Shadab Ahmad. The differentiated hierarchy of roles articulated by the prosecution underscores that his alleged conduct, while forming part of the evidentiary matrix for trial, does not presently establish a continuing threat warranting custodial restraint. Subject to strict compliance with conditions imposed by the Court, enlargement on bail remains the proportionate course.

390. Having regard to the differentiated nature of involvement disclosed by the prosecution itself where Umar Khalid and Sharjeel Imam are alleged to have conceptualised and directed the overarching plan, whereas Shadab Ahmad is alleged to have acted as a local-level facilitator of decisions taken elsewhere. This Court finds that the threshold of necessity for continued detention is not fulfilled in his case. Conditional release can sufficiently secure the interests of justice. Accordingly, subject to stringent conditions as imposed below, the appellant is held entitled to be enlarged on bail. These observations are confined to the adjudication of bail and shall not be construed as expressing a view on the merits.

12. GULFISHA FATIMA - SLP (CRL.) NO. 13988/2025

12.1. SUBMISSIONS ON BEHALF OF THE APPELLANT:

391. Learned Senior Counsel Sri Abhishek Manu Singhvi for the Appellant submitted that the impugned judgment of the High Court declining bail

suffers from a fundamental error in approach, inasmuch as it proceeds on broad generalisations about the nature of the alleged conspiracy while completely losing sight of the specific role attributed to the present Appellant. It was urged that the Appellant has remained in custody since April 2020, now for more than five and a half years, without charges even being framed, and that the denial of bail in such circumstances amounts to a punitive pre-trial incarceration wholly alien to settled constitutional principles.

392. He further submitted that on a plain reading of the charge sheets and the material relied upon by the prosecution, no overt act of violence is attributed to the Appellant at any protest site. The allegations, at the highest, pertain to participation in and organisation of protests in the Seelampur-Jafrabad area, which, as borne out from the record itself, remained peaceful, with no recoveries, no injuries, no MLCs and no contemporaneous evidence of rioting or use of weapons. It was emphasised that the Appellant was not a member of the alleged conspiratorial WhatsApp groups such as DPSG, which the prosecution itself projects as the backbone of the conspiracy narrative.

393. Learned Senior Counsel submitted that the High Court has gravely erred in rejecting the Appellant's claim of parity. Co-accused Devangana Kalita and Natasha Narwal, who are alleged to have played a more proximate role in the supposed conspiracy and were admittedly members of DPSG, have been on bail since June 2021, which bail was affirmed by this Hon'ble Court. The role attributed to the Appellant is not only similar but demonstrably lesser, and yet she continues to remain incarcerated. The finding that parity is unavailable is thus unsupported by the record and internally inconsistent with the prosecution's own case.

394. He further submitted that the statutory embargo under Section 43D(5) of the UAPA cannot be read in isolation or as a charter for indefinite detention. This Hon'ble Court has repeatedly held that where there is no likelihood of the trial concluding within a reasonable time, constitutional courts are duty-bound to intervene to protect personal liberty. In the present case, with nearly a thousand witnesses cited, voluminous documentary material, and arguments on charge still pending, there is no realistic prospect of trial commencing, let alone concluding, in the near future.

395. Learned Senior Counsel also submitted that the impugned judgment proceeds on conjectures rather than evidence, particularly while relying on belated and uncorroborated statements of protected witnesses, recorded months after the alleged events, without independent support from call records, recoveries, or contemporaneous material. The High Court, it was urged, has selectively relied upon incriminatory fragments while ignoring

exculpatory material, thereby falling into a clear error of law at the stage of bail.

396. He lastly submitted that the continued incarceration of the Appellant, a young woman, despite the absence of any direct allegation of violence, despite clear parity with co-accused already enlarged on bail, and despite extraordinary delay in the progress of the case, results in a manifest violation of Article 21 of the Constitution. It was therefore prayed that this Hon'ble Court may be pleased to set aside the impugned judgment and enlarge the Appellant on bail, on such terms and conditions as this Hon'ble Court may deem fit in the interests of justice.

12.2. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

397. Learned ASG Sri S.V. Raju submitted that the role of Gulfisha Fatima, Accused No. 5, is clearly delineated in the charge sheets and supporting material, which establish her as a key local executor of the larger criminal conspiracy. She was not a passive protestor but was entrusted with operational responsibility of the Seelampur-Jafrabad protest site, owing to her status as a local resident with deep community access. The prosecution case is that directions issued by principal conspirators were channelled through Gulfisha Fatima for on-ground execution at this site, making her an indispensable link in the conspiracy chain.

398. It was further submitted that Gulfisha Fatima actively participated in conspiratorial meetings, including the meeting held on 23.01.2020 at Yameen House, Seelampur, attended by Umar Khalid, Natasha Narwal and Devangana Kalita, where instructions were issued for stockpiling red chilli powder, acid, bottles and sticks. Witnesses examined under Section 164 CrPC have specifically named Gulfisha Fatima as being present in this meeting. Her presence is not incidental but forms part of the preparatory stage of the conspiracy, preceding the escalation of protests into violence.

399. Learned ASG Sri S.V. Raju submitted that Gulfisha Fatima also attended the clandestine meeting held in the intervening night of 16/17.02.2020 at Chand Bagh, where the final roadmap for escalating chakka-jam into violent riots was discussed. Witnesses have deposed that representatives of North-East Delhi protest sites, including Gulfisha Fatima, were present and agreed to intensify road blockades and orchestrate violence. This meeting constitutes the immediate precursor to the events of 22.02.2020 and 23.02.2020 and directly links Gulfisha Fatima to the execution phase of the conspiracy.

400. It was further submitted that pursuant to these meetings, Gulfisha Fatima actively mobilised women protestors, used coded language to communicate

instructions, and facilitated distribution of stones, chilli powder and other material at the Jafrabad protest site. Statements of witnesses recorded under Section 164 CrPC specifically attribute to her the act of instigating women protestors and providing them with materials used to attack police personnel and civilians. These acts are not symbolic or peripheral but constitute direct participation in chakka-jam and the subsequent violent riots on 22.02.2020 and 23.02.2020, leading to registration of FIRs for serious offences including attempt to murder and murder.

401. Learned ASG Sri S.V. Raju further submitted that Gulfisha Fatima remained in continuous contact with other co-accused persons, including Athar Khan, Natasha Narwal, Devangana Kalita and Tasleem Ahmad, and that real-time updates from the Seelampur-Jafrabad site were communicated to principal conspirators. The prosecution has also relied upon witness statements indicating that Gulfisha Fatima received funds from co-accused Tahir Hussain for utilisation in riots. At the stage of bail, these materials clearly satisfy the threshold of "prima facie true" under Section 43D(5) of the UAPA.

402. He lastly submitted that the plea of parity raised by Gulfisha Fatima is wholly misconceived, as her role as a local executor and facilitator at a critical protest site distinguishes her from other accused who have been granted bail. The gravity of her specific acts, her proximity to the execution of violence, and the statutory embargo under Section 43D(5) of the UAPA disentitle her from any discretionary relief. It was therefore prayed that the appeal filed by Gulfisha Fatima be dismissed and the order declining bail be affirmed.

12.3. FINDINGS OF THE TRIAL COURT:

403. The Trial Court vide order dated 16.03.2022 passed in IA. No. 72/2021 in SC 163/2020 dismissed the bail application filed by the Appellant. The Trial Court held that the allegations against the appellant disclosed prima facie involvement in a large-scale and deep-rooted criminal conspiracy culminating in the North-East Delhi riots of February 2020.

On a holistic reading of the chargesheet, case diary, witness statements, and electronic material, the Court found sufficient material indicating that the protests were not spontaneous but were engineered, escalated into chakka-jam, and thereafter into targeted violence, with prior meetings, coordinated roles, and preparatory acts. At the stage of bail, the Court emphasized that it was not required to conduct a meticulous appreciation of evidence, and that the prosecution material, taken at face value, revealed the appellant's complicity in the conspiracy.

404. A central reason for rejection was the statutory bar under Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967. Applying the law laid down in *National Investigation Agency v. Zahoor Ahmad Shah Watalli* (supra), the Court held that once there are reasonable grounds for believing that the accusation is prima facie true, bail must be refused. The Court found that the material collected by the investigating agency satisfied this threshold, and therefore the embargo under Section 43D(5) squarely operated against the appellant, in addition to the rigour of Section 437 Cr.P.C. applicable to serious offences.

405. The Court also rejected the appellant's arguments seeking bail on parity with co-accused who had been granted bail by the High Court. It held that parity cannot be claimed mechanically, particularly in conspiracy cases where roles may differ, and when the statutory bar under UAPA applies. The Court further noted that the High Court orders relied upon by the appellant did not dilute the obligation of the trial court to independently assess whether the accusations against the present appellant were prima facie true under Section 43D(5). Consequently, parity was held to be inapplicable.

406. Lastly, the Trial Court found no merit in the defence contentions regarding alleged infirmities in witness statements, admissibility of electronic evidence, or claims of false implication. Relying on settled law, it held that questions of admissibility, credibility, and contradictions are matters for trial, not for determination at the bail stage. Considering the gravity of offences, the nature of the conspiracy, the material indicating coordinated violence, and the statutory restrictions on grant of bail, the Court concluded that the appellant was not entitled to bail, and accordingly dismissed the bail application.

12.4. FINDINGS OF THE HIGH COURT:

407. The High Court in the impugned order held that the prosecution material, when viewed cumulatively, disclosed prima facie involvement of Gulfisha Fatima in the execution of the larger criminal conspiracy culminating in the North-East Delhi riots of February 2020. She was alleged to have actively managed and guided multiple protest sites in the Seelampur-Jafrabad area, including the creation of a 24×7 sit-in at Madina Masjid, Seelampur, and the establishment of additional local protest points.

The Court noted material indicating her participation in conspiratorial meetings, her role in mobilising women protestors, creation and administration of WhatsApp groups for coordination, use of code words to signal chakka-jaams, and alleged involvement in stockpiling materials for violence. These acts, assessed on broad probabilities, were held sufficient at

the bail stage to connect her to the execution of the conspiracy rather than mere presence at protests.

408. Applying the rigour of Section 43D(5) of the UAPA, the Court held that there were reasonable grounds for believing that the accusations against Gulfisha Fatima were prima facie true, thereby creating a statutory bar to bail. The pleas of parity with co-accused granted bail, absence of recoveries, alleged lack of direct incitement, and prolonged incarceration were rejected. The Court clarified that her role, particularly in local mobilisation, coordination of protest sites, and alleged instigation of violence, was distinct from that of the co-accused released on bail, and that issues of credibility and evidentiary weight must be tested at trial. In view of the seriousness of the allegations and the statutory embargo, the bail appeal was dismissed.

12.5. DISCUSSION ON ROLE AND FINDINGS:

409. Gulfisha Fatima, stated to be a member of the organisation Pinjra Tod, is a local resident of Seelampur and, as per the charge-sheet, is alleged to have been one of the principal executors of the plan purportedly hatched by Umar Khalid and Sharjeel Imam. The protest site at the 66 Foot Road, Seelampur, is stated to have been assigned to Gulfisha Fatima along with Natasha Narwal and Devangana Kalita, both of whom are alleged members of the Delhi Protest Support Group (DPSG) and its associated WhatsApp group. Gulfisha Fatima is alleged to have been responsible for coordinating the Seelampur/Jafrabad protest site.

It is further alleged that directions issued by DPSG were conveyed to Gulfisha Fatima by Natasha Narwal and Devangana Kalita for implementation at the ground level. Being a resident of the locality, Gulfisha Fatima is stated to have facilitated access to the area and to have instigated local residents to participate in the protests. The charge-sheet further alleges that on 26.12.2019, Gulfisha Fatima created a WhatsApp group titled "Warriors" for the purpose of mobilising women and inciting them to engage in violence.

410. On 15.01.2020, Gulfisha Fatima is alleged to have been among the key individuals who initiated a women- and child-centric protest site at Seelampur near Madina Masjid, in accordance with the alleged plan of the conspirators. She, along with Devangana Kalita, is stated to have attended a conspiratorial meeting convened by Umar Khalid on 23.01.2020 at a purportedly secret office located at Yameen House, Seelampur.

As noted hereinabove, in the said meeting, Umar Khalid is alleged to have issued directions for stockpiling red chilli powder, acid, bottles, and sticks. It is further alleged that pursuant to the said meeting, Gulfisha Fatima stockpiled

chilli powder, wooden sticks (dandas), acid, bottles, and other materials, and that she used coded language to transmit directions of the conspirators to the protesters. Statements of protected witness "Echo" are relied upon in the charge-sheet in support of these allegations.

411. On 17.02.2020, Gulfisha Fatima is alleged to have attended a meeting held at the Chand Bagh protest site during the night hours, which is stated to have been attended by members of DPSG. According to the charge-sheet, approximately twenty persons attended the said meeting, including Gulfisha Fatima. At the said meeting, a roadmap for execution of the final phase of the alleged conspiracy namely, escalation of chakka jams into disruptive chakka jams and the organisation of violence and riots- is stated to have been outlined by co-accused Athar Khan. The charge-sheet relies upon electronic evidence to assert the presence of Gulfisha Fatima at the said meeting.

412. The charge-sheet further alleges that on 22.02.2020, Gulfisha Fatima not only instigated women to participate in the protests but also actively participated in the protest held at the Jafrabad Metro Station. In connection with the riots that occurred at the said location, FIR No. 48/2020 is stated to have been registered.

413. It is further alleged that on 23.02.2020, in furtherance of the conspiracy, approximately 300 women from the Jahangirpuri area were first transported to Shaheen Bagh and thereafter taken to the Jafrabad chakka jam site, where DPSG members, namely Natasha Narwal, Devangana Kalita, and Gulfisha Fatima, are alleged to have supplied stones and red chilli powder to them for use in attacks on police personnel and non-Muslims, thereby instigating violence. The chargesheet further alleges that leaders of the Pinjra Tod group associated with the Chand Bagh protest site were actively orchestrating the riots. Statements of protected witnesses "Helium" and "Sierra" are relied upon to substantiate the alleged role of Gulfisha Fatima in the incidents of violence.

414. According to the charge-sheet, Gulfisha Fatima is alleged to have been one of the leading executors of the orchestrated violence that occurred on 23.02.2020, which is stated to have resulted in loss of innocent lives and extensive damage to public property.

415. The charge-sheet further alleges that Gulfisha Fatima was financially supported by co-accused Tahir Hussain in furtherance of the alleged conspiracy.

416. At this stage, a prima facie evaluation of the material placed on record indicates that Gulfisha Fatima's alleged role, though not insignificant, is confined to the operational execution of directions purportedly transmitted

through other actors. The prosecution narrative does not attribute to her any determinative authority in conceptualising or directing the alleged conspiracy; rather, she is projected as a ground-level facilitator at Seelampur/Jafrabad. Where the evidentiary foundation itself distinguishes between those who are alleged to have architected the larger design and those alleged to have acted upon instructions, this Court is persuaded that her role remains materially distinct from that of the principal conspirators.

417. The allegation that Gulfisha Fatima mobilised local women and coordinated protest-site logistics, though relevant to the prosecution's case, does not presently disclose that she exercised independent command, resource control, or strategic oversight over multiple protest sites. The prosecution itself asserts that directions were conveyed to her by others higher in the asserted hierarchy. In these circumstances, this Court finds that the level of attributed agency and control does not justify continued incarceration once the investigative purpose stands substantially fulfilled.

418. The apprehension that her release may lead to interference with witnesses or revival of the alleged operational network is considerably attenuated by the absence of material suggesting that she retains any autonomous capacity to mobilise persons or resources in the current circumstances. It is undisputed that the structures relied upon by the prosecution both formal or informal no longer exist in their asserted form, and the appellant's present ability to exert influence is neither pleaded with specificity nor supported by contemporaneous material. The imposition of stringent conditions can sufficiently safeguard against any residual risk.

419. It bears reiteration that the gravity of the incidents in question, though serious, cannot eclipse the constitutional demand for individualized assessment of necessity in pre-trial detention. Prolonged incarceration premised solely on the seriousness of allegations, absent a proximate and continuing nexus between the appellant and present threats to the administration of justice, would amount to a punitive measure inconsistent with settled principles. In view of her alleged executory role and absence of demonstrable present capacity to influence proceedings, continued custody does not meet the threshold of necessity.

420. This Court is cognisant of the appellant's status as a woman and the settled principle that gender, while not conferring immunity from criminal law, remains a relevant consideration in determining the necessity of continued pre-trial detention. The appellant has remained in custody for a substantial period, and there is no material to indicate that her release would pose an irremediable risk that cannot be addressed by restrictive conditions. The law does not envisage incarceration as a measure of deterrence at the pre-

trial stage, particularly where the individual concerned is a woman with no prior criminal antecedents and whose alleged actions stem from a ground-level facilitating role.

421. The allegations attributed to the Appellant i.e. assignment of protest sites, coordination of local mobilisation, participation in meetings of DPSG members, and logistical execution of protest activities are substantially identical to the allegations against co-accused Natasha Narwal and Devangana Kalita, who allegedly conveyed DPSG directions to the Appellant and jointly coordinated the Seelampur/Jafrabad protest sites.

422. Once bail has been granted to co-accused who stand on the same factual and legal footing in terms of alleged roles, meetings, communications, and purported execution on the ground, continued incarceration of the Appellant violates the settled principle of parity.

423. The prosecution's evidentiary foundation against the Appellant including statements of protected witnesses, alleged electronic presence in meetings, reliance on WhatsApp groups, and alleged mobilisation of women mirrors the nature and quality of evidence relied upon against co-accused Natasha Narwal and Devangana Kalita, who were enlarged on bail despite similar reliance on anonymous witness testimony, electronic traces of presence, and allegations of mobilisation and logistical facilitation.

424. In the absence of any distinguishing material against the Appellant, denial of bail would constitute hostile discrimination vis-à-vis similarly situated coaccused, offending Article 14 and the doctrine of parity. Accordingly, and keeping in view the differentiated footing on which the prosecution itself places Gulfisha Fatima as compared to the alleged masterminds Umar Khalid and Sharjeel Imam, this Court is of the considered view that further detention is not warranted at this stage. Subject to conditions ensuring regular attendance before the trial court, restrictions on contact with prosecution witnesses, and abstention from public commentary relating to the case and further conditions enumerated hereinbelow., the appellant is held entitled to be enlarged on bail. Nothing stated herein shall be treated as an expression on merits or an assessment of guilt.

425. The appellant's continued detention must also be weighed against the constitutional imperative to ensure that the administration of criminal justice does not operate in a manner that disproportionately burdens women, especially where the investigative agency has concluded its inquiry against her and no custodial interrogation is sought. While gender alone cannot dictate the outcome, it forms a legitimate factor in the proportionality assessment under Article 21, and in the present factual matrix where the

appellant's alleged participation lacks the strategic centrality attributed to the principal conspirators this consideration reinforces the conclusion that her pre-trial liberty can be secured through appropriate conditions rather than prolonged incarceration.

13. FINAL CONCLUSION AND OPERATIVE DIRECTIONS

426. The present batch of appeals has required the Court to engage with questions that lie at the intersection of personal liberty and collective security. The guarantee of liberty enshrined under Article 21 of the Constitution is of foundational importance, and no constitutional court can be unmindful of the gravity of restraining liberty before guilt is adjudicated. At the same time, the Constitution does not conceive liberty in isolation. The security of the community, the integrity of the trial process, and the preservation of public order are equally legitimate constitutional concerns. When bail is sought in prosecutions governed by a special statute, the Court is required to undertake a difficult and sensitive balancing exercise, conscious that neither liberty nor security admits of absolutism.

427. While undertaking this exercise, the Court cannot proceed on any consideration except restricting the contours of inquiry confining to law. Where Parliament has prescribed a distinct statutory threshold for the grant of bail, and where the prosecution places prima facie material suggesting organised and deliberate activity affecting public order and security of the Nation, the Court cannot turn a Nelson's eye to such material merely because incarceration is prolonged or liberty is invoked in the abstract. Equally, where continued detention is not shown to be necessary to serve a legitimate purpose recognised by law, the Court must not hesitate to restore liberty, subject to stringent conditions that safeguard the larger public interest.

428. The position of law that emerges may be stated with clarity. The right to personal liberty enshrined under Article 21 is of seminal importance, and prolonged pre-trial incarceration is a matter of serious constitutional concern. At the same time, where Parliament has, in the context of a special statute, conditioned the grant of bail upon the satisfaction of a defined statutory threshold, a constitutional court cannot treat such restraint as avoidable. Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967, represents a legislative judgment that offences alleged to implicate the security of the State warrant a distinct bail regime.

The constitutional role of the Court, therefore, is neither to mechanically enforce the statutory embargo nor to neutralise it by invocation of liberty as straight-jacket formula, but to apply it with disciplined scrutiny. Where the prosecution material, taken at face value, discloses reasonable grounds for

believing the accusation to be prima facie true, the statutory restraint must ordinarily operate. Where it does not, liberty must prevail. Article 21 thus commands the manner of application of the statute; it does not dissolve the statutory condition itself.

429. It is in this constitutional and statutory framework that the individual appeals have been examined based on facts obtained. The Court has consciously avoided a collective or uniform approach. Each appellant has been assessed on the basis of the role attributed, the nature of material relied upon, and the stage of the proceedings, strictly within the limited compass of adjudication for grant of bail.

13.1. ACCUSED IN RESPECT OF WHOM BAIL IS DECLINED

430. This Court is satisfied that the prosecution material, taken at face value as required at this stage, discloses a prima facie attribution of a central and formative role by the appellants in appeals arising out of SLP (Crl.) No. 14165 of 2025 and SLP (Crl.) No. 14030 of 2025 i.e., Umar Khalid and Sharjeel Imam in the alleged conspiracy. The material suggests involvement at the level of planning, mobilisation, and strategic direction, extending beyond episodic or localised acts. The statutory threshold under Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967, therefore stands attracted qua these appellants.

431. While the period of incarceration undergone by these appellants is substantial and has been duly considered, the Court is not persuaded that, on the present record, continued detention has crossed the threshold of constitutional impermissibility so as to override the statutory embargo. The complexity of the prosecution, the nature of evidence relied upon, and the stage of the proceedings do not justify their enlargement on bail at this juncture as noticed in detail in the discussion made hereinabove. Hence, the appeals arising out of SLP (Crl.) No. 14165 of 2025 and SLP (Crl.) No. 14030 of 2025 stands rejected.

432. We reiterate that courts are under a constitutional obligation to ensure that criminal proceedings, particularly those involving prolonged pre-trial incarceration, should progress with utmost expedition and the accused are not left to languish in jail. At the same time, the Court is mindful that pre-trial detention, even when justified by statute, cannot be permitted to continue without regard to the progress of the trial. The restraint on liberty contemplated by law must proceed alongside a meaningful advancement of the prosecution.

In the present case, having regard to the reliance placed upon protected witnesses, this Court considers it appropriate to provide a defined point for consideration of their prayer for grant of bail. We are of the opinion that on the completion of the examination of the protected witnesses relied upon by the prosecution, or upon the expiry of a period of one year from the date of this order, whichever is earlier, these two appellants would be at liberty to renew their prayer for grant of bail before the jurisdictional Court.

In the event of such prayer being made it shall be considered on its own merits, having regard to the stage then reached in the proceedings before the Trial Court, and without being influenced by the impugned orders or the present order. This course gives effect to the statutory discipline embodied in Section 43D(5) of UAPA while ensuring that the constitutional guarantee under Article 21 operates as a continuing check against continued incarceration without there being any substantial progress of the trial.

13.2. ACCUSED IN RESPECT OF WHOM BAIL IS GRANTED

433. The appeals arising out of SLP (Crl.) No. 13988 of 2025 (Gulfisha Fatima), SLP (Crl.) No. 14132 of 2025 (Meeran Haider), SLP (Crl.) No. 14859 of 2025 (Shifa-ur-Rehman), SLP (Crl.) No. 15335 of 2025 (Mohd. Saleem Khan), and SLP (Crl.) No. 17055 of 2025 (Shadab Ahmed) are allowed as the Court is of the view that, having regard to the role attributed, the nature of the material relied upon, and the present stage of the proceedings, continued incarceration is not shown to be indispensable to the conduct of a fair trial, provided strict safeguards are imposed. The grant of bail in their favour does not reflect any dilution of the seriousness of the allegations, nor does it amount to a finding on guilt. It represents a calibrated exercise of constitutional discretion, structured to preserve both liberty of the individual and security of the nation.

13.3. CONDITIONS GOVERNING RELEASE ON BAIL

434. The appellants granted bail shall be released subject to the following conditions, which are imposed not as matters of form, but as substantive safeguards in the interest of national security, public order, and the integrity of the trial process.

- i. Each of the appellants shall execute a personal bond in the sum of ₹2,00,000/- (Rupees Two Lakhs only) with two local sureties of the like sum to the satisfaction of the Trial Court.
- ii. The appellants shall remain within the National Capital Territory of Delhi and shall not leave its territorial limits without prior permission of the Trial

Court. Any request for travel shall disclose reasons and such prayer/request shall be considered by the Trial Court strictly on its merits

iii. The appellants shall surrender their passports, if any, before the Trial Court. Where no passport exists, an affidavit to that effect shall be filed. We direct the respondent to intimate all the immigration authorities in the country not to permit their exit from the country in any manner whatsoever, without express permission from the Trial Court.

iv. The appellants shall furnish their current residential addresses, contact numbers, and e-mail addresses to the Investigating Officer as well as to the Trial Court. The appellants shall not change their place of residence or contact particulars without giving at least seven days' prior written intimation to the Investigating Officer and the Trial Court.

v. Each of the appellants, namely Gulfisha Fatima, Meeran Haider, Shifa-ur-Rehman, Mohd. Saleem Khan, and Shadab Ahmed, shall personally appear twice a week, that is on Monday and Thursday between 10:00 a.m. and 12:00 noon, before the Station House Officer, Police Station Crime Branch, Delhi Police, Office of the Commissioner of Police, Police Headquarters, Jai Singh Marg, New Delhi - 110001 and mark their attendance. The Station House Officer shall maintain a separate register of attendance in respect of each of these appellants and shall furnish a monthly compliance report to the Trial Court, which shall be placed on the main record of the case.

vi. The abovenamed appellants shall not directly or indirectly contact, influence, intimidate or attempt to contact any witness or any person connected with the proceedings, nor shall they associate with or participate in the activities of any group or organization linked to the subject matter of the present FIR/ final report.

vii. The appellants shall not make or publish or disseminate any information, statement, article or post whether in print, electronic or social media concerning the present case or its participants till conclusion of the trial.

viii. The appellants shall not participate in any programme or address or attend any gathering, rally or meeting, whether physically or virtually till conclusion of the trial.

ix. The appellants shall not circulate any post either in electronic form or physical form or circulate any hand bills, posters, banners, etc in any form whatsoever. x. The appellants shall fully cooperate with the trial and shall appear on every date of hearing unless exempted for reasons to be recorded by the Trial Court to its satisfaction and they shall not exhibit any conduct that has the effect of delaying the proceedings.

xi. The appellants shall maintain peace and good behaviour throughout and in the event of any offence committed during the pendency of the trial, the prosecution would be at liberty to seek for revocation of the bail granted by filing such application before the Trial Court and in the event of such application being filed the Trial Court shall consider it on its own merits.

435. In case of breach of any of the afore-stated conditions imposed or in the event of appellants having misused the liberty granted, it shall be open to the Trial Court to cancel the bail which would be necessarily after affording opportunity of hearing to the appellants.

13.4. CONCLUDING OBSERVATION

436. Before we conclude, it bears reiteration that a principle lies at the heart of constitutional adjudication in matters of this nature. The Constitution guarantees personal liberty, but it does not conceive liberty as an isolated or absolute entitlement, detached from the security of the society in which it operates. The sovereignty, integrity, and security of the nation, as well as the preservation of public order, are not abstract concerns rather they are constitutional values which Parliament is entitled to protect through law. Where a special statutory framework has been enacted to address offences perceived to strike at these foundations, courts are duty-bound to give effect to that framework, subject always to constitutional discipline.

437. In the application of such law, the Court does not proceed on identity, ideology, belief, or association. It proceeds on role, material, and the statutory threshold governing the exercise of jurisdiction. Criminal law does not mandate identical outcomes merely because allegations arise from the same transaction. Those alleged to have conceived, directed, or steered unlawful activity or terrorist activity stand on a different legal footing from those whose alleged involvement is confined to facilitation or participation at a different level. To disregard such distinctions would itself result in arbitrariness.

438. The present decision reflects this constitutional method. It neither endorses the prosecution case nor prejudices the guilt of any accused. It applies the law as it stands, recognising that individual liberty must be protected, but that it must also withstand the legitimate demands of national security and collective safety. This balance is not a matter of preference rather it is a matter of constitutional duty.

439. Before parting, it is necessary to reiterate the limited nature of the present determination. The Court has not examined the merits of the prosecution case beyond the confines mandated at the stage of consideration of an application seeking bail, nor has it expressed any opinion on the ultimate culpability of any of the accused. All observations are confined to the material presently on record and to the statutory and constitutional standards governing pre-trial liberty under a special enactment.

440. Having regard to the nature of the prosecution and the period of incarceration already undergone, it is considered appropriate to direct that the Trial Court shall proceed with the matter with due expedition and shall endeavour to ensure that the examination of witnesses, particularly the protected witnesses relied upon by the prosecution, is taken up and carried forward without delay.

441. The prosecution shall take all necessary steps to secure the presence of its witnesses on the dates fixed and the parties shall refrain from seeking adjournments except for reasons which are unavoidable. The Trial Court shall be at liberty to regulate the proceedings in accordance with law so as to ensure that the trial is not unnecessarily prolonged, while at the same time safeguarding the rights of all parties.

442. It is clarified that these directions are issued in furtherance of the obligation to ensure a fair and timely trial and shall not be construed either as an expression on the merits of the prosecution case or as a constraint on the discretion of the Trial Court in the conduct of the proceedings.

443. The Trial Court shall remain free to adopt such measures as are permissible in law to ensure that the trial proceeds with continuity and at a reasonable pace, consistent with the requirement of fairness and the orderly administration of criminal justice.

444. There would be something amiss in this judgment, if we do not place on record the able and arduous assistance rendered by learned Senior Counsels led by Shriyuths Kapil Sibal, Abhishek Manu Singhvi, Salman Khurshid, Siddharth Luthra, Siddhartha Dave, Siddharth Aggarwal and learned Advocate Gautam Khazanchi and their team of lawyers appearing for appellants including the painstaking efforts put in by Sri. Tushar Mehta, learned Solicitor General of India and Sri. S.V. Raju, learned Additional Solicitor General of India and their team appearing for respondent - State, the Law Clerks-cum-Research Associates for assisting this Court in rendering this judgment expeditiously in the background of voluminous records, lengthy arguments and catena of judgments relied upon.

.....J. [Aravind Kumar]

.....J. [N.V. Anjaria]

New Delhi;

January 05, 2026

1 Additional Sessions Judge -03, (Shahdara), Karkardooma Court, Delhi

2 (2021) 3 SCC 713

3 2023 SCC OnLine Del 3472

4 2025 SCC OnLine SC 1754

5 (2024) 6 SCC 1

6 2025 INSC 1418

7 (2019) 5 SCC 1

8 (2023) 8 SCC 1

9 (2021) 16 SCC 720

10 2024 SCC OnLine SC 124

11 2024 SCC OnLine SC 742

12 (2022) 14 SCC 766.

IN THE SUPREME COURT OF INDIA

Nirbhay Singh Suliya

Vs.

State of Madhya Pradesh & Anr.

[Civil Appeal No. 40 of 2026

@ SLP (Civil) No. 24570 of 2024]

Head Note - Disciplinary proceedings cannot be initiated against members of the district judiciary merely for passing allegedly incorrect or erroneous judicial orders. If the complainant is a recalcitrant member of the Bar, apart from contempt action, a reference should be made to the Bar Council for disciplinary proceedings, with a direction to dispose of such references expeditiously.

Caution must be exercised by the High Courts in initiating disciplinary proceedings. It should be ensured that only because an order is wrong or there is an error of judgement without anything more judicial officer is not put through the ordeal of such proceedings.

Such proceedings have a chilling effect on the independence of the district judiciary and often discourage trial court judges from exercising discretion, particularly in bail matters.

Lurking fear of administrative action has resulted in trial court judges becoming reluctant to grant bail even in deserving cases, leading to an excessive inflow of bail applications before the High Courts and the Supreme Court.

Issued strong directions to curb false and frivolous complaints against judicial officers. It held that proceedings must be initiated against persons found to be engineering such complaints, including, in appropriate cases, proceedings for contempt of court. If the complainant is a recalcitrant member of the Bar, the Court said that apart from contempt action, a reference should be made to the Bar Council for disciplinary proceedings, with a direction to dispose of such references expeditiously.

JUDGMENT

K.V. Viswanathan, J.

1. Leave granted.

2. This case highlights the unfortunate plight of a judicial officer (appellant herein) who, after 27 years of unblemished service, was removed from service. The sole and exclusive basis on which the appellant has been removed are four judicial orders by which he enlarged certain parties thereon on bail. Those four orders were contrasted with fourteen other orders of bail and after finding that in the four orders Section 59-A of the Madhya Pradesh Excise Act, 1915 (for short the "Excise Act") was not referred to, action has been taken. According to the High Court, in the fourteen other orders the appellant referred to the said Section implying thereby that he was conscious of the existence of the said Section on the statute. Section 59-A prescribes what has now famously come to be known as "twin conditions" for grant of bail.

3. The question before us is whether on facts, based on the four judicial orders of grant of bail per se and without anything more, the authorities were justified in removing the appellant from service?

4. The facts lie in a very narrow compass. The appellant joined service on 31.10.1987 as Civil Judge (Junior Division) in the Madhya Pradesh Judicial Service. The appellant scaled the ladder up and in 2003 was promoted as Additional District Judge and in September, 2008 was confirmed in the said post. On 16.05.2011, he was transferred to Khargone, District Mandaleshwar (MP), where he joined as First Additional District & Sessions Judge. In the course of discharge of his duties, he dealt with several matters, including bail applications under the Excise Act.

5. One Jaipal Mehta, a resident of Jaitapur, Khargone, lodged a complaint with the Chief Justice of the Madhya Pradesh High Court, Jabalpur. The complaint which did not set out any details of the bail orders and which was in very general terms reads as under:-

"Subject: Regarding disposal of cases under Section 34(2) of IPC.

Sir,

In reference to above subject matter, it is requested that First ADJ Sh. Suliya posted in Khargone, District-West Nimar, Mandleshwar by taking bribe through his Steno namely Anil Joshi, Clerk, is granting bails in the cases of Section 34/2 of Excise Act i.e. of 50 Bulk Ltrs. of liquor, whereas, ADJ/Sessions Judge has no power to allow said bail applications. Said Bails are allowed by the High Court. Anil Joshi, Steno challenges in each and every case that either you bring case of 302, 307, Claim or Civil Case, I have good setting with sir, I will get it resolved, rest you have to pay money as per my wishes.

Due to such corrupt employee, the judiciary is getting defamed. Injustice is being done with the aggrieved parties in place of giving them justice. Who will be responsible for it? Previously in the year 1995-1996, the serious complaints of bribe were also made against the said corrupt employee, on which, no action was taken. Aforesaid employee is posted in Khargone since last 25 years and is earning money by doing setting with Advocates openly. If the enquiry of his account be conducted, then, the truth will be exposed. If, the trust of public loses confidence in judiciary then, will be possible of military rule jungle raj."

6. It will be seen that according to the complaint, the allegation was that the appellant was taking bribe through his steno, namely, Anil Joshi for grant of bail in cases under the Excise Act in which the quantity of seized liquor was 50 Bulk liters or more; that the said Anil Joshi was claiming that he will get the work done through the appellant for extraneous consideration; that due to such corrupt employee, the judiciary was getting defamed; that even in 1995-96, serious complaints of bribery were made against the said employee on which no action was taken; that the said employee has been posted in Khargone for more than 25 years and is earning money through illegal means and that an inquiry is essential.

7. It appears from the counter affidavit filed before this Court by R-2 - the High Court of Madhya Pradesh, that a preliminary inquiry was conducted by the District Judge (I & V), Indore Zone, Indore, against the appellant and on 06.10.2012, the Principal Registrar (I & V) put up a note based on which it was decided to initiate departmental proceedings against the appellant.

8. What emerges is that in the preliminary inquiry certain orders passed by the appellant in bail proceedings seem to have been examined and few orders pulled out. Two charges were framed against the appellant of which the second charge admittedly was held not proved by the inquiry officer. The charges read as under:-

"Whereas, you Shri Nirbhay Singh Suliya while functioning as Additional Sessions Judge, Khargone, distt. Mandleshwar, have committed following acts which if proved would amount to grave misconduct:-

ARTICLE OF CHARGE - I

That, you, with corrupt of oblique motive or for some extraneous considerations, while functioning as Additional & Sessions Judge, allowed Bail Application No. 129/11 Lokesh Vs. State of MP vide order dated 1.8.11, Bail Application No. 136/11 Babulal & Ors. Vs. State vide order dated 4.8.11, Bail Application No.200/11 Mohan Vs. State of MP vide order dated 7.12.11,

Bail Application No. 123/12 Jitendra & Nantiya Vs. State & No. 122/12 Gulab & Ors. Vs. State of MP, vide order dated 31-08-12, against the provisions of Section 59-A of the M.P. Excise Act wherein all the cases, quantity of seized liquor was 50 and more bulk litres.

On the contrary, you rejected Bail Application No.89/11 vide order dated 16.06.2011, Bail Application No. 92/11, vide order dated 23.06.11, Bail Application No.104/11, vide order dated 1.7.2011, Bail Application No.103/11, vide order dated 4.7.11, Bail Application no. 111/11, vide order dated 11.7.11, Bail Application No. 121/11, vide order dated 21.07.11, Bail Application No.140/11, vide order dated 12.08.11, Bail Application No. 160/11 vide order dated 22.09.11 and six other bail applications in which the quantity of seized liquor was 50 bulk litres or more. In this manner you have applied double standard, malafidely, in allowing the aforesaid bail applications.

ARTICLE OF CHARGE - II

That, you, with corrupt or oblique motive or for some extraneous consideration allowed the first bail application No. 101/2012 Pappu Vs. State of MP in Crime No. 101/2012 under section 439 of CrPC for offense punishable under 363, 366, 376(2)(g) of the IPC in a serious offence of gang rape without assigning any sufficient reason, whereas the accused was already facing trial in another similar crime no. 103/2012 PS Oon for offence punishable under sections 363, 366, 376(2)(g) 3 of the IPC. Your aforesaid acts being unbecoming of Judicial Officer amount to grave misconduct under Rule 3 of M.P. Civil Services (Conduct) Rules, 1965 and are punishable under Rule 10 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966."

9. A perusal of "Charge-I" reveals that the orders in the following bail applications where Bail was granted to the applicants therein were the basis of the gravamen of the charge:-

Bail Application Nos.	Date of Order
129/2011	01.08.2011
136/2011	04.08.2011
200/2011	07.12.2011
123/2012 & 122/2012	31.08.2012

10. The charge was that for corrupt motive or that for some extraneous consideration, bail applications were allowed contrary to Section 59-A of the Excise Act. A contrast was made with 14 other bail orders, where the appellant had rejected bail. It is significant to note that among the five bail

orders, Bail Application No.200/2011 that was disposed of on 07.12.2011 was actually a case where the appellant had rejected bail. Somehow that order also made its way into "Charge-I", as an order of grant of bail. Be that as it may. In the list of witnesses, Jaipal Mehta was named apart from a general statement - "any other witnesses that may be felt necessary".

11. The appellant gave his reply and dealt with each bail order that was subject matter of the charge.

12. We have perused the actual bail orders. In the bail order in Bail Application No.129/2011 (60 liters of liquor) the reasoning given was as under:-

"After hearing arguments of both the parties, Criminal Case No.1685/11 Filed before Chief Judicial Magistrate was perused. On perusal, it is clear that on 25.07.2011, challan has been filed against both the Applicants/Accused in violation of Section 34(2) of M.P. Excise Act, and possibility of consuming time in it's trial cannot be overruled.

In view of the nature of crime, allegations, and without commenting on the merits of evidences collected in the present case i.e. Crime No. 232/11, and by placing reliance on the said case laws, where trial is likely to take time, and Applicant/Accused are themselves [sic] being permanent resident, there is no flight risk or tempering evidences on their part, thereupon, it appears justifiable to grant benefit of bail to these Applicants/ Accused Persons. Due to this reason, the present Bail Application u/s 439 Cr.P.C. is hereby allowed."

13. Similarly, in other orders, reasons like filing of challan, the applicants being rural farmers with no flight risk were mentioned. There was no express reference to the twin conditions under Section 59-A(2) of the Excise Act.

14. At the inquiry, the complainant Jaipal Mehta was not examined. Instead the executive clerk of ADJ, Khargone Court, Gendalal Chauhan was examined as witness No.1, in support of the charge. The witness marked all the exhibits and categorically deposed as under which actually was in favour of the appellant:-

"It is correct to say that while passing orders, Anil Joshi was posted as Steno in the Court of First Additional Sessions Judge. He is posted in Khargone since last 7-8 years, whom I know due to being my colleague. I never seen Anil (sic) asking anyone that he has good relations with Suliya Sahab and I will get done the work by doing setting. None of the Advocates has told me that Anil Joshi has setting with Suliya Sahab."

15. The appellant in defense examined the prosecutor K.P. Tripathi who appeared in all the 18 bail applications which were subject matter of the charge. He deposed as under:-

"I did not feel that the double standard has been adopted by the Court. If it would happen, then, I would give my opinion to the State for taking action in Hon'ble High Court. In Exh. P-19, only one Crime i.e. Crime No.102/12 is registered against Accused Pappu in P.S. Oon. Moreover, as per my knowledge, no other crime is registered against this accused. Because in Police Report, there is no mention of registration of any other crime against him. I find the functioning of Court to be completely impartial."

"That, three Bail Applications of Excise Act have been allowed, and out of the said Applications, 15 Applications have been rejected. In my opinion, in the cases of Bail marked as Exh. P-1, P-2 and P-4, those orders of allowing bail application which have been passed in view of the facts and circumstances of respective cases, nature of crime, and in pursuance of the case laws of Hon'ble High Court and Supreme Court, those orders are completely based on merits and are relevant and true as per law. Those 15 Bail Applications which have been rejected by the Ld. Trial Court, out of those cases, in the orders marked as Exh. P-9, Exh. P-12, Exh. P-13, Exh. P-17 and Exh. P-18, the case was at the initial stage of investigation."

"Note: Question by Enquiry Officer:-

Question: The bail orders, in which bail applications have been allowed, whether those orders according to your goodself or in the opinion of Public Prosecutor, are proper or improper? What you say in this regard.

Answer: In my opinion i.e. in the capacity of Public Prosecutor, the orders of granting bail were absolutely proper and on proper grounds."

16. Notwithstanding the above evidence the inquiry officer held "Charge-I", proved by recording the following findings:-

"Therefore, on the basis of aforesaid analysis, as a final conclusion, it is proved in favour of the Department that Delinquent Officer Sh. N.S. Suliya in the capacity of Additional Sessions Judge, not being impartial in the disposal of Bail Applications for the offences of Section 34(2), 49-A of the Excise Act, and with oblique motive and by deliberately violating the mandatory provisions of Section 59-A of the aforesaid Act, has committed misconduct by allowing some Bail Application Nos. 129/11, 136/11, 123/12, 122/12 and by rejecting some bail Applications by applying double standards in malafide and arbitrary manner, who has violated Rule 3 of the M.P. Civil Services

(Conduct) Rules, 196, which is punishable under Rule 10 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966."

17. On 21.03.2014, a copy of the inquiry report was furnished to the appellant and he was asked to show cause on the punishment. The appellant filed a detailed reply by his letter dated 10.04.2014.

18. On 02.09.2014, on the recommendation of the High Court of Madhya Pradesh, order was passed by the Principal Secretary, Government of M.P., Law & Legislative Affairs Department, removing the appellant from service. A representation/appeal filed against the said order was rejected on 17.03.2016.

19. The appellant filed a writ petition before the High Court of Madhya Pradesh at Jabalpur (Writ Petition No.8623/2016) challenging the order of removal and the order of the appellate authority and prayed for reinstatement with consequential benefits.

20. By the impugned order dated 25.07.2024, the High Court has dismissed the Writ Petition by recording the following finding:-

"If the principles laid down by the Supreme Court, in the case referred to herein above, are taken note of, then a reasonable finding arrived at by the Inquiring Authority in the present case based on material available on record can neither be interfered with by this Court nor can it be termed as perverse or unreasonable to such an extent that interference can be made by this Court. Considering the material available in the present case, it is apparent that the petitioner was holding the post of Additional Sessions Judge with which comes a great responsibility and he was under obligation to conduct himself in a manner befitting the post held by him. He was under duty to conduct the proceedings of bail applications in conformity with the provisions of law.

He extended the benefit of bail to some applicants relying on the pronouncement of High Court and refused to grant bail to others without considering those pronouncements. No violation of principles of natural justice or error is found in the procedure followed in the enquiry in the present case. In the absence of any procedural illegality, irregularity in the conduct of departmental enquiry, in the considered opinion of this Court, no interference is warranted and after considering the over all material available in the record and in view of the settled position of law, we do not find any reason to interfere in the order of punishment/removal dated 02.09.2014 and the order of rejection of appeal on 17.03.2016 and accordingly, the writ petition is dismissed."

21. Aggrieved, the appellant is before us.

22. We have heard Mr. Dama Seshadri Naidu, learned senior counsel assisted by Mr. Kanu Agarwal, learned counsel for the appellant and Mr. Arjun Garg, learned counsel for the respondent no. 2, the High Court of Madhya Pradesh, who ably presented the case of the said respondent. We have perused the records, including the written submissions and the compilation of case law filed by the parties.

CONTENTIONS OF THE APPELLANT:-

23. Learned senior counsel for the appellant contends that the allegations were directly against Anil Joshi - the Stenographer; that neither the complainant - Jaipal Mehta nor the Stenographer was produced as witnesses during the Departmental Inquiry and that the bail orders which were subject matter of the inquiry were passed on valid grounds. Even in the case of special statute "bail is the rule and jail is the exception"; that the Inquiry Officer has examined the legality and propriety of the orders of bail acting as an Appellate Authority.

That the departmental witness Gendalal Chauhan and the public prosecutor in their deposition did not support the charge and finally it was contended that merely because on a given set of facts, a different conclusion is possible, is no ground to indict a Judicial Officer. It was further submitted that wrong exercise of jurisdiction or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceedings.

CONTENTIONS OF RESPONDENT NO.2 - THE HIGH COURT OF MADHYA PRADESH:-

24. The learned Counsel for the respondent no. 2 - the High Court of Madhya Pradesh submitted that the procedure for Inquiry has been duly followed; that the consistent view of this Court has been that the Court will not function as an Appellate Court over the Inquiry report and the only consideration was whether the Inquiry had been fairly conducted after giving due opportunity to the delinquent. It was further submitted that Section 59-A (2) of the Excise Act was not even referred to in the bail orders in question, while in the other bail orders it was mentioned while rejecting bail.

The learned counsel submitted that the Inquiry Officer has come to the conclusion that the conduct of the appellant was not impartial and the appellant violated the mandate of Section 59-A and applied double standards in a mala fide and arbitrary manner. It was submitted that a judicial officer is required to maintain a very high standard of devotion to duty. So contending, it was pleaded that the impugned order did not call for any interference.

QUESTIONS FOR CONSIDERATION:-

25. The questions for consideration are whether the order removing the appellant from service based on the inquiry report is justified in law and whether any good ground has been made out for interference?

ANALYSIS AND CONCLUSION:-

26. The present is the case of a Disciplinary Inquiry against the senior Judicial Officer. Before we set out the parameters laid down by this Court as to in what circumstances a Judicial Officer can be subjected to penalty in the discharge of his duties, it is apposite to make certain preliminary observations.

27. A fearless judge is the bedrock of an independent judiciary, as much as an independent judiciary itself is the foundation on which rule of law rests. A judicial Officer is tasked with the onerous duty of deciding cases. Invariably one party to the case would lose and go back unhappy. Disgruntled elements amongst them, wanting to settle scores may raise frivolous allegations. The Trial Judiciary also has tremendous work pressure and works under trying working conditions. Large number of cases are listed in a day and most of the Judicial Officers give their very best while discharging their duties.

28. Instances have also emerged from different parts of the country, where not just disgruntled parties but some mischievous elements in the Bar have also resorted to intimidatory tactics against the members of the Trial Judiciary by engineering false and anonymous complaints. Strict and strong action in accordance with law should be taken against such individuals filing a false and frivolous complaint against a judicial officer and/or if found to be engineering the false and frivolous complaints.

Such proceedings would include in appropriate cases, proceedings for contempt of court. In case the person filing or engineering false and frivolous complaints is a recalcitrant member of the Bar, apart from proceedings for contempt of court, reference to the bar council should be made for disciplinary action. Bar councils, on receipt of such references, have to dispose of the matter expeditiously.

29. Equally, if the complaint of misconduct against the judicial officer is prima facie found to be true, prompt action to initiate disciplinary proceeding should be taken and no leniency should be shown if the charges are established. Not only this, in appropriate cases where criminal prosecution is warranted against a judicial officer, the High Court should not hesitate to have the same initiated. That is the only way to weed out black-sheeps sully the fair name of the judiciary. Due care and caution must be exercised by the High Court in initiating such proceedings. It should be ensured that only

because an order is wrong or there is an error of judgment, without anything more, a judicial officer is not put through the ordeal of a disciplinary proceeding or a prosecution.

30. It is trite to recall the observations of this Court in *Sadhna Chaudhary v. State of U.P and Another*.1:-

"20. We are also not oblivious to the fact that mere suspicion cannot constitute "misconduct". Any "probability" of misconduct needs to be supported with oral or documentary material, even though, the standard of proof would obviously not be on a par with that in a criminal trial. While applying these yardsticks, the High Court is expected to consider the existence of differing standards and approaches amongst different Judges. There are innumerable instances of judicial officers who are liberal in granting bail, awarding compensation under MACT or for acquired land, back wages to workmen or mandatory compensation in other cases of tortious liabilities. Such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.

21. Furthermore, one cannot overlook the reality of ours being a country, wherein countless complainants are readily available without hesitation to tarnish the image of the judiciary, often for mere pennies or even cheap momentary popularity. Sometimes, a few disgruntled members of the Bar also join hands with them, and the officers of the subordinate judiciary are usually the easiest target. It is, therefore, the duty of the High Courts to extend their protective umbrella and ensure that the upright and straightforward judicial officers are not subjected to unmerited onslaught.

26. We can find no fault in the proposition that the end result of adjudication does not matter, and only whether the delinquent officer had taken illegal gratification (monetary or otherwise) or had been swayed by extraneous considerations while conducting the process is of relevance. Indeed, many-a-times it is possible that a judicial officer can indulge in conduct unbecoming of his office whilst at the same time giving an order, the result of which is legally sound.

Such unbecoming conduct can either be in the form of a Judge taking a case out of turn, delaying hearings through adjournments, seeking bribes to give parties their legal dues, etc. None of these necessarily need to affect the outcome. However, importantly in the present case, a perusal of the charge-sheet shows that no such allegation of the process having been vitiated has been made against the appellant."

(Emphasis supplied)

31. In *Abhay Jain vs. High Court of Rajasthan*², this Court quoted with approval the observations in *Sadhna Chaudhary* (supra).

32. When false allegations fly thick and fast, the judicial officers cannot react. Here is where the High Court which is vested with the supervisory control has to exercise great caution and circumspection. As to what the parameters are, when the High Court on the Administrative side is faced with such a scenario, has been felicitously set out by Chief Justice D.Y. Chandrachud J. speaking for the Court in *R.R. Parekh v. High Court of Gujarat* and *Another*³ as under:

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"16. The issue of whether a judicial officer has been actuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care.

A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinised to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The issue which arises in such cases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is erroneous.

A wrong decision can yet be a bona fide error of judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. The legality of a judicial determination is subject to such remedies as are provided in law for testing the correctness of the determination. It is not the correctness of the verdict but the conduct of the officer which is in question. The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which forms the basis of the charge of misconduct was not an honest exercise of judicial power.

The circumstances let into evidence to establish misconduct have to be sifted and evaluated with caution. The threat of disciplinary proceedings must not demotivate the honest and independent officer. Yet on the other hand, there is a vital element of accountability to society involved in dealing with cases of misconduct. There is on the one hand a genuine public interest in protecting fearless and honest officers of the District Judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrongdoing, responsible for his or her actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice."

(Emphasis supplied)

33. As held in R.R. Parekh (supra), it should be borne-inmind that inference of misconduct or about extraneous considerations having actuated, the decision cannot be drawn merely from a hypothesis that a decision is erroneous. It has been held that a wrong decision can yet be a bona fide error of judgment and inadvertence is consistent with an honest error of judgment. Ultimately, it is not the correctness of the verdict but the conduct of the Officer in question which is determinative.

34. It is apposite to recall the observations of this Court in Union of India and Others vs. K.K. Dhawan⁴, which has been followed in P.C. Joshi v. State of U.P. and Others⁵. This Court in K.K. Dhawan (supra), while illustrating certain cases for which disciplinary action can be initiated, took care to administer a note of caution also. In K.K. Dhawan (supra), this Court held:-

"28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

35. This Court held that merely because the order is wrong, disciplinary action is not warranted and that each case will depend upon the facts and no absolute rule can be postulated. What is significant to notice is that even though in the illustrated case [para 28 (iv)] K.K. Dhawan (supra), cases of omission of prescribed conditions which are essential for the exercise of statutory powers may in a given case furnish a ground for disciplinary enquiry, it is not an absolute rule and each case will depend upon the facts. As observed in R.R. Parekh (supra), the Disciplinary Authority has to examine whether there has emerged from the record, one or more circumstances that indicate that the decision which forms the basis of the charge of misconduct was not an honest exercise of judicial power.

36. In Ishwar Chand Jain v. High Court of Punjab and Haryana and Another⁶, this Court highlighted how the functioning of the Trial Judiciary would be seriously impacted and fearless discharge of duties would become a casualty, if inquiries are launched on ill-conceived or motivated complaints. This Court in Ishwar Chand Jain (supra) held as under:-

"14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner.

An independent and honest judiciary is a sine qua non for rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.

Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Shri Mehlawat and others were motivated which did not deserve any credit. Even the vigilance Judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments."

[Emphasis supplied]

37. Similar sentiments were expressed in *Ramesh Chander Singh v. High Court of Allahabad and Another*⁷, wherein this Court held as under:-

"12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution.

17. In *Zunjarrao Bhikaji Nagarkar v. Union of India* [(1999) 7 SCC 409 : 1999 SCC (L&S) 1299 : AIR 1999 SC 2881] this Court held that wrong exercise of jurisdiction by a quasijudicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction.

Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour.

Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level."

38. Highlighting various options available before the High Court to deal with judicial officers and the need for clearly establishing misconduct and extraneous influences or illegal gratification before resorting to disciplinary measures, this Court in *Krishna Prasad Verma v. State of Bihar and Others*⁸, had the following to say:-

"16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned.

Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect."

[Emphasis supplied]

39. That merely because a different conclusion was possible is not an indicium for misconduct was highlighted in *P.C. Joshi (supra)*.

"7. In the present case, though elaborate enquiry has been conducted by the enquiry officer, there is hardly any material worth the name forthcoming except to scrutinize each one of the orders made by the appellant on the judicial side to arrive at a different conclusion. That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which

would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive.

At best, he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly.

Indeed the words of caution are given in K.K. Dhawan case [(1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24 ATC 1] and A.N. Saxena case [(1992) 3 SCC 124 : 1992 SCC (L&S) 861 : (1992) 21 ATC 670] that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case."

40. Applying the above principles to the facts of the present case, we find that the appellant has been held guilty of misconduct only based on certain judicial orders granting bail without anything more. We say so for the following reasons:-

(i) The complaint, as originally filed by Jaipal Mehta, was primarily against Anil Joshi, the stenographer who has been working in Khargone for a long time even before the appellant assumed office in Khargone.

(ii) The complaint neither set out any particulars nor set out any judicial order. It was general in nature.

(iii) The complainant was not examined in the inquiry. The witnesses examined in support of the charge Gendalal Chauhan did not support the charge.

(iv) The prosecutor who appeared in each of the 18 bail orders was examined on behalf of the defence and even he deposed that the State accepted the orders granting bail without mounting any challenge in the higher court. He categorically deposed that the orders were absolutely proper and were passed on proper grounds.

(v) A perusal of the four orders show that reasons have been given, though there is no express mention Section 59-A (2) of the Excise Act. In one bail order, the appellant mentions about the filing of the challan and the possibility

of the trial consuming lot of time. In fact, in the said order, the appellant has relied on Article 21 though he has not expressly mentioned the same. In the other bail orders, he mentions about the applicants being rural farmers and not being a flight risk and so on.

(vi) There is absolutely no material placed on record to show that there are circumstances from which inference could be drawn that extraneous considerations actuated the passing of those orders of bail. The hypothesis was drawn only on the basis that the order did not make reference to the statutory provision expressly.

(vii) The finding that in 14 other orders he referred to Section 59-A (2) of the Excise Act is by itself not enough to infer misconduct in the passing of the four bail orders in question.

(viii) It will be a dangerous proposition to hold that judgments and orders which do not refer expressly to statutory provisions are per se dis-honest judgments.

41. The High Court has erred in not interfering with the order. A valiant attempt was made by Mr. Arjun Garg to sustain the impugned order by contending that a writ court or this Court cannot act as an appellate court over the inquiry report and the only consideration was whether the inquiry had been fairly conducted. We are unable to accept the said contention. In our opinion, for the reasons stated above, the findings in the inquiry report are perverse and are not supported by findings on record. We make bold to record a finding that on the available material, no reasonable person would have reached the conclusion that enquiry officer reached.

42. In *Yoginath D. Bagde v. State of Maharashtra and Another*⁹, Saghir Ahmad, J. lucidly explained the principle thus:-

"51. It was lastly contended by Mr Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinised by the enquiry officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or Article 32 of the Constitution, act as the appellate authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr Salve is in very broad terms and cannot be accepted. The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter.

In *Kuldeep Singh v. Commr. of Police* [(1999) 2 SCC 10 : 1999 SCC (L&S) 429 : JT (1998) 8 SC 603] this Court, relying upon the earlier decisions in *Nand Kishore Prasad v. State of Bihar* [(1978) 3 SCC 366 : 1978 SCC (L&S) 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] , *State of Andhra Pradesh v. Rama Rao* [AIR 1963 SC 1723 : (1964) 3 SCR 25] , *Central Bank of India Ltd. v. Prakash Chand Jain* [AIR 1969 SC 983 : (1969) 2 LLJ 377] , *Bharat Iron Works v. Bhagubhai Balubhai Patel* [(1976) 1 SCC 518 : 1976 SCC (L&S) 92 : AIR 1976 SC 98 : (1976) 2 SCR 280] as also *Rajinder Kumar Kindra v. Delhi Admn.* [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805 : (1985) 1 SCR 866] laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere.

It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

(Emphasis supplied)

43. For the above reasons, the appeal is allowed. The order of removal dated 02.09.2015, the order of Appellate Authority dated 17.03.2016 and the impugned order of the High Court are all set aside. The appellant shall be deemed to have continued in service till he attained the normal age of superannuation. Since the appellant has been kept out of service for no fault of his, we are of the opinion that full back wages with all consequential benefits should be given to the appellant. Let the monetary benefits be released within a period of eight weeks from today with interest @ 6 per cent. No order as to costs.

44. Let a copy of this judgment be transmitted to all the Registrar Generals of the respective High Courts in the country, so as to enable them to draw the attention of the Chief Justices of the High Courts to the same.

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

.....J. [K. V. Viswanathan]

New Delhi;

January 05, 2026

1 (2020) 11 SCC 760

2 (2022) 13 SCC 1

3 (2016) 14 SCC 1

4 (1993) 2 SCC 56

5 (2001) 6 SCC 491

6 (1988) 3 SCC 370

7 (2007) 4 SCC 247

8 (2019) 10 SCC 640

9 (1999) 7 SCC 739

Nirbhay Singh Suliya
Vs.
State of Madhya Pradesh and Anr.

**[Civil Appeal No. 40 of 2026
arising out of SLP (C) No. 24570 of 2024]**

J.B. Pardiwala, J.

1. My esteemed brother Justice K.V. Viswanathan has penned an ineffable judgment. This judgment will go a long way in protecting judicial officers of the district judiciary from being subjected to departmental action for alleged wrong or incorrect exercise of discretion in passing orders of bail without anything more. Brother Viswanathan has put it very pithily, saying that if the complaint of misconduct against the judicial officer is prima facie found to be true then, in such circumstances, disciplinary proceedings must be taken, and no leniency should be shown if the charges are established.

In an appropriate case, even criminal prosecution may be instituted against a judicial officer. Such action is necessary to weed out tainted judges from the judiciary. It goes without saying that corruption in the judiciary at any level is intolerable, as corruption severely undermines the core of the administration of justice and erodes public trust in the rule of law. However, the High Court, which is vested with the supervisory control must keep in mind that a judicial officer of the district judiciary works mostly in a charged atmosphere. A mere wrong order or wrong exercise of discretion in grant of bail by itself without anything more, cannot be a ground to initiate departmental proceedings.

2. Initiation of departmental proceedings on mere suspicion is one of the primary causes why trial court judges are reluctant when it comes to exercising discretion for the purpose of grant of bail. It should not happen that because of the lurking fear in the mind of a trial court judge, of some administrative action being taken that even in a deserving case, well within the principles of law, bail is declined. This is one reason why the High Courts are flooded with bail applications.

The same is the scenario even so far as the Supreme Court is concerned. Over a period of time, the trial court judges have exhibited tendency to shirk from their solemn judicial function and responsibility when it comes to exercising discretion in matters relating to bail. Courts of the district judiciary wield powers necessary for the functioning of the justice delivery system in India and when their autonomy is compromised by higher courts and fear takes precedence over judicial duties, democracy and the rule of law suffer.

3. For functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. As held by this Court in *M.S. Bindra versus Union* reported in (1998) 7 SCC 310 while evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently.

The maxim "**Nemo Firut Repente Turpissimus**" (no one becomes dishonest all of a sudden) is not unexceptional but still is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch.

That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label 'doubtful integrity'.

.....**J. (J.B. Pardiwala)**

New Delhi:

January 05, 2026

IN THE SUPREME COURT OF INDIA

NAK Engineering Company Pvt. Ltd.

Vs.

Tarun Keshrichand Shah and Ors.

**[Civil Appeal Nos. _____ of 2026
arising out of SLP (C) Nos. 6024-6025 of 2022]**

Head Note - Plaintiff is 'Dominus Litis'. He can't be compelled to add a defendant in suit under Order 1 Rule 10 CPC.

JUDGMENT

Pankaj Mithal, J.

1. Leave granted.
2. We have heard Shri Chander Uday Singh, senior counsel assisted by Shri Amarjit Singh Bedi, Advocate-on-Record for the appellant-NAK Engineering Company Pvt. Ltd.¹ and Dr. Abhinav Chandrachud, learned counsel assisted by Shri Surjendu Sankar Das, Advocate-on-Record for the respondent No.1-Tarun Keshrichand Shah².
3. Respondent No.2- Priyalata Keshrichand Shah³ is reported to be dead and her interest is represented by respondent No.1.
4. Respondent No.3- M/s Kishore Engineering Company⁴ has not appeared. It had not even appeared in the Trial Court or the High Court. It has not even filed any written statement, despite service of notice.
5. In a Suit No.6117 of 2007 filed by respondent No.1 and respondent No.2 against respondent No.3, a Notice of Motion No.1346 of 2018 was moved to add the appellant as the party defendant to participate and contest the aforesaid suit. Earlier, a Notice of Motion No. 1925 of 2017 was also moved by the appellant seeking to set aside the order to proceed in the said suit ex-parte. Both the said motions were allowed by the court of first instance vide a common Order dated 05.10.2018. However, the said order was set aside by the High Court by the impugned judgment and order dated 21.02.2022 in exercise of its power under Article 227 of the Constitution of India.
6. Under challenge in these appeals is thus the above judgment and order of the High Court dated 21.02.2022 setting aside the order of the court of first instance permitting impleadment of the appellant as one of the defendants to

the suit meaning thereby that the motion of addition of the appellant as one of the defendants to the suit stands rejected.

7. One Keshrichand Shah was the original owner of the commercial premises admeasuring 1700 sq. feet existing on the third floor of the Churchgate House, Mumbai. He was the sole proprietor of M/s Union Commercial Corporation. The aforesaid Keshrichand Shah through its proprietorship firm M/s Union Commercial Corporation let out an area of 525 square feet of the above premises having five cabins to one M/s Modern Products Pvt. Ltd.

The said M/s Modern Products Pvt. Ltd. licensed or sublet the same to the respondent no.3. In addition to the rent of Rs.400/- per month payable to M/s Modern Products Pvt. Ltd., the respondent No.3 also used to pay service charges at the rate of Rs.2,100/- per month for the use of furniture and fixtures therein to the owner, Keshrichand Shah. On the death of Kesharichand Shah, the said service charges were realized by his heirs, i.e., respondent nos.1 and 2.

8. The respondent Nos.1 and 2 instituted a Suit No.3319 of 2007 on the original civil side of the Bombay High Court but on account of pecuniary jurisdiction it was later transferred to the Bombay City Civil Court and renumbered as Suit No.6117 of 2017.

9. The aforesaid suit was instituted by respondent Nos.1 and 2 against respondent No.3 for the recovery of service charges at the rate of Rs.2,100/- per month, amounting to Rs.75,600/- for the period November 2004 to October 2007.

10. In the aforesaid suit, notice was served upon sole defendant i.e., respondent no.3 but no one appeared on its behalf and filed any written statement. Thus, after closing the evidence on 11.02.2014, the court vide order dated 12.11.2014 proceeded ex-parte in the matter.

11. It was much thereafter on 02.04.2018 that the appellant filed an application for being impleaded as the defendant in this suit contending that it is a successor of respondent No.3 under Part IX of the Companies Act, 1956. The appellant is actually running the business of respondent No.3. Therefore, it is a necessary party to the suit.

12. The appellant contended that it had acquired knowledge of the suit only on 02.10.2012 and that it has proceeded exparte against the respondent No.3. There was no proper service of the notice upon the respondent No.3 or upon the appellant. It was contended that the appellant has drawn separate proceedings for getting the ex-parte order set aside. The appellant had no

knowledge of the transfer of the suit from the Bombay High Court to the City Civil Court as no notice in this regard was received or served upon it.

13. It may be not out of context to mention here that the respondent Nos.1 and 2 apart from instituting the above suit had also filed a suit for the eviction of the respondent No.3 and the appellant and its Directors from the premises in dispute in the Small Causes Court. This apart, a criminal complaint was also lodged against the appellant and its Director-Himanshu Patwa on account of dishonour of two cheques of Rs.2,100/- and Rs.400/- issued by them in respect of the monthly service charges and the rent respectively in connection with the demised premises.

14. It is in the above background that the court of first instance vide order dated 05.10.2018 allowed the motion to add the appellant as one of the defendants to the suit observing that there is no dispute to the fact that the appellant is in occupation of the suit premises. The suit premises was initially let out to the respondent No.3 and is now in possession of appellant, who claims to be the successor company that has taken over the business of respondent No.3.

The certificate of incorporation relied upon by the appellant along with the Memorandum of Association prima facie reveals that the appellant has taken over and acquired the business interest of the respondent No.3. The court accepted the said certificate issued by the Registrar of the companies opining that it lacked jurisdiction to rule on the validity of the said certificate.

15. The aforesaid order of the court of first instance on being taken up before the High Court under Article 227 of the Constitution has been reversed and the impleadment of the appellant has been revoked on the ground that it is not a proper or a necessary party to the suit. The suit will not fail for want of its presence.

16. The High Court proceeded to pass the impugned order on the premise that no relationship of tenant and landlord existed between the parties and that the appellant is the unauthorized occupant that need not be joined as a defendant to the suit.

17. The High Court further held that the issue of recovery of arrears of service charges can be decided even in the absence of the appellant as the respondent No.3 had no legal sanctity of law to authorize the use of furniture and fixtures to a third party.

18. It is alleged that the High Court completely ignored the fact that the appellant is the successor company of the tenant- respondent No.3 whose complete business has been taken over by it. The appellant has stepped into

the shoes of respondent No.3 and was in possession of the premises in that capacity and was not an unauthorized occupant.

19. It is in this background that we have been called upon to consider to decide whether the appellant is a necessary and proper party to be impleaded in the suit No.6117 of 2007 for the recovery of service charges in respect of the premises in dispute which was admittedly sublet to the respondent No.3 to whose business the appellant happens to be a successor.

20. The first and the foremost argument of Shri Chander Uday Singh, senior counsel appearing for the appellant is that the High Court exceeded its jurisdiction under Article 227 of the Constitution in setting aside the judgment and order of the court of first instance as if it is sitting in appeal. The order of the Trial Court allowing the impleadment was an interlocutory order which required no interference by the High Court in exercise of its supervisory power.

The High Court incorrectly concluded that the appellant is not a necessary party to the suit, completely ignoring the fact that the respondent Nos.1 and 2 themselves had arrayed it as one of the defendants in a suit for eviction from the premises filed before the Small Causes Court. The High Court also erred in not appreciating that the appellant is a successor to respondent No.3 under the Companies Act and that the validity of the certificate of registration issued by the Registrar of Companies in favour of the appellant could not have been adjudicated while exercising powers under Article 227 of the Constitution.

21. It is further contended that the appellant has been paying service charges through cheque since 1991 and the respondent nos.1 and 2 were aware of it. Rather, the service charges from 2004 were received by the respondent Nos.1 and 2, implying an admission on their part that the appellant is the person liable to pay the same. Even the furniture and telephone lines in the premises, which existed, have been used by the appellant since 1991 with the knowledge of the respondent No.1. Therefore, the High Court was not right in holding that since there is no relationship of tenant and landlord between the parties, the appellant is not a necessary party. The relationship of tenant and landlord in the matter was not relevant and material, as it was not a suit for eviction rather a suit for recovery of service charges.

22. He further argued that, in fact, any decree that may be passed in the suit in question against the respondent No.3 that is practically defunct, would lead to execution of the decree against the appellant and as such the appellant is a necessary and proper party to the suit.

23. Dr. Abhinav Chandrachud, learned counsel appearing for the respondent No.1 in defense submits that the appellant has not come up before the court with clean hands rather with an ulterior motive to legitimize its illegal occupation over the premises in dispute. The summons in the suit were served upon the respondent No.3 way back in the year 2008.

The acknowledgement bears the signature and the stamp of the appellant which clearly proves that the appellant was aware of the institution of the suit but even then, remained silent for over nine years before seeking impleadment. The appellant is an unauthorized occupant of the premises in dispute and therefore, in the suit for eviction, was made one of the defendants so that the eviction decree if any may be effectively executed. However, this does not mean that it is also a necessary and proper party to the present suit for the recovery of arrears of service charges.

24. Further, the certificate of incorporation of the appellant is not a proof of successorship to the respondent No.3 and that the certificate annexed with the appeal is a new and different document which was not part of the record before the courts below. The respondent No.3 still continues to be a registered company and is still in existence and therefore, the appellant cannot be accepted to be its successor more particularly when it is only a firm and not even a company.

25. Lastly, it has been submitted that the respondent Nos.1 and 2 who instituted the suit are dominus litis in the matter and cannot be compelled to add a defendant against their wishes if they do not desire to seek any relief against such a person.

26. Undisputedly, the suit in question has been filed by the owners of the property to recover service charges for the use of furniture and fixtures from the respondent No.3 that was inducted as a sub-tenant in the premises in dispute by M/s Modern Products Pvt. Ltd. The dispute is not regarding recovery of rent or arrears of rent. Therefore, the relationship of landlord and tenant between the parties is completely alien to the controversy in question.

27. The dispute is essentially with regard to payment of service charges between the owners of the property and its user i.e. respondent No.3. Therefore, no other person has any right to be impleaded so as to defend the suit regarding payment of service charges.

28. The appellant claims to be the successor of respondent No.3 and as such, wants to defend the suit on its behalf or as its representative.

29. The respondent No.3, though stated to be a private limited company, is only a partnership firm having only four members. There is no authentic proof

on record that the above partnership firm was ever converted into a company. The conversion of a partnership firm into a company as under Part IX of Companies Act, 1956 requires fulfilment of strict conditions such as having at least seven partners/members and execution of certain deeds.

The respondent No.3 was having only four partners and as such was ineligible for conversion under the relevant law. Further, there is nothing on record to indicate that the aforesaid firm respondent No.3 has ceased to exist or has become extinct. The extract of respondent No.3 firm dated 20.09.2016 from the office of the Registrar of Firms reveals that respondent No.3 continues to exist as a partnership firm even though appellant may have been incorporated as a new company.

30. The appellant has relied upon the Certificate of Incorporation dated 22.02.1988 to claim that it has succeeded the respondent No.3. No doubt, a company comes into existence as a body corporate from the date of its incorporation having perpetual succession and a common seal. However, its incorporation or its Certificate of Incorporation in no way conclusively proves that it has come into existence as a successor of respondent No.3. In such circumstances, appellant cannot be accepted to be the successor of respondent No.3 so as to permit it to be impleaded and to defend the suit for the recovery of service charges.

31. The appellant has nowhere established its independent right to be impleaded to defend the suit except for claiming to be the successor of respondent No.3 which, in our opinion, has no legs to stand.

32. The above discussion takes us to another aspect of the matter as to whether the appellant is a necessary or a proper party to be impleaded. The governing principles and law in this regard are well-settled.

33. The fundamental distinction between a "necessary party" and a "proper party" was succinctly explained in *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay*⁵, wherein this Court held:

"6. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

34. In *Kasturi v. Iyyamperumal*⁶, this Court crystallized the twin tests for a necessary party:

"the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise

unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. two tests are to be satisfied for determining the question as to who is a necessary party. The tests are:

(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings;

(2) no effective decree can be passed in the absence of such party."

35. This principle has been consistently reiterated. In *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*⁷, this Court reiterated:

"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.

If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

36. Thereafter, in *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*⁸, the broad principles governing impleadment were summarized:

"41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff."

37. In the case at hand, the respondent Nos.1 and 2 are not claiming any relief against the appellant. There is no iota of material to indicate that the relief, as claimed in the suit against respondent No.3, if granted, would be implemented

against the appellant. Therefore, the appellant is not a necessary party to the suit.

38. The appellant cannot also be construed as a proper party once it has failed to establish that it is a successor to the respondent No.3. In the absence of any evidence to prove that respondent No.3 has ceased to exist or cannot be represented in the suit on its own to contest it on merits, we are of the opinion that the appellant is not even a proper party to provide any assistance to the court in the suit.

39. This apart, the respondent Nos.1 and 2 who have instituted the suit are dominus litis and it is for them to choose their adversaries. If they do not array the proper and necessary parties to the suit, they do it at their own risk. However, they cannot be compelled to add a party to defend a suit against their wishes. The decree, if any, passed in the suit would be binding only between the parties to the suit and would not infringe upon any right of a third party, much less of the appellant that is not a party to the suit.

40. This conclusion is reinforced by the fundamental principle laid down in *Kanaklata Das v. Naba Kumar Das*⁹, wherein this Court has observed:

"11.4. the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the coplaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.

11.5. a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

41. In the above facts and circumstances, if the High Court, for one reason or the other, has set aside the order of impleadment passed by the court of first instance, we do not consider it to be illegal so as to set it aside and restore the order of the Trial Court.

42. There is one another reason for not interfering with the impugned judgment and order of the High Court. The summons issued in the suit meant to be served upon respondent No.3, were served in the year 2008. The seal

and signatures on the acknowledgement on the said summons is of the appellant which clearly indicates that the appellant had acquired knowledge of the suit in the year 2008.

However, the appellant kept silent and moved the motion for impleadment only after the evidence was closed in the year 2014 and the court had directed to proceed ex-parte in the matter. The impleadment application was filed almost after nine years of the knowledge of the pendency of the suit. Thus, the impleadment has been rightly refused to the appellant by the High Court.

43. We are conscious of the fact that the jurisdiction of the High Court under Article 227 is simply supervisory in nature and that the High Court ought not to have intervened in the matter. However, once the order has been interfered with, and rightly so, we do not wish to commit another illegality by restoring an incorrect order passed by the court of first instance.

44. In view of the above discussion, we are of the opinion that the appeals lack merit and are dismissed but with the direction that the decree passed in the suit would not be used against the appellant and would not be implemented against it.

45. The appeals are dismissed with no order as to cost.

46. Pending application(s), if any, shall stand disposed of.

.....**J. [Pankaj Mithal]**

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

New Delhi;

January 05, 2026.

1 Hereinafter referred to as 'appellant'

2 Hereinafter referred to as 'respondent No.1'

3 Hereinafter referred to as 'respondent No.2'

4 Hereinafter referred to as 'respondent No.3'

5 (1992) 2 SCC 524

6 (2005) 6 SCC 733

7 (2010) 7 SCC 417

8 (2012) 8 SCC 384

9 (2018) 2 SCC 352

IN THE SUPREME COURT OF INDIA

Arvind Dham

Vs.

Directorate of Enforcement

[Criminal Appeal No. _____ of 2026

@ SLP (Crl.) No. 15478 of 2025]

Head Note – The right to a speedy trial, guaranteed under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an under-trial, without commencement or reasonable progress of trial, effectively converts pre-trial detention into a form of punishment.

Prolonged incarceration pending trial, especially where evidence is largely documentary and already in the custody of the prosecution, weighs decisively in favour of bail.

JUDGMENT

Alok Aradhe, J.

1. Leave granted

2. This appeal is directed against the judgment and order dated 19.08.2025, passed by learned Single Judge of the High Court of Delhi, by which the application preferred by the appellant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') read with Section 45 of the Prevention of Money Laundering Act, 2002 ('PMLA') seeking grant of regular bail, came to be rejected.

3. The appellant is a former promoter and non-executive Chairman of Amtek Auto Ltd. (AAL), and is also nonexecutive Director of M/s. ACIL Ltd., a company registered under the Companies Act. The group of companies including subsidiaries and associate concerns is collectively referred to as the "Amtek Group". During the period 2017-2018, Corporate Insolvency Resolution Process (CIRP) was initiated against entities belonging to Amtek Group.

4. FIRs were registered on 21.12.2022 at the instance of IDBI Bank and Bank of Maharashtra alleging commission of offences under Sections 120B, 420, 406, 468 of the Indian Penal Code and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, wherein the appellant was arrayed as an accused along with twenty seven other individuals. In the aforementioned FIRs there is an allegation of fraud to the extent of INR 385.35 crores and INR 289 crores respectively. On the basis of the said FIRs on 21.03.2023, the

Directorate of Enforcement registered two ECIRs alleging laundering of proceeds of crime.

5. A Writ Petition under Article 32 of the Constitution of India, being W.P. Criminal No(s). 246 of 2022 (Jaskaran Singh Chawla vs. Union of India and Ors.) was filed before this Court alleging failure of CBI and the Serious Fraud Investigation Office (SFIO) to investigate frauds allegedly committed by Amtek Group involving diversion and siphoning of bank loans amounting to Rs.33,400 crores. A two-Judge Bench of this Court, by an interim order dated 27.02.2024, directed the CBI and SFIO to conduct an exhaustive investigation and to cooperate with and complement the Enforcement Directorate in the collection of evidence.

6. The gravamen of the allegation against the appellant is that he is the ultimate beneficiary of the fraud which was a well-orchestrated scheme, executed at his behest, involving diversion and siphoning of public funds through layered entities, resulting in substantial wrongful loss to Public Sector Banks.

7. The appellant, in response to the summons issued to him under Section 50 of the PMLA, appeared on 19.06.2024 and his statement was recorded. The respondent carried out search and seizure operations on 20.06.2024, at the residence of the appellant and his statement was again recorded. The appellant was arrested on 09.07.2024.

A prosecution complaint dated 06.09.2024 was filed against 16 accused persons i.e., six individuals and ten companies, wherein, appellant was arrayed as an accused. Thereafter a supplementary prosecution complaint was filed on 02.08.2025 against 40 accused persons i.e., 22 individuals and 18 companies. Out of 28 individuals, only the appellant has been arrested and is in custody. A total number of 208 prosecution witnesses have been cited. The cognizance of prosecution complaint is yet to be taken.

8. On 16.12.2024, the appellant moved an application under Section 45 of the PMLA for seeking bail before the Special Judge. The Special Judge by an order dated 21.01.2025 dismissed the application on the ground that the appellant is not covered by proviso to Section 45 of the PMLA. Thereafter, on 04.02.2025, the appellant approached the High Court by filing an application under Section 483 of the BNNS and Section 45 of PMLA, along with an application for interim bail. The appellant was granted interim bail on medical grounds on 11.03.2025 till 01.04.2025. By the impugned order dated 19.08.2025, the High Court rejected application for regular bail.

9. Learned senior counsel for the appellant submitted that appellant is aged

about 64 years and suffers from multiple ailments. It is further submitted that appellant is in custody for past about 16 months and 20 days and his long incarceration, is violative of the Right to Liberty and speedy trial under Article 21 of the Constitution. In support of the aforesaid submission, reliance is placed on decisions of this Court¹.

It is pointed out that out of 28 individuals only the appellant has been arrested and investigation qua the appellant stands concluded. In this connection, reference has been made to order dated 20.08.2025 passed by the Special Court which records the submission of the ED. It is, therefore, contended that the custody of the appellant is no longer required. It is urged that no cognizance of the prosecution complaint has been taken and the matter is at the stage of scrutiny of documents.

10. It is submitted that there is no likelihood of trial commencing in foreseeable future. It is pointed out that delay in trial of approximately eight months is attributable to the respondent, as it had filed Crl. MC No.7860 of 2024 before the High Court challenging the order dated 07.09.2024 issuing notice to the proposed accused person. It is pointed out that in the said proceeding, the High Court had granted an interim order of deferment of proceeding before the Special Judge and after eight months, respondent, on 23.05.2025, withdrew the said proceeding.

11. It is urged that the appellant has cooperated with the investigation and the allegation with regard to influencing the witness, Ms. Anuradha Kapur, is incredulous as the appellant has been in custody since 09.07.2024 and aforesaid Ms. Anuradha Kapur has been arrayed as a witness in supplementary prosecution complaint dated 02.08.2025. Therefore, the question of instructing the said witness not to join the investigation prior to issue of summons to her does not arise.

It is pointed out that all close family members of the appellant have fully participated in the investigation. It is contended that the appellant is in custody since 09.07.2024 and has no knowledge of dissipation of properties at Panipat and Alwar. It is submitted that the appellant is not the Director of M/s. Marichika Properties and, therefore, has no knowledge about dissipation of properties mentioned in the chart at page 125 of the counter affidavit.

12. It is submitted that the allegations in the predicate offence allege a total bank fraud to the tune of INR 673.35 crores, therefore, the figure of INR 38,000 crores is deliberately exaggerated to project the instant case as India's largest bank fraud to justify the prolonged custody of the appellant. It is urged that it is settled law that economic offences cannot be classified as

separate class on its own for determination of grant of bail². It is also stated that the appellant is neither a flight risk nor can he tamper with the evidence. Therefore, the appellant is entitled to be enlarged on bail.

13. On the other hand, learned Additional Solicitor General submitted that the gravity of the offence disentitles the appellant from seeking any exemption from the mandatory twin conditions of bail under Section 45 of the PMLA. It is further submitted that the appellant is an influential person and had instructed his cousin, Ms. Anuradha Kapur, who is a dummy director in his group of companies, not to join the investigation. It is also submitted that the appellant has dissipated the proceeds of crime i.e., immovable properties at Alwar and Panipat after attachment.

It is contended that mere incarceration for a long period cannot be a sole ground for bail, ignoring the gravity of an offence especially when there are allegations of tampering with evidence and influencing witnesses³. It is contended that delay in trial, if any, is attributable to the appellant, which is evident from the order sheet of the Trial Court. It is further contended that the proviso to Section 45(1) of the PMLA has no application to the facts of the case.

14. It is submitted that out of 210 witnesses to be examined during the trial, 25 witnesses are common in both the prosecution complaints. It is pointed out that out of 63,691 pages of relied upon documents, only few pages are relevant to prove the loss. It is further pointed out that ED has filed an application on 27.09.2025 for day-to-day hearing. It is submitted that the appeal is liable to be dismissed. Alternatively, it is also pointed out that in many serious cases, this Court has directed the parties to re-apply for bail after sometime⁴ and the appellant, depending upon the progress of the trial, be directed to renew the prayer for bail after six months.

15. We have given our thoughtful consideration to the rival submissions and have carefully perused the record. The court while dealing with the prayer for grant of bail has to consider gravity of offence, which has to be ascertained in the facts and circumstances of each case. One of the circumstances to consider the gravity of offences is also the term of sentence i.e., prescribed for the offence, the accused is alleged to have committed⁵. The court has also to take into account the object of the special Act, the gravity of offence and the attending circumstances along with period of sentence.

All economic offences cannot be classified into one group as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the Court to categorize all the offences into one

group and deny bail on that basis⁶. It is well settled that if the State or any prosecuting agency including, the court, concerned has no wherewithal to provide or protect the fundamental right of an accused, to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious.

Article 21 of the Constitution applies irrespective of the nature of the crime⁷. The aforesaid proposition was quoted with approval by another two-Judge Bench of this Court and it was held that long period of incarceration for around 17 months and the trial not even having commenced, the appellant in that case has been deprived of his right to speedy trial⁸.

16. A two-Judge Bench of this Court in V. Senthil Balaji's case⁹ has held that under the statutes such as PMLA, where maximum sentence is seven years, prolonged incarceration pending trial may warrant grant of bail by Constitutional Courts, if there is no likelihood of the trial concluding within a reasonable time. Statutory restrictions cannot be permitted to result in indefinite pretrial detention in violation of Article 21.

17. A three Judge Bench of this Court in Padam Chand Jain (supra), reiterated that prolonged incarceration cannot be allowed to convert pretrial detention into punishment and that documentary evidence already seized by the prosecution eliminates the possibility of tampering with the same.

18. The right to speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an undertrial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pretrial detention into form of punishment. Economic offences, by their very nature, may differ in degree and fact, and therefore cannot be treated as homogeneous class warranting a blanket denial of bail.

19. In the backdrop of aforesaid well settled parameters with regard to exercise of jurisdiction for grant of bail in economic offences, we now advert to the facts of the case in hand. The appellant has joined the investigation even prior to his arrest i.e., 19.06.2024 and 02.07.2024 as well as on 09.07.2024. Thus, he has cooperated with the investigation. Out of 28 individuals, only the appellant has been arrested. The order dated 20.08.2025 of the Special Court records the submission of ED that investigation qua the appellant has concluded. The maximum sentence which can be imposed on the appellant is seven years.

The appellant is in custody for past around 16 months and 20 days. It is

pertinent to note that various Benches of this Court, while taking into account the period of incarceration which ranges from 3 months to 17 months in several cases have granted bail to the appellants therein¹⁰. In the instant case, no cognizance has been taken on the prosecution complaint and the proceeding is at the stage of scrutiny of documents.

No material has been placed on record to show the fate of the application filed by the ED on 27.09.2025 seeking day-today hearing even after period of approximately three months has expired. There are 210 witnesses to be examined in the proceeding. There is no likelihood of trial commencing in the near future. The continued incarceration in such circumstances, particularly where the evidence which is primarily documentary in nature, is already in custody of the prosecution, violates the right of the appellant to speedy trial under Article 21 of the Constitution of India.

20. As regards the allegation that the appellant instructed Ms. Anuradha Kapur not to join the investigation, the same does not inspire confidence, particularly, in view of the fact that appellant has been in custody prior to concerned witness being formally arrayed as a witness. It is noteworthy that the appellant is in custody since 09.07.2024 and Ms. Kapur was arrayed as a witness only on 02.08.2025. The allegation, therefore, is wholly incredulous.

21. The record reveals that the prosecution complaint was filed on 06.09.2024. The Special Judge issued notice on 07.09.2024 to all proposed accused persons under the proviso to Section 223 of BNSS. The respondent challenged the said order before the High Court, resulting in eight months stay of proceedings, before the Special Judge, which was lifted on 23.05.2025 only upon withdrawal of the petition. The delay in the trial is thus attributable only to the respondent, not the appellant.

22. The appellant has been in custody since 09.07.2024. The disposal of immovable properties occurred on 24.12.2024 and 17.02.2025 and pertains to M/s Marichika Properties, with which no material link to the appellant has been established. There is no evidence that the appellant was signatory to any sale document. The allegation of dissipation of proceeds of crime by him is, therefore, untenable at this stage.

23. For the foregoing reasons, the impugned judgment and order dated 19.08.2025 is quashed and set aside. The appellant-Arvind Dham shall be released on bail during the pendency of the trial arising out of prosecution complaint-ECIR Case Nos. ECIR/GNZO/13/2024 and ECIR/GNZO/14/2024, pending before the Special Judge (PC Act) (CBI)-02(Duty Judge), Rouse Avenue District Court, under provisions of the PMLA. The terms and conditions for grant of bail shall be fixed by the Trial

Court.

24. In addition, the appellant will provide one telephone/mobile No. on which he can be contacted by the Officers of Directorate of Enforcement to ascertain his whereabouts while he is on bail. The appellant shall surrender his passport to the Trial Court and will not leave India without permission of the Trial Court.

25. In the result, the appeal is allowed.

.....J. [Sanjay Kumar]

.....J. [Alok Aradhe]

New Delhi;

January 06, 2026.

1 Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660, Padam Chand Jain v. Enforcement Directorate, (2025) SCC OnLine SC 1291, Udhaw Singh v. Directorate Enforcement, 2025 SCC OnLine SC 357, Prem Prakash v. Union of India, SLP (Crl.) No.691 of 2023 - Order dated 04.10.2024, Dineshchand Surana v. Asst. Director, ED, SLP (Crl.) No.15274 of 2024 - Order dated 06.08.2025, Union of India v. K.A. Najeed, (2021) 3 SCC 713, Kapil Wadhawan v. CBI, SLP (Crl.) No.16953 of 2025 - Judgment/Order dated 11.12.2025.

2 P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791.

3 Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 and B. Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70.

4 Bimal Kumar Jain v. Directorate of Enforcement, SLP (Crl.) No. 7942/2021.

5 P. Chidambaram (supra)

6 Satender Kumar Antil v. CBI (2022) 10 SCC 51

7 Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr. (2024) 9 SCC 813.

8 Manish Sisodia (supra)

9 V. Senthil Balaji v. Deputy Director, Enforcement Directorate, 2024 SCC

10 P. Chidambaram (supra) (three months), Kalvakuntla Kavitha v. Directorate of Enforcement, 2024 SCC OnLine SC 2269 (five months), Sanjay Agarwal v. Directorate of Enforcement, 2022 SCC OnLine SC 1748 (ten months), Sanjay Agarwal v. Directorate of Enforcement, 2022 SCC OnLine SC 1748 (eleven months), Ramkripal Meena v. Directorate of Enforcement, 2024 SCC OnLine SC 2276 (thirteen months), Anil Tuteja v. Directorate of Enforcement, SLP (Crl) No.3148 of 2025 (Order dated 15.04.2025), V. Senthil Balaji (supra) (fifteen months), Neeraj Singal v. Directorate of Enforcement, 2024 SCC OnLine SC 3598 (sixteen months), Abdul Razak Peediyakkal v. UOI, 2023 SCC OnLine SC 2326 (seventeen months) and Manish Sisodia (supra) (seventeen months)

IN THE SUPREME COURT OF INDIA

S. Nagesh

Vs.

Shobha

**[Criminal Appeal No. _____ of 2026
@ SLP (Crl.) No. 18127 of 2024]**

Head Note – Cognizance can't be taken on a cheque dishonor complaint filed belatedly unless the delay is condoned by the Court.

JUDGMENT

Sanjay Kumar, J

1. Leave granted.

2. Challenge in this appeal is to the order dated 28.06.2024 passed by a learned Judge of the Karnataka High Court in Criminal Petition No. 9119 of 2018. This petition was filed by S. Nagesh, the appellant before us, under Section 482 of the Code of Criminal Procedure, 1973, seeking the quashing of the complaint in PCR No. 3144 of 2013, which was converted as CC No. 1439 of 2014 on the file of the learned I Additional I Civil Judge and Judicial Magistrate First Class at Mysore¹. The learned Judge rejected the petition, holding that the delay of two days in the filing of the complaint was bonafide and cognizance had rightly been taken.

3. In her complaint in PCR No. 3144 of 2013, Shobha S. Aradhya, the respondent, averred as follows: The appellant had approached her husband and her, seeking financial assistance to purchase a house and to meet legal necessities. They lent him a sum of ₹5,40,000/- between the dates 27.01.2010 and 26.07.2010. He, thereafter, issued cheque dated 10.07.2013 drawn in her name for the said sum, assuring that it would be honoured upon presentation.

However, the cheque was dishonoured on 17.07.2013 for insufficiency of funds. She got issued legal notice dated 13.08.2013 calling upon the appellant to pay the cheque amount within 15 days but the same was returned as 'unclaimed' on 22.08.2013. However, the copy of the notice sent through courier was not returned unserved and the same amounted to deemed service. However, no payment was made by the appellant. She, thereupon, filed the complaint praying that the Court take cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881², and punish the appellant in accordance with law, apart from awarding her compensation.

4. The then learned Magistrate, after perusing the complaint and the documents, noted the presence of the complainant and took cognisance, vide order dated 09.10.2013. However, by order dated 23.05.2014, the successor learned Magistrate noted that, though there was a delay of two days in the filing of the complaint, his predecessor-in-office had already taken cognisance of the offence and granted liberty to the accused, viz., the appellant, to contest the delay at the time of the trial. The case was directed to be registered against the appellant for the offence punishable under Section 138 of the NI Act and summons were directed to be issued to him to appear on the next date of hearing. It was reiterated that liberty was granted to the appellant to contest the delay at the time of the trial.

5. Thereafter, by order dated 04.02.2016, the learned Magistrate noted that an application had been filed for condonation of the delay of two days in the presentation of the complaint and opined that the same required to be considered before the case went to trial on merits. Having considered the objections on the said application, the learned Magistrate passed order dated 30.10.2018 allowing it.

Therein, it was noted that the complainant had stated in the condone delay application that she was suffering from viral fever and was, therefore, unable to present the complaint within time. The learned Magistrate also took note of the medical certificate produced by her, wherein it was stated that she was suffering from viral fever and was under treatment from 04.10.2013 to 07.10.2013. Opining that the delay of two days in the presentation of the complaint was purely bonafide, the learned Magistrate allowed the application; condoned the delay in the filing of the complaint; and directed issuance of a non-bailable warrant against the appellant.

6. Aggrieved by this turn of events, the appellant approached the High Court by way of Criminal Petition No. 9119 of 2018. This petition was filed on 06.12.2018. Therein, the appellant contended that there was a delay of sixteen days in the filing of the complaint and not just two days. He pointed out that the respondent had filed the complaint on 09.10.2013 and cognisance was taken by the learned Magistrate on the very same day.

He contended that this procedure was totally opposed to the scheme of the NI Act. He further contended that the condonation of the delay of two days by the learned Magistrate, vide order dated 30.10.2018, was equally without jurisdiction and contrary to the statutory provisions. His specific argument was that the learned Magistrate did not have the jurisdiction to take cognisance before the delay was condoned and the steps taken to the contrary were in violation of the prescribed procedure. He also contested the matter on merits, denying his liability, and prayed for quashing of the complaint.

7. Perusal of the impugned order dated 28.06.2024 passed by the High Court reflects that the solitary issue focused upon by the appellant before the learned Judge was that the learned Magistrate could not have taken cognisance without first condoning the delay in the filing of the complaint. The learned Judge concurred with the view taken by the learned Magistrate that the delay in the filing of the complaint was actually two days and not more and that it was bonafide, justifying its condonation.

Further, the learned Judge noted that the proviso to Section 142(1)(b) of the NI Act empowered the Court concerned to take cognisance of a complaint made even after the prescribed period of one month from the date on which the cause of action arose under clause (c) of the proviso to Section 138 of the NI Act, if the complainant satisfied the Court that he had sufficient cause for not making the complaint within that period. The learned Judge, therefore, observed that the legislature had conferred express power on the Court to take cognisance even in respect of a belated complaint, if sufficient cause for such belated presentation was established by the complainant.

8. Per the learned Judge, whether the Court condoned the delay after taking cognisance or whether it first condoned the delay and then took cognisance did not, in any way, vitiate the taking of cognisance as what was of consequence was whether the Court had condoned the delay in the presentation of the complaint. The learned Judge held that, if cognisance is taken without the delay in the presentation of the complaint being condoned, it would only be a curable irregularity. According to the learned Judge, it is only when the Court failed to condone the delay altogether, during the pendency of the proceedings, and went on to adjudicate the matter on merits that the proceedings would stand vitiated.

9. On facts, the learned Judge observed that the learned Magistrate had taken cognisance on 09.10.2013 without noticing that the complaint had been filed with delay, perhaps being misled by the erroneous averment in the complaint that it was filed within time. However, upon noticing the delay of two days in the presentation of the complaint, the learned Magistrate had observed that his predecessor-in-office had taken cognisance without noticing the delay and kept the said issue alive.

The learned Judge held that, as the complaint was of the year 2013 and the matter had been pending for more than 11 years, there was no justification in considering the delay of two days in the filing of the complaint as of consequence. The learned Judge affirmed the condonation of that delay by the learned Magistrate and upheld the cognisance taken, though it was irregular, observing that the said irregularity stood cured on the delay being condoned. The appellant's petition was, accordingly, dismissed.

10. The learned counsel for the appellant would argue that cognizance could not have been taken by the learned Magistrate of the belated complaint filed by the respondent without first considering and condoning the delay in the presentation of the complaint, provided sufficient cause was shown for such delay by her. He would contend that, in the light of the law laid down by a 3-Judge Bench of this Court in *Dashrath Rupsingh Rathod vs. State of Maharashtra* and another³, the learned Judge of the High Court was in error in rejecting the quash petition of the appellant.

11. Despite service of notice, the respondent did not choose to enter appearance before this Court till after the judgment in this case was reserved on 02.12.2025. However, a mention was made on 05.12.2025 by the learned counsel who was instructed to appear for the respondent. He was, accordingly, permitted to file his written submissions after entering appearance for the respondent. In his written submissions, the learned counsel admitted that the respondent's complaint was filed on 09.10.2013 and cognizance was taken on the very same day.

Though the learned counsel stressed upon the order dated 23.05.2014 passed by the learned Magistrate remaining unchallenged, we may note that it was only on 30.10.2018 that the learned Magistrate condoned the delay of two days, thereby validating the cognizance taken by his predecessor-in-office even before an application for condonation of delay was filed. Therefore, the failure of the appellant to challenge the earlier orders is of no consequence. More so, as the learned Magistrate had, in fact, reserved the right of the appellant to raise the issue of delay during the trial but, having stated so, the learned Magistrate, thereafter, took upon himself the task of deciding the limitation issue and condoned the delay by the later order dated 30.10.2018.

12. At this stage, we may note that, in *Dashrath Rupsingh Rathod* (supra), it was held that cognizance under Section 142 of the NI Act of an offence under Section 138 thereof is forbidden except upon a complaint, in writing, made by the payee or holder of the cheque in due course within one month from the date the cause of action accrues to such payee or holder under clause (c) of the proviso to Section 138. It was observed that the proviso to Section 138 simply postpones institution of criminal proceedings and taking of cognizance by the Court till such time the cause of action in terms of clause (c) of the proviso accrues to the complainant.

13. We may note that the proviso to Section 142(1)(b) of the NI Act was inserted by Act 55 of 2002, with effect from 06.02.2003. Section 142(1)(b), to the extent relevant, reads as under: -

142. Cognizance of offences.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

(a)

(b) such complaint is made within one month of the date on which the cause of action arises under clause

(c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

14. It is manifest from the clear and unambiguous language of the above proviso that the power conferred upon the Court to take cognizance of a belated complaint is subject to the complainant first satisfying the Court that he had sufficient cause for not making the complaint within time. The satisfaction in that regard, resulting in condonation of the delay, must therefore precede the act of taking cognizance. Ordinarily, a proceeding instituted with limitation-linked delay before a Court of law does not actually figure as a regular matter on its file until that delay is condoned.

For example, Order XLI Rules 3A and 5(3) of the Code of Civil Procedure, 1908, make this position amply clear in the context of belated presentation of civil appeals. Therefore, the approach of the High Court in treating this crucial aspect as a mere interchangeable exercise, i.e., either to first condone the delay or to first take cognizance, is not in keeping with the mandate of the aforestated proviso. We may note that the respondent was herself responsible for this imbroglio as she had made a categorical statement in her complaint that it was filed within time, when it was not.

15. On the above analysis, we have no hesitation in holding that the learned Magistrate erred in taking cognizance of the respondent's complaint under Section 138 of the NI Act, even before the delay of two days in its presentation was condoned. The order passed by the High Court refusing to quash the same is, thus, set aside.

The appeal is accordingly allowed. In consequence, the complaint in PCR No. 3144 of 2013, which was converted as CC No. 1439 of 2014 on the file of the learned I Additional I Civil Judge and Judicial Magistrate First Class, Mysore, shall stand quashed.

.....J. [Sanjay Kumar]

.....J. [Alok Aradhe]

New Delhi

January 06, 2026

1. For short, 'the learned Magistrate'
2. For short, 'the NI Act'
3. (2014) 9 SCC 129

IN THE SUPREME COURT OF INDIA

Md Imran @ D.C. Guddu

Vs.

State of Jharkhand

**[Criminal Appeal No. _____ /2026
arising out of SLP (Crl) No. 12110/2025]**

**[Criminal Appeal No. _____ /2026
arising out of SLP (Crl) No. 19548/2025]**

Head Note - Bail shouldn't be denied unless there's strong and convincing evidence showing serious involvement.

When a person is added as an accused under Sec. 319 Cr.P.C. and that person is ultimately arrested and prays for bail, the relevant consideration at the end of the court while considering his plea for bail should be the strong and cogent evidence than mere probability of his complicity.

The Court laid down a structured approach for considering bail in cases involving an accused summoned under Section 319 CrPC, i.e.,

1. The evidence must disclose more than a mere prima facie case, which is ordinarily sufficient for framing charges.
2. At the same time, it need not meet the higher threshold of satisfaction that the evidence, if unrebutted, would necessarily lead to conviction.
3. There must, however, be strong and cogent evidence indicating the accused's complicity, justifying continued custody.

JUDGMENT

1. Leave granted.
2. Since the issues involved in both the captioned appeals are the same, those were taken up for hearing analogously and are being disposed of by this common order.
3. So far as the Appeal arising out of S.L.P. (Crl) No. 12110/2025 is concerned, the same has been filed by one MD Imran @ D.C. Guddu.
4. The appeal filed by Imran @ D.C. Guddu arises from the order passed by the High Court of Jharkhand at Ranchi dated 08.04.2025 in BA No.2758/2025 by which the bail application filed by the appellant in connection with Daily Market Police Station Case No. 46 of 2018, arising out of S.T. No. 100239 of

2019 registered for the offence punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code (for short "IPC") respectively and Sections 25(1-B)/A/26/27/35 of the Arms Act respectively came to be rejected.

5. It appears from the materials on record that the appellant herein viz. MD Imran @ D.C. Guddu was one of the accused persons named in the FIR lodged by the father of the deceased.

6. The FIR was registered against in all nine accused persons. At the end of the investigation chargesheet came to be filed only against three accused persons, whereas the closure report was filed so far as the other six co-accused are concerned. In the course of the trial, the eye-witnesses to the incident who are all family members of the deceased deposed as regards the involvement of all the nine accused persons originally named in the FIR.

7. The depositions of the eyewitnesses were recorded sometime in 2020 and 2021 respectively. In the year 2022 the first informant preferred an application under Section 319 of the Cr.P.C., before the trial court with a prayer that the other six co-accused who came to be dropped by the police should be added and summoned as accused to face the trial. Such application was filed on the strength of the oral evidence of the eye-witnesses which came on record.

8. The application filed by the first informant was looked into by the trial court and ultimately the same came to be partly allowed. Out of the six accused who were dropped, the trial court thought fit to summon three accused persons. So far as the other three are concerned, the trial court did not deem fit to add them in exercise of its powers under Section 319 of the Cr.P.C.

9. It is not in dispute that the original order passed by the trial court under Section 319 of the Cr.P.C. never came to be challenged. It attained finality. The appellant herein MD Imran @ D.C. Guddu came to be arrested pursuant to a nonbailable warrant issued against him. In so far as the respondents in the connected matters are concerned, before they could be arrested, they went before the High Court and prayed for anticipatory bail. The High Court granted them anticipatory bail.

10. In such circumstances referred to above, we have two appeals before us one filed by the accused MD Imran @ D.C. Guddu who came to be arrested and is in judicial custody and the connected appeal has been filed by the State of Jharkhand being aggrieved by the order passed by the High Court releasing the other two co-accused on anticipatory bail.

11. Since the three accused have now been summoned, the trial against them will have to proceed afresh. We are informed that charges have been framed.

12. We heard Mr. Samant Singh, Mr. Rakesh Kumar Singh & Mr. Ganesh Khanna, the learned counsel appearing for the respective accused persons and Ms. Pragya Baghel, the learned counsel appearing for the State of Jharkhand.

13. We looked into the matter threadbare. We also looked into the oral evidence of the eyewitnesses on the strength of which the three accused have now been summoned to face the trial for the offence of murder.

14. When a person is added as an accused under Section 319 Cr.P.C. and that person is ultimately arrested and prays for bail, the relevant consideration at the end of the court while considering his plea for bail should be the strong and cogent 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.

The Court should weigh factors like the nature of the offence, the quality of the evidence against the new accused and the likelihood of the person absconding or tampering with evidence. In other words, the court must be satisfied that there is strong and cogent evidence of the person's complicity at the threshold i.e. much higher than that required for framing charges against the original accused.

15. The other two co-accused namely MD Samsher and MD Arshad respectively are already on anticipatory bail since 02.07.2025. We are informed that they have been appearing before the trial court on all dates.

16. Since the matter is at large before the trial court, we need not observe anything further.

17. It is ordered that MD Imran @ D.C. Guddu shall be released on bail subject to terms and conditions that the trial court may deem fit to impose.

18. So far as the other two accused are concerned, they are already on anticipatory bail. No case is made out by the State for cancellation of anticipatory bail.

19. In the result, the appeal filed by MD Imran @ D.C Guddu stands allowed and the appeal filed by the State of Jharkhand stands dismissed.

20. We make it clear that all the three accused shall regularly appear before the trial court and cooperate in expeditious disposal of the trial.

21. We further make it clear that the observations in this order are only for the purpose of deciding the bail application of MD Imran @ D.C. Guddu as well as for consideration of the State appeal against the order granting anticipatory bail to Md. Shamsheer Alam and Md. Arshad. The trial court will proceed in accordance with law and the trial court will not be influenced by the observations in this order.

22. Pending Application(s) if any shall stand disposed of.

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

.....J. [K.V. Viswanathan]

New Delhi;

January 07, 2026.

IN THE SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs.

Anurudh and Anr

[Criminal Appeal No. _____ of 2026

@ Petition for Special Leave to Appeal (Crl.) No. 10656 of 2025]

Head Note - Suggested the Union Government to introduce a “Romeo-Juliet” clause in the POCSO Act to exempt adolescents who engage in consensual relationships from criminal prosecution, despite being below the age of consent (18 years) and having only a minor age difference.

A “Romeo-Juliet” clause, widely recognised in several jurisdictions, provides an exception to statutory rape laws where the age difference between the parties is minimal and the relationship is consensual. The purpose is to prevent harsh penal consequences in cases where two adolescents are close in age and willingly engaged in a relationship, distinguishing such situations from exploitative or abusive conduct.

JUDGMENT

For ease of reference, this judgment is divided into the following parts:

Contents

The Appeal

Facts And Previous Proceedings

The Impugned Judgment

Question To Be Determined

Analysis And Determination

Relevant Provisions

What were the bases for the High Court's Conclusions and Directions?

The Jurisdictional Question

Whether the impugned directions rest on sound legal grounds?

Determination of the age of the victim - At what stage and by whom

Mini Trial- Impermissible at the stage of Bail

Medically Determining the Age of the Victim

Summation

Sanjay Karol J.,

1. Leave Granted.

THE APPEAL

2. The State of Uttar Pradesh, in this appeal by special leave, challenges the correctness of final judgment and order dated 29th May 2024 in CRMBA No. 4880 of 2024 passed by the High Court of Judicature at Allahabad, whereby the learned Single Judge granted bail to Respondent No.1 in connection with the First Information Report No.622 of 2022, PS Kotwali, Orai, District Jalaun, dated 24th November 2022 and issued a number of directions.

3. The question presented in this appeal, however, is not one of relative ease as an appeal against grant of bail and instead hinges on the scope of Section 439 of the Code of Criminal Procedure, 1973. In the High Court's own words- "The question of law which arises for consideration in this bail application is the nature of the legal duty cast on the police to draw up a medical report determining the age of a victim while investigating POCSO Act offences. The jurisdiction of this Court to determine this question will predicate the discussion on the merits of the bail."

FACTS AND PREVIOUS PROCEEDINGS

4. The facts, in a nutshell, are that Respondent no. 1 is accused of having committed offences under Sections 363, 366 of the Indian Penal Code, 18603 and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 20124 in the subject FIR, lodged at the instance of the mother of the victim, where the allegation is that her 12-year old girl had been abducted from her home. The Trial Court rejected bail by order dated 29th September 2023.

In the proceedings for bail before the High Court, by order dated 22nd April 2024 the Chief Medical Officer, Jalaun was directed to constitute a medical board for determination of the age of the victim. On 8th May 2024 the Court then released the accused on interim bail, observing that there was wide inconsistency in the age of the victim as in the school records, or as stated by her in her statement under Sections 161 and 164 CrPC regarding age/intimacy with the accused among other factors. In terms of the impugned judgment, the Court confirmed the said order, while adjudicating on the issue indicated above.

The Impugned Judgment

5. The observations of the High Court can be summarised thus:

5.1 The Court began by affirming that the jurisdiction exercised under Section 439 CrPC engages constitutional protection under Article 21. The right to bail has evolved beyond a purely statutory entitlement into a constitutionally safeguarded right. On this basis, the Court reiterated that when issues affecting personal liberty arise, such as legality of investigative procedures, they must be addressed directly within bail adjudication.

5.2 In assessing the age of the victim, the Court evaluated prior precedents of the High Court which collectively prescribe that medical determination of age under Section 164-A CrPC read with Section 27 POCSO Act is mandatory and is often a more reliable indicator than documentary entries. Reliance on *Pradeep Kumar Chauhan & Anr. v. State Of U.P & Ors.*⁵ (passed by a learned Single Judge of that High Court) is rejected as misplaced due to its habeas corpus context and its non-examination of statutory medical age provisions.

5.3 The statutory scheme was analysed to conclude that Sections 164-A CrPC and 27 POCSO Act obligate police to obtain the victim's medical age report at the commencement of investigation. Section 94 of the Juvenile Justice (Care and Protection) Act 2015⁶ supplements this mechanism. Failure to secure such a report rendered the statutory framework futile and opens scope for false implication via manipulated age claims.

5.4 On the factual matrix, the Court noted recurring systemic lapses wherein the police failed to obtain medical age reports, Trial Courts ignored scientifically assessed age, and consensual adolescent relationships were criminalised under the POCSO Act due to falsified age records. This systemic malfunction, according to the Court, necessitated corrective judicial directives.

5.5. Finally, applying law to fact, the Court accepted the medically determined age of the prosecutrix as above 18 years and consequently, allowed bail subject to conditions.

5.6 The directions issued are extracted in toto, as under:

"I) The police authorities/investigation officers shall ensure compliance of the directions rendered by this Court in *Aman* (supra) and ensure that the medical report determining the age of the victim is drawn up by the competent medical authority at the commencement of the investigations of POCSO Act offences in accordance with the provisions of the Section 164-A CrPC read with Section 27 of the POCSO Act.

II) The medical report of the victim determining her age and drawn up under Section 164-A CrPC. read with Section 27 of the POCSO Act shall be produced by the police authorities/investigation officers before the court hearing the bail application. The learned courts while hearing bail applications shall make due enquiries about the compliance of these directions and Aman (supra) during the bail proceedings.

III) The judgement of this Court rendered in Monish (supra), Aman (supra) as well as this case have to be read together and not in isolation. The directions in Aman (supra) as well as this case will be of little avail, if not examined and implemented in light of the directions made in Monish (supra).

IV) The age of the victim in bails arising out of POCSO Act offences has been determined by a composite reading of Section 94 of the Juvenile Justice (Care and Protection of Children) Act and Section 164-A of CrPC. read with Section 27 of the POCSO Act in light of the judgements rendered in Monish (supra), Aman (supra) and this case.

V) The court hearing the bail application has to accord full weight to the medical age determination report of the victim and also carefully examine all other documents relating to the victim's age. The court has to determine the credibility of the respective age related documents while deciding the bail application in the facts of the case. In appropriate facts and circumstances as in the instant case, the age determined by the competent medical authority under Section 164-A of CrPC. read with Section 27 of the POCSO Act can prevail over other age related documents (including school records)."

QUESTION TO BE DETERMINED

6. The question that this Court is called upon to consider is whether under Section 439, CrPC the High Court could have issued directions, mandating age determination test to be conducted in all cases involving the POCSO Act. This larger question involves twin considerations, one on the aspect of jurisdiction and the other on the aspect of law i.e., the postulate of the act regarding determination of age, and how the directions issued in the impugned judgement correspond to or are in contravention of the same.

ANALYSIS AND DETERMINATION

7. We have heard the learned senior counsel and learned counsel for the parties.

Relevant Provisions

8. Before proceeding further, the provisions of law involved in this appeal must be referred to.

8.1 Section 27 of the POCSO Act

"27. Medical examination of a child.-

(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution."

(emphasis supplied)

8.2 Section 164 of the CrPC

"[164A. Medical examination of the victim of rape.-

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:-

- (i) the name and address of the woman and of the person by whom she was brought;
 - (ii) the age of the woman;
 - (iii) the description of material taken from the person of the woman for DNA profiling;
 - (iv) marks of injury, if any, on the person of the woman;
 - (v) general mental condition of the woman; and
 - (vi) other material particulars in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- (5) The exact time of commencement and completion of the examination shall also be noted in the report.
- (6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- (7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.-For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53.]"

(emphasis supplied)

8.3 Section 94 of the Juvenile Justice (Care & Protection) Act 2015

"94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

(emphasis supplied)

8.4 Section 29 of the POCSO Act

"29. Presumption as to certain offences.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

What were the bases for the High Court's Conclusions and Directions?

9. Although we have, in earlier paragraphs of this judgement, summarised the reasoning of the High Court, let us now unpack the same with reference to the earlier judgements of the Court in *Aman@Vansh v. State of UP*⁷ and *Monish v. State of U.P.*⁸. Both these judgments as also the judgment impugned before us, have been passed by the very same learned Single Judge. Since *Monish* (supra) was earlier in point of time, we will take that up first.

9.1 The learned Single Judge in *Monish* (supra) held in substance, as follows: The Court examined two key questions of law: (i) whether the age of a victim under the POCSO Act should be determined as per Section 94 of JJ Act at the stage of bail, and (ii) whether the presumption of culpable intent under

Section 29 of the POCSO Act applies at that stage. After extensive review, the Court held that Section 94 of the JJ Act, 2015 which prescribes a conclusive method for age determination does not apply strictly to bail proceedings. Instead, the documents enumerated in Section 94 (such as school certificates or birth certificates) may be considered as evidence, but their correctness can be challenged by the accused at the bail stage.

The Court emphasized that such an assessment of age during bail proceedings is tentative, meant only for evaluating the prima facie case and not conclusive for trial purposes. The High Court had examined and synthesized the leading authorities of this Court, including *Abuzar Hossain @ Gulam Hossain v. State of West Bengal*⁹; *Parag Bhati (Juvenile) through Legal Guardian-Mother-Rajni Bhati v. State of U.P.*¹⁰; *Sanjeev Kumar Gupta v. State of U.P.*¹¹; *Rishipal Singh Solanki v. State of U.P.*¹²; and *Mukarrab v. State of U.P.*¹³. The collective import of these judgments is that the presumption of correctness attached to age-related documents under Section 94 of JJ Act, is not absolute but rebuttable, and that a Court may consider other credible materials or order further inquiry, whenever contradictions or doubts arise about the recorded age.

The Court further observed that accused persons have the right to question the veracity of age-related documents relied on by the prosecution. It clarified that bail courts must independently assess the credibility of such documents and may consider corroborative materials like medical reports or other records to resolve doubts regarding the victim's age. The Court frowned upon a rigid or formulaic approach to bail under the POCSO Act, stressing that decisions must be based on the specific facts and circumstances of each case.

Regarding the presumption of culpable intent under Section 29 of the POCSO Act, the Court held that such presumption does not apply at the pre-trial bail stage. The presumption becomes operative only once the trial begins and foundational facts are established through evidence. The right of the accused to contest this presumption and present a defence cannot be curtailed at the bail stage. The Court reaffirmed that constitutional and evidentiary principles must govern bail decisions, ensuring fairness and due process.

From a constitutional perspective, the Court reiterated that grant of bail is the rule and refusal the exception, aligning with settled principles under Article 21 of the Constitution of India. It noted that while the POCSO Act is a special statute aimed at protecting minors, it does not exclude the operation of standard bail principles under Section 439 CrPC. The Court, therefore, emphasized judicial discretion, proportionality, and individual case assessment as central to deciding bail. The Court held:

"78. The discussion then proceeded to probe the effect of Article 21 of the Constitution of India on the offending provisions for grant of bail. This enquiry was overlaid with a consideration of authorities "on the concept of due process in our constitutional jurisprudence whenever the court has to deal with a question affecting life and liberty of citizens".

85. In view of the constitutional moorings of the right of bail, curtailment of the said right cannot be permitted in absence of an express statutory mandate or contrary to the constitutional scheme. Nor can restrictions of on right of bail be readily inferred from a statute if other interpretations are possible."

The Court also discussed parameters of bail under the POCSO Act, holding that the nature and gravity of the offence, likelihood of conviction, chances of tampering with evidence, or absconding must be assessed in the light of constitutional protections. No additional restrictions on bail can be read into the POCSO Act beyond those under the general law. It was observed:

"88. Bails under POCSO Act offences have to be considered under Section 439 Cr.P.C. and in accordance with the settled parameters of grant of bail which include nature and gravity of the offences, and the likelihood of an accused having committed the offence. The possibility of the accused reoffending, influencing witnesses and tampering with evidence or being a flight risk are also relevant factors to be considered while deciding a bail application.

89. In POCSO Act related offences the age of a victim is a critical factor which will influence the decision to grant bail.

90. No provisions circumscribing the right of bail can be distilled from the scheme of POCSO Act. The existing norms of bail jurisprudence are sufficient to effectively implement the POCSO Act and to serve justice. Of course, the threshold of satisfaction of the Court while granting bail may vary in the facts and circumstances of each case." In conclusion, the Court found inconsistencies in the age-related evidence of the victim and the existence of a prima facie defence by the accused that the victim was a minor. The prosecution's reliance on unverified documents could not justify continued detention, particularly when material contradictions were apparent. Bail was therefore granted on legal and constitutional grounds.

9.2 Now, let us examine Aman (supra). The Court noted a recurring problem in POCSO cases: frequent contradictions in the recorded age of victims and false depiction of majority as minority, often leading to the weaponisation of the legislation against young couples in consensual relationships. Medical determinations of age, drawn per the latest scientific protocols, were deemed

more reliable and essential to prevent injustice. Referring to Sections 164-A CrPC and 27 POCSO Act, the Court held that a medical report determining the victim's age is a mandatory component of investigation in every POCSO case. Such reports assist Courts in making accurate findings, preventing false implication, and ensuring fair application of law. Accordingly, the Court issued directions:

"1. The police authorities/investigation officers shall ensure that in every POCSO Act offence a medical report determining the victim's age shall be drawn up at the outset under Section 164A of the Criminal Procedure Code read with Section 27 of the Protection of Children from Sexual Offences Act, 2012. The report may be dispensed with if medical opinion advises against it in the interests of the victim's health.

2. The medical report determining the age of the victim shall be created as per established procedure of law and in adherence to latest scientific parameters and medical protocol.

3. The medical report determining the age of the victim shall be submitted under Section 164-A of the Code of Criminal Procedure to the Court without delay.

4. The Director General (Health), Government of Uttar Pradesh, Lucknow shall also ensure that the doctors who comprise the Medical Board are duly trained and follow the established medical protocol and scientific parameters for determining the age of the victims in such cases. Constant research shall be done in this field to keep the reports in line with the latest scientific developments. A copy of this order be communicated by the learned Government Advocate to the Director General of Police, Lucknow, Uttar Pradesh for compliance and Director General (Health), Government of Uttar Pradesh,"

9.3 Although it did not place reliance on Pradeep Kumar Chauhan (supra) a significant portion of the judgement was devoted to answering its application, as contended by the advocate for the State; hence, it is important to refer thereto. The Court undertook a detailed examination of the applicability of Pradeep Kumar Chauhan (supra) and ultimately distinguished its ratio. The Court observed that while Pradeep Kumar Chauhan (supra) had been invoked in several bail applications to argue that the age recorded in school certificates is conclusive under Section 94 JJ Act, such reliance was misplaced.

The Court relied almost entirely on an earlier Full Bench decision Chandrapal Singh v. State of U.P.¹⁴ which had already undertaken a comprehensive analysis of the governing law on age determination under Section 94 of the JJ

Act. Relying on the reasoning in Chandrapal Singh (supra) the learned single Judge reaffirmed that Pradeep Kumar Chauhan (supra) did not correctly reflect this settled legal position. That decision had treated documentary proof of age such as school or matriculation certificates as final and conclusive, thereby excluding the possibility of further scrutiny.

It held that such a restrictive view was inconsistent with the this Court's liberal and contextual interpretation of Section 94 JJ Act. Accordingly, Pradeep Kumar Chauhan (supra) was distinguished and held to be inapplicable. The Court concluded that the determination of age, whether of a victim or an accused - must rest on the totality of credible evidence, and that the statutory presumptions under Section 94 JJ Act, though significant, are rebuttable and subject to judicial verification to ensure fairness and prevent miscarriage of justice.

The Jurisdictional Question

10. The High Court, while exercising bail jurisdiction issued the directions reproduced supra. One of the issues raised by the Appellant-State is that the same was beyond the scope of jurisdiction. The question of jurisdiction to issue these directions also confronted the learned Single Judge who answered the same stating that while exercising statutory jurisdiction, the High Court is not denuded of its constitutional status and, therefore, it is entirely open, to consider questions of law as in the present case. Observations in this regard are extracted hereunder:

"10. While sitting in bail determination, this Court is not denuded of its constitutional status. The High Court is a court of record and a constitutional court irrespective of the nomenclature of the jurisdiction it is exercising. Needless to add that the High Court always exercises its jurisdiction as per law. While deciding bail applications the High Court exercises a composite jurisdiction of statutory powers and constitutional obligations. At times legal issues which directly impinge on the fair administration of justice arise in bail jurisdiction.

The High Court cannot neglect consideration of such issues on the footing that they are beyond the scope of bail jurisdiction. The High Court always possesses the necessary powers to decide such issues for dispensing fair justice and to realize the fundamental rights of an accused in bail jurisdiction. Refusal to decide the said issues would amount to abdication of constitutional obligations of this Court. Issues arising in the instant case (and those referred in the judgment) directly impact the right of a prisoner to seek bail. They have to be decided by this Court with clarity in lawful exercise of bail jurisdiction and in the interests of equal justice."

11. Let us now, independently examine this issue.

11.1 Section 439 CrPC reads as under:

"439. Special powers of High Court or Court of Session regarding bail.-

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:

1[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

2[(1-A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860).]

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

11.1.1 In State of U.P. v. Amarmani Tripathi¹⁵, it was held:

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger

of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]].

While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

11.1.2. Vaman Narain Ghiya v. State of Rajasthan¹⁶, held thus:

"11. While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required. (See Niranjana Singh v. Prabhakar Rajaram Kharote [(1980) 2 SCC 559 : 1980 SCC (Cri) 508 : AIR 1980 SC 785] .)

Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, character of the evidence and amongst others the larger interest of the public. (See State of Maharashtra v. Anand Chintaman Dighe [(1990) 1 SCC 397 : 1990 SCC (Cri) 142 : AIR 1990 SC 625] and State v. Surendranath Mohanty [(1990) 3 OCR 462] .)"

11.1.3 In State v. M. Murugesan¹⁷, a two Judge bench of this Court analysed various judgements wherein it was concluded that the Court had overstepped the bounds of Section 439, viz., State of Punjab v. Davinder Pal Singh Bhullar¹⁸ wherein the concerned High Court had continued to pass orders with respect to offenders not connected with the instant case; Sangitaben Shaileshbhai Datanta v. State of Gujarat¹⁹ wherein the Court, in a bail application had directed the accused and his family to undergo a narco-analysis test and a brain mapping test; RBI v. Coop. Bank Deposit A/C HR. Sha²⁰ once again in a bail application, issued directions to the concerned bank to begin disbursing the amount thus far recovered from the accused in the case. Having referred to these judgements, it was held as under:

"11. We find that the learned Single Judge [M. Murugesan v. State, 2019 SCC OnLine Mad 12414] has collated data from the State and made it part of the order after the decision [M. Murugesan v. State, Criminal Original Petition No. 1618 of 2019, order dated 18-2-2019 (Mad)] of the bail application, as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the court.

(emphasis supplied)

11.1.4 In *Union of India v. Man Singh Verma*²¹, this Court through one of us, (Sanjay Karol J.,) set aside an order, passed while exercising bail jurisdiction, granting compensation to the extent of Rs. 5,00,000/- for wrongful confinement, as being without the authority of law.

11.2 The upshot of the above discussion is that a Court's jurisdiction, i.e., either the Court of Sessions or the High Court under Section 439 CrPC is limited to adjudicating the question of the person concerned being released into society pending trial or whether they should continue to be incarcerated.

11.3 It is unquestionable that High Court is a constitutional Court. However, in the instant case the error of jurisdiction by the High Court was in exercise of a statutory power and not under the Constitution. The powers arising from the Constitution and those flowing from a statute are distinct and separate. A constitutional power is the one which emanates directly from the text and spirit of the Constitution of India, the supreme and fundamental charter of governance, and inheres in those institutions or functionaries whose existence and competence are defined by it.

Such powers are self-sustaining; they are not contingent upon any act of the Legislature, nor can they be abridged or extinguished except through a formal amendment under Article 368. For example, the President's power to dissolve the Lok Sabha under Article 85(2)(b); the Governor's authority to reserve a bill for the consideration of the President under Article 200, or the jurisdiction of the Supreme Court under Article 32 are all in exercise of constitutional power. These powers represent the apex of the legal hierarchy, deriving their legitimacy not from the will of the people as expressed by Parliament, but from the sovereignty of the Constitution itself.

In contrast, a statutory power is derivative and conditional, drawing its vitality from a law duly enacted by the Parliament or a State Legislature. Such power exists only within the four corners of the enabling statute and is circumscribed by its language, purpose, and legislative intent. Illustratively, the powers conferred upon the Central Government under the Environmental (Protection) Act, 1986, to frame rules, issue directions, or regulate industrial operations are purely statutory in nature, as are the regulatory functions vested in the Securities and Exchange Board of India under the SEBI Act, 1992, or those entrusted to the Competition Commission of India under the Competition Act, 2002.

The exercise of these powers must conform strictly to the parameters laid down by the statute; any transgression beyond its express or implied authority is rendered ultra vires and, therefore, void in the eyes of law. The essential distinction between these two species of power lies not merely in their origin but also in their constitutional status and susceptibility to control. Constitutional powers are sovereign, foundational, and insulated from the vicissitudes of ordinary legislation; they can neither be curtailed nor expanded by parliamentary enactment. Statutory powers, by contrast, are subordinate and mutable, existing at the pleasure of the Legislature, which may at any time amend, restrict, or repeal them through the ordinary legislative process.

Judicial review, while applicable to both, assumes different contours in each case: in relation to constitutional powers, the Courts examine whether their exercise conforms to constitutional limitations including the protection of fundamental rights and the inviolable tenets of the basic structure whereas, in the case of statutory powers, the inquiry is confined to whether the authority has acted within the scope and purpose of the statute from which its power is drawn. The constitutional power cannot overshadow the statutory power, enlarging its scope beyond what has been envisaged by the statute. In other words, while both powers rest with the High Court, one power cannot usurp the ambit of another, unless otherwise permitted by law.

11.4 Let us understand this by way of an example. Suppose a dispute arises between the Government of State 'A' and the Government of the Union of India, concerning a statutory scheme. The State files a suit in the Supreme Court under Article 131 claiming the Union has over-stepped its power. Because Article 131 deals with original jurisdiction and involves questions of fact and law between governments, the Supreme Court may frame issues, permit evidence, summon and examine witnesses, and make findings of fact as part of its adjudication.

In the same case, imagine if a private party (or even the State) tries to approach the Supreme Court under Article 136, claiming injustice in a

judgment of a High Court or Tribunal in the same matter. While Article 136 gives the Court the power to grant leave to appeal, the Court cannot treat its jurisdiction under Article 136 as though it were a suit under Article 131. If the Court were to proceed under Article 136 but adopt the full evidentiary/litigation machinery of Article 131 (leading fresh evidence, summoning witnesses, conducting trial proceedings), it would step into the turf of Article 131 and thereby blur the distinction between the two powers. That would amount to an improper exercise of jurisdiction.

11.5 On the aspect of jurisdiction, consequent to the discussion above, we have no hesitation in holding that the High Court had erred in undertaking such an exercise of issuing directions and getting the age of the victim examined in an application seeking grant of bail . Whether the impugned directions rest on sound legal grounds?

12. Let us now turn our attention to the provisions of law involved. The purpose of doing so is to examine whether the directions issued by the High Court to mandatorily conduct a test for age verification at the inception of the investigation is sustainable in law, if this question of law is examined as divorced from the aspect of jurisdiction.

13. At the outset of this analysis, it is important to delve into the scope and ambit of the POCSO Act. Pardiwala J, writing for the Court in Just Rights for Children Alliance v. S. Harish²², examined in detail, the objects, reasons and scope of the legislation. Relevant paragraphs of the decision are extracted hereinbelow:

"43. The Statement of Objects and Reasons for the enactment of the POCSO makes it abundantly clear that since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalized, the POCSO has been enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and for matters connected therewith and incidental thereto.

44. It further states that the POCSO is a 'self-contained comprehensive legislation' for the purpose of enforcing the rights of all children to safety, security and protection from sexual abuse and exploitation countered through commensurate penalties as an effective deterrence for sexual offences and pornography and has been enacted keeping in mind Articles 15 and 39 of the Constitution respectively and the United Nations Convention on the Rights of the Children.

45. The primary legislative intent behind the enactment of the POCSO was to create a comprehensive legal framework that would not only punish offenders but also provide a child-friendly system for the recording of evidence, investigation, and trial of offenses. The POCSO was designed to cover all forms of sexual abuse against children, including sexual harassment, child pornography, and aggravated sexual assault, among others. It aimed to ensure the safety and dignity of child victims during the legal process, with specific provisions that mandate in-camera trials, the presence of a trusted adult during the proceedings, and the prohibition of aggressive questioning of child victims.

(emphasis in original)

Determination of the age of the victim - At what stage and by whom 13.1 Section 2(d) of the POCSO Act defines a child as any person below eighteen years. So, for the provisions of this Act to be applied, the person against whom the offence in question has been perpetrated must necessarily be below 18 years of age. This is the sine qua non. The natural question which then arises is how the age of victim is to be determined. *Jarnail Singh v. State of Haryana*²³ put this question to rest as follows:

"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above.

Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child.

In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is

to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion."

(emphasis supplied)

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007²⁴ it must be noted, provides the same hierarchy of documents as has been provided by Section 94 of the JJ Act. The same is reproduced below for felicity of reference:

"12.Procedure to be followed in determination of age.-

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which

will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

14. The High Court held that since the presumption of correctness attached to age-related documents under Section 94 JJ Act is rebuttable, challenge to the same would be open at the stage of bail and the view taken by the Court in such a challenge, would be "tentative". Analysis of the judgments referred to by the Court would be apposite.

14.1 In *Abuzar Hossain (supra)* a bench of three judges held as under:

"39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima

facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12.

The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected.

In Akbar Sheikh [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent."

14.2 In Parag Bhati (supra) a co-ordinate bench held as under:

"34. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the JJ Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

35. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.

36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , an enquiry for determination of the age of the accused is permissible which has been done in the present case."

(emphasis supplied)

14.3 In Sanjeev Kumar Gupta (supra) the question was whether the accused was entitled to claim the benefit of juvenility for an offence committed on 18th August 2015. The Juvenile Justice Board²⁵ at first allowed the plea but then on demand, eventually decided otherwise and rejected the said having considered evidence in that regard. The High Court reversed holding that the matriculation certificate issued by the CBSE would be given precedence over the opinion of the Medical Board.

The former recorded his date of birth as 17th December 1998 whereas the latter recorded that on 9th November 2016, he was approximately 19 years of age. This Court set aside the findings of the High Court and restored the rejection of the plea of juvenility as returned by the JJB, having considered evidence on affidavit and arriving at the conclusion that his age would be determined as per the date of birth - 17th December 1995.

14.4 In Rishipal Singh Solanki (supra) this Court while dealing with an appeal filed by the father of the deceased noted the difference between the Rules 2007 and the JJ Act 2015. It was observed:

"29. The difference in the procedure under the two enactments could be discerned as under:

29.1. As per the JJ Act, 2015 in the absence of requisite documents as mentioned in clauses (i) and (ii) of Section 94(2), there is provision for determination of the age by an ossification test or any other medical age related test to be conducted on the orders of the Committee or the JJ Board as per Section 94 of the said Act; whereas, under Rule 12 of the JJ Rules, 2007, in the absence of relevant documents, a medical opinion had to be sought from a duly constituted Medical Board which would declare the age of the juvenile or child.

29.2. With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007 has been provided under sub-section (2) of Section 94 of the JJ Act, 2015 as a substantive provision.

29.3. Under Section 49 of the JJ Act, 2000, where it appeared to a competent authority that a person brought before it was a juvenile or a child, then such authority could, after making an inquiry and taking such evidence as was necessary, record a finding as to the juvenility of such person and state the age of such person as nearly as may be. Sub-section (2) of Section 49 stated that no order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order had been made is not a juvenile and the age recorded by the competent authority to be the age of person so brought before it, for the purpose of the Act, be deemed to be the true age of that person.

30. But, under Section 94 of the JJ Act, 2015, which also deals with presumption and determination of age, the Committee or the JJ Board has to record such observation stating the age of the child as nearly as may be and proceed with the inquiry without waiting for further confirmation of the age. It is only when the Committee or the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, it can undertake the process of age determination, by seeking evidence.

31. Sub-section (3) of Section 94 states that the age recorded by the Committee or the JJ Board to be the age of the persons so brought before it shall, for the purpose of the Act, be deemed to be the true age of that person. Thus, there is a finality attached to the determination of the age recorded and it is only in a case where reasonable grounds exist for doubt as to whether the person brought before the Committee or the Board is a child or not, that a process of age determination by seeking evidence has to be undertaken." Then further, it was held-

"33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

(emphasis supplied)

14.5 Now we proceed to examine the merits of this argument. It is clear from the above that all of these cases discuss the determination of age from the point of view of the offender and not the victim. Although the process to be followed therefor is the same as that for an offender as held by Jarnail Singh (supra), the question involved in the instant lis concerns the forum and the stage at which the determination of age is to be made. According to the High Court, the bail Court would, if a challenge is presented by the offender, entertain such challenge and take a prima facie view. Here, it becomes important to appreciate the difference between the JJ Act and the POCSO Act.

14.5.1 The JJ Act is primarily focused on dealing with children in conflict with law and children in need of care and protection, rather than victims of offences who are minors. The Preamble and Section 1(4) of the Act expressly state that its purpose is to provide for the care, protection, treatment, development, and rehabilitation of such children and for the adjudication of matters relating to children in conflict with law. The Act establishes the JJB (under Sections 4-9) to handle cases involving juvenile offenders, and the Child Welfare Committee²⁶ (under Sections 27-30) to deal with children who require care and protection. Neither of these bodies are vested with jurisdiction over cases concerning child victims of crime.

The definitions provided under the Act, of a child in conflict with law and a child in need of care and protection, also clearly underscore this. The Act draws a fundamental distinction between two principal categories of children - children in conflict with law and children in need of care and protection each grounded in the philosophy of welfare, rehabilitation, and reintegration. A child in conflict with law refers to a person who has not completed eighteen years of age and is alleged or found to have committed an offence under any existing law.

To fall under this category, the requirements are, first, that the person must be below eighteen years of age at the time of the commission of the alleged offence, and second, that there is an allegation or finding of involvement in an act constituting an offence. The Act thus rejects the traditional punitive model of criminal jurisprudence and adopts a reformatory, restorative approach, recognizing that a child's deviant conduct often arises from a coming together in an unfortunate array of circumstances, of structural neglect, social disadvantage, or exposure to adversity. The focus, therefore, is on correction, guidance, and social reintegration through child-friendly processes before the JJB, ensuring that such children are treated not as offenders but as individuals in need of direction and support.

14.5.2 Conversely, a child in need of care and protection denotes a child whose condition of neglect, abuse, abandonment, or deprivation necessitates intervention by the State to secure their safety, welfare, and development. This classification embraces children who are orphaned or abandoned; those found begging, working, or living on the streets; those who are victims of cruelty, exploitation, or trafficking; those who are physically or mentally challenged and without adequate family support; and those at imminent risk of early marriage or neglect within the home, (which in a given case, could also be a victim). The essence of this definition lies in the child's exposure to vulnerability and the corresponding necessity of care, protection, and rehabilitation through the mechanisms of the CWC. The Act's protective framework thus ensures that children who are deprived of a nurturing environment are restored to stability, dignity, and opportunity through institutional or family-based care.

14.5.3 While these two categories emerge from different factual matrices, one involving alleged delinquency and the other deprivation, they converge upon a shared humanitarian foundation. Both are guided by the principle that every child is entitled to protection, dignity, and development, and that the justice system must operate with sensitivity and compassion. This Court has many-a-time emphasised that the administration of juvenile justice must rest on care and rehabilitation rather than punishment, highlighting the State's duty to protect all children from circumstances that impede their growth and well-being.

14.5.4 It is, however, imperative to recognise that neither of these statutory classifications - the child in conflict with law or the child in need of care and protection expressly includes within its ambit the category of child victims. Although both categories are designed to shield children from neglect and marginalisation, the Act does not explicitly address the position of children who are victims of offences, as those under POCSO Act. Unless such victims

independently satisfy the definitional parameters of vulnerability or abandonment, they fall outside the direct purview of these classifications.

This reveals a conceptual gap, as the legislative scheme, while comprehensive in its welfare orientation, does not formally integrate the rehabilitative and procedural rights of child victims within its framework. Nevertheless, the broader spirit of the Act, anchored in compassion, protection, and restorative justice demands that child victims, too, be accorded equivalent care, support, and rehabilitative attention, ensuring that every child, irrespective of circumstance, is empowered to reclaim their dignity and future.

14.6 Having discussed thus, the two separate fields that these two legislations govern, we now turn back to the question of age determination. If the POCSO Act is examined, it can be found that the Act does not prescribe a manner for determination of the age of the victim. As we have already noticed, it is an established position in law that the procedure under Section 94 of the JJ Act is to be applied.[See: Section 34 of the Act] When the question of determination of age of a child in conflict with the law emerges for the first time before a Court, the concerned legislation provides the procedure as housed in its Section 9 of the Act lays down the procedure to be followed when a person is brought before a Magistrate who is not empowered under the Act, and there arises a claim or reasonable doubt that such person is a child.

In such cases, the Magistrate must conduct an inquiry to determine the person's age in accordance with Section 94 of the Act, which prescribes the method for age determination. If, upon inquiry, the Magistrate finds that the person was a child at the time of commission of offence, the case must be immediately forwarded to the JJB having jurisdiction, which will thereafter deal with the matter as per the provisions of the JJ Act. Conversely, if the person is found not to be a child, the Magistrate proceeds with the case as per the regular criminal procedure. The object of Section 9 is to ensure that no juvenile offender is tried as an adult merely due to an initial misclassification and to safeguard the rehabilitative and welfare-oriented spirit of the juvenile justice system by ensuring that every child in conflict with law is tried by the appropriate forum, i.e., the JJB

14.7 As held in *Rishipal Singh*, extracted (supra) the determination of the age when done by a Court stands differently to that done by the JJB. There are two possibilities provided for. There is no determination of age by a JJB - like body when it comes to the victim. If there is a question about the age, it has to be dealt with by the Court, as per the procedure of Section 94, JJ Act. It is when the Court is undertaking the exercise of determination, that the defense of an accused can challenge the veracity of these documents, since the presumption under this section is rebuttable.

14.8 As is obvious and as we have observed, the victim being a child is sine qua non for the application of the POCSO Act. If a charge-sheet is filed and it contains charges against a person under the POCSO Act, it is but obvious that such an accused would challenge the same at the first available instance in the Court concerned, or in other words, at the inception of trial, so as to ensure that the foundation of the trial is correctly in place before it proceeds further.

The Court would then undertake the exercise as provided for, and in accordance with the result obtained therefrom, proceed further, either under the POCSO Act or under the provisions of the IPC, as the case may be. Should the accused be dissatisfied with the manner in which the result has been drawn by the Trial Court, an appeal from such determination would have to be filed and only when the question of age is set at rest can the trial proceed forward on firm footing.

14.9 Unlike an offender who can claim benefit of juvenility at any point in time, even after completion of proceedings given the beneficial nature of the JJ Act, a victim of a crime cannot claim to be a juvenile at any point in time, for the charges against which an offender is tried, are intrinsically tied to the age of the victim. If a victim of a sexual offence was allowed to claim juvenility at any stage of the proceedings, in the same manner that an offender can under Section 9 of the JJ Act, it would have serious procedural and substantive consequences.

For instance, an accused may have been charged under Section 376 IPC which applies when the victim is an adult. However, if the victim is later determined to be below eighteen, the offence would fall under the POCSO Act, where consent is irrelevant and the punishments are more stringent. This would mean that the earlier trial, framing of charges, and recording of evidence were all conducted under an incorrect legal framework. The proceedings would therefore be vitiated, and the trial could be rendered a nullity, necessitating the reframing of charges and a fresh trial under the correct statute.

14.10 As can be seen from Mahadeo v. State of Maharashtra²⁷, and Sanjeev Kumar Gupta (supra) the consideration of the documents enumerated in Section 94, JJ Act is a matter of consideration of evidence since it may involve the examination of witnesses to prove the veracity of the documents. That can only be done by the Trial Court. Contra evidence to challenge the documents, can also be presented only before the Trial Court.

In our considered view, therefore, the High Court fell in error in holding that a Court in bail jurisdiction is empowered to entertain a challenge to the 27

(2013) 14 SCC 637 documents as Section 94 would not apply at the bail stage.

Mini Trial- Impermissible at the stage of Bail

15. There is an additional aspect which, if the proposition as posited by the impugned judgment is upheld, would fall foul of. Such aspect would be that a Court, at the stage of bail cannot conduct a mini trial. This position is trite in law. Reference to the judgments as under would reiterate the same-

15.1 In *Union of India v. K.A. Najeer*²⁸, it was held by a bench of three judges that the High Court could not at the stage of bail conduct a mini trial and adjudicate, for instance, the admissibility of certain evidence.

15.2 In *Amlesh Kumar v. State of Bihar*²⁹, this Court observed that when a Court is exercising powers under Section 439 CrPC, such power does not permit the ordering of roving enquiries, or in the context of that case, the use of involuntary investigative techniques.

15.3 Let us also understand this by juxtaposition. Section 482 CrPC empowers the High Court to prevent abuse of the process of law and secure the ends of justice, including quashing criminal proceedings or staying investigations. Even under these broad powers, courts are not permitted to re-examine witnesses or conclusively decide disputed factual issues. Section 439, by contrast, is limited to granting bail or anticipatory bail and requires the Court to consider only prima facie evidence, the risk of the accused absconding, tampering with evidence, or other relevant factors. Since Section 439 is narrower in scope, the Court cannot undertake a mini trial at the bail stage.

Medically Determining the Age of the Victim

16. Apropos the above discussion, it is clearly held that determination of age of the victim is a matter of trial and not at the stage of bail. If the age is under question, the bail Court may examine the documents produced to establish age, but it will not enter into the question of those documents being correct or not so. The mandate of Section 94 JJ Act is clear. The documents provided therein are to be utilized for determination of the age of the victim, and only in the absence thereof, will medical evidence be resorted to. The decisions in *P. Yuvaprakash v. State*³⁰ and *Rajni v. State of UP*³¹ make this as evident as can be.

16.1 *Yuvaprakash* (supra) was a case involving the alleged kidnapping of one 'M', by the appellant, alleged forced marriage by tying a 'thali' around her neck, and thereafter, repeated sexual intercourse over a period of time, before

abandoning her when the accused persons came to know that M's loved ones had filed a complaint regarding her being kidnapped.

On appeal from a judgment of conviction returned by the Madurai Bench of the High Court of Judicature at Madras, this Court examined the proper method for determining a victim's age under Section 94(2) of the JJ Act. The statute established a clear hierarchy of documents: first, a matriculation or equivalent school certificate showing the date of birth; second, a birth certificate issued by a municipal corporation or panchayat; and third only if these were unavailable could a medical or ossification test be relied upon.

In the present case, the only document produced was a school Transfer Certificate indicating the date of birth as 11th July 1997. However, this Certificate was not one of the documents prescribed by the Section. Moreover, the Transfer Certificate was produced by a court - summoned witness rather than the prosecution, and the Revenue official confirmed that official birth records for 1997 were missing. Consequently, the Transfer Certificate could not establish that the victim was under 18 years of age at the relevant time.

16.1.1 The Court cited precedents, including *Rishipal Singh Solanki* (supra) and *Sanjeev Kumar Gupta* (supra), to reaffirm the statutory hierarchy i.e., only in the absence of matriculation/school certificates or municipal birth records could medical age-determination be used. In the facts, it was observed, the headmaster (DW-2) admitted that the date of birth in the school record was based on a horoscope rather than an independent verification, and no official birth register existed to support it.

16.1.2 Since the documents presented did not fall within the first two categories under Section 94(2), the Court held that the prosecution should rely on the medical ossification test. The doctor (PW-9) conducted such a test, concluding that the victim's age was "more than 18 years and less than 20 years," with cross-examination confirming the possibility of age being 19 years. The Court below had discounted this medical evidence, holding that the school record alone could determine age, but that reasoning was rejected, emphasizing that the Transfer Certificate did not meet the statutory standard.

16.1.3 Ultimately, the Court concluded that the only acceptable evidence on age was the medical ossification report, which indicated that the victim was above 18 years. As a result, the prosecution failed to prove that the victim was a "child" under the POCSO Act, meaning the statutory age requirement for the offence was not satisfied. He was, therefore, acquitted.

16.2 In Rajni, the juvenility of her son, Respondent No.2, was the central question and arose in the context of his being made an accused in connection with Crime No. 80/2021 registered before the Medical College Police Station, Meerut under Sections 302/201/34 of the IPC as well as Crime Case No. 97/2021 registered before the same police station under Sections 3/25/27 of the Arms Act, 1959. Rajni's application to have her son dealt with as a minor was rejected by the JJB, and the case eventually made its way up the judicial hierarchy, to this Court.

16.2.1 The respondent produced a School Certificate from DPS Higher Secondary School, Parvesh Vihar, Meerut, showing his date of birth as 8th September 2003. This Certificate, along with the admission date of 4th April 2016 and the High School passing year 2018, suggested that the respondent was about 17 years and 3 months old at the time of the incident. Notably, an earlier proceeding (Miscellaneous Case No.9/2000) had already accepted the same date of birth.

16.2.2 However, the JJB was skeptic about these documents, noting that records from Class 4 to Class 8 had been destroyed in a fire, and the respondent's mother could not recall the school's name. The school principal confirmed that original records for those classes were missing. In addition, the JJB rejected the municipal birth certificate from the concerned municipal corporation, which also indicated 8th September 2003, on the grounds that it had been issued on 8th June 2020 that is, after the incident. As a result, a medical examination of the respondent was ordered to determine his age.

16.2.3 The Court held this approach to be incorrect in view of the clear stipulation under Section 94(2) of the JJ Act. Here, both the municipal birth certificate and the school certificate were available, and both corroborated the earlier JJB decision. By disregarding these documents and relying on a medical test, the JJB had erred. The Additional District & Sessions Judge rightly reversed the JJB's decision, giving precedence to the school certificate and declaring the respondent a juvenile.

16.2.4 The Court also emphasized that the JJB could not challenge its earlier acceptance of the date of birth simply because the mother or informant was not a party in the prior proceeding. The JJB does not have the power to review its earlier decision under the JJ Act, and the earlier acceptance of 8th September 2003 should be binding. Consequently, the High Court upheld the Additional District & Sessions Judge's ruling and affirmed the date of birth reflected in the school certificate.

16.2.5 The Court referred to precedents such as *Rishipal Singh Solanki* (supra) which clarified that juvenility can be claimed at any stage, and that

initial burden lies on the claimant. Documents like school certificates or municipal birth certificates are prima facie sufficient to establish juvenility, while medical tests cannot serve as the sole criterion. When evidence is borderline, Courts are to lean in favor of juvenility, although misuse must be guarded against.

16.2.6 The discussion continued by distinguishing prior cases where medical tests were relied upon when documentary evidence was unreliable. In contrast, the present case involved consistent documentary evidence - the school certificate, municipal certificate, and earlier JJB decision - all supporting the date of birth as 8th September 2003. The JJB's reasoning that the informant was not a party in the earlier proceeding was found to be unsound. The Additional District & Sessions Judge had correctly reversed the JJB's approach, and the High Court had rightly affirmed that the respondent should be treated as a juvenile at the time of the incident.

17. The necessary sequitur from the above exposition is that a medical determination of age of a victim cannot be resorted to as a matter of course, much less mandated. It can only be employed in a given circumstance when the other stipulations of Section 94 JJ Act are not/cannot be met. This direction, therefore, has to be set aside.

SUMMATION

18. In fine, our conclusions are that the High Court in bail jurisdiction was coram non iudice for issuing directions mandating the investigating authorities within the State of Uttar Pradesh to necessarily have a medical examination of the victim conducted, with the particular intent to determine the age of the victim as also holding, that a bail Court would be empowered to entertain challenges to the documents produced to establish the age of the victim. The importance of medical examination in the harrowing crimes of sexual assault cannot be overstated, it is not merely a record of injury or a catalogue of biological traces; it is the voice of the body, speaking when words falter and memory trembles.

In cases where the victim's courage may be tested by stigma, shame, or the weight of societal scrutiny, medical evidence provides an impartial testament, grounding the pursuit of justice in the certainty of observable fact. It is, in essence, the bridge that links the personal suffering of the victim with the impartial adjudication of the law. But at the same time, its purpose, which is to gather essential evidence in a scientifically sound manner, with due regard to the principles of human dignity on one hand and evidence on the other, cannot be reduced to a common, matter of course step - especially when a procedure with a legislative imprimatur has been laid down. The Court could

not have passed directions that go against clearly stated legislative intent under Section 94 of the JJ Act.

The determination of the age of the victim is a matter for trial, and the presumption which is accorded to the documents enumerated under the Section, has to be rebutted there, for that is the appropriate forum to do so, not the bail Court. If the question of age is raised at the stage of bail, it is only open for the Court to, from the perusal of the documents, take a prima facie view as to the age of the victim, not one on the correctness of the documents since that would amount to a mini trial. It could also not have fused statutory jurisdiction with a constitutional one, lifting one to the other, or downgrading the higher to the lower in order to grant itself the wherewithal, in an otherwise fairly circumscribed jurisdiction, to do what could not be done.

A NECESSITATED POST-SCRIPT

19. As the conclusions drawn above indicate the impugned judgment and order of the High Court has to be set aside on grounds of transgression of the jurisdiction present and thereby lacking the appropriate directions. It is to be set aside also because it goes against the statutory prescription under the JJ Act. Be that as it may, this Court has not lost sight of the well-intentioned purport of this order. The POCSO Act is one of the most solemn articulations of justice aimed at protecting the children of today and the leaders of tomorrow. Yet, when an instrument of such noble and one may even say basic good intent is misused, misapplied and used as a tool for exacting revenge, the notion of justice itself teeters on the edge of inversion.

Courts have in many cases sounded alarm regarding this situation. Misuse of the POCSO Act highlights a grim societal chasm - on the one end children are silenced by fear and their families are constrained by poverty or stigma, meaning thereby that justice remains distant and uncertain, and on the other hand, those equipped with privilege, literacy, social and monetary capital are able to manipulate the law to their advantage. The impugned judgment is one amongst many where Courts have spoken out.

Not only are instances rife where the age of the victim is misrepresented to make the incident fall under the stringent provisions of this law but also there are numerous instances where this law is used by families in opposition to relationships between young people. In *Satish alias Chand v. State of U.P.*³², the High Court, noted that on few occasions concern had been expressed by the Court with respect to application of the Act on consenting adolescence when it comes to consensual relationships between teenagers, four factors have been highlighted which, is crucial for the Courts to consider:

"A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.

B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.

C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.

D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect."

[See also: Mrigraj Gautam @ Rippu v. State of U.P.]³³

The Delhi High Court in Sahil v. the State NCT of Delhi³⁴ the Court noted in para 11 of the order that POCSO cases filed at the behest of a girl's family objecting to romantic involvement with a young boy have become common place and consequent thereto these young boys languish in jails. Therein, reference is also made to an order of the Gujarat High Court³⁵, where the Court noted that considering the closeness in age of the prosecutrix and the accused as also the fact that she had left home of her own accord observed that the application deserved consideration. This chasm between access and abuse is also mirrored in the misuse of Section 498-A IPC and the Dowry Prohibition Act, 1961.

Amongst numerous examples, we may only refer to Rajesh Chaddha v. State of U.P.³⁶, where this Court lamented the use of these Sections without specific instances or relevant details, among other cases. It is also to be stated though that no amount of judicial vigilance against misuse can alone bridge this ever-widening gap. The first line of defence lies with the Bar i.e., the body that translates grievance into action and is the gatekeeper of justice at the point of entry. When it comes to matters such as these, the responsibility of the advocate is profound - to examine the allegations with detachment and necessary discretion and to counsel restraint when grievance masks vengeance and to refuse participation in litigation when it can be seen that an ulterior motive is sought to be agitated under the guise of seeking protection of the law.

It is only when the Bar takes a principled, proactive role, that the legislation intended as a shield can be stopped from being twisted into a weapon. A lawyer who tempers aggression with calm, reason and rationality, protects not only the opposing party from unwarranted harm but also the client from the long-term consequences of frivolous or malicious litigation, including adverse orders, and judicial censure. By taking a principled stand, the Bar acts as a crucial filter, preventing the legal system from being overwhelmed by abuse masquerading as enforcement. Such self-regulation strengthens public faith in the profession, ensures that judicial time is reserved for genuine disputes, and reinforces the foundational idea that law is a means of justice, not a weapon of convenience.

In this sense, the ethical vigilance of lawyers is not ancillary to justice, it is indispensable to it. When they do not do so, the chasm alluded to above widens. Society also must match institutional reform with moral awakening. The intent and object of these legislations must be at the forefront when a person wishes to lodge a complaint thereunder. The misuse of these laws is a mirror to the opportunistic and self-centered view that pervades the application of law. It is only through discipline, integrity and courage that these problems can be remedied and rooted out. Any legislative amendment or judicial direction will remain lack-luster without this deeper change.

We have referred to certain instances of the High Courts noting the misuse/misapplication of the POCSO Act, somewhat in line with the indices appended to the impugned judgment as also its progenitors. Considering the fact that repeated judicial notice has been taken of the misuse of these laws, let a copy of this judgment be circulated to the Secretary, Law, Government of India, to consider initiation of steps as may be possible to curb this menace inter alia, the introduction of a Romeo - Juliet clause exempting genuine adolescent relationships from the stronghold of this law; enacting a mechanism enabling the prosecution of those persons who, by the use of these laws seeks to settle scores etc.

20. In that view of the matter, we pass the following order:

(a) The appeal is allowed. The directions issued in the impugned judgment are set aside.

(b) In view of 'III)' as extracted in para 5.6 as also in view of their intrinsic connection, such effect will extend to Aman (supra) and Manish (supra)

(c) The bail granted in terms of these judgments and orders, is left undisturbed in view of the other factors considered by the learned Single Judge subject to judicial review, if any.

(d) Insofar as the cases listed in the appendices to these judgments are concerned, this Court refrains from making any comment. The effect of this judgment will be prospective and shall not therefore, impact negatively, any of those cases wherein, following the procedure laid down in the impugned judgment or its progenitors, bail has been secured.

(e) The Registrar (Judicial) is directed to dispatch forthwith a copy of this judgment to the learned Registrar General, High Court of Judicature at Allahabad, for necessary follow-up action, as also information to the Trial Courts. Pending applications, if any, stand disposed of.

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

January 09, 2026

1 FIR

2 CrPC

3 IPC

4 POCSO Act

5 Habeas Corpus Writ Petition No. - 733 Of 2020

6 JJ Act

7 2024:AHC:62260

8 2023:AHC:32270

9 (2012) 10 SCC 489

10 (2016) 12 SCC 744

11 (2019) 12 SCC 370

12 (2022) 8 SCC 602

13 (2017) 2 SCC 210

14 2022 SCC OnLine All 934

- 15 (2005) 8 SCC 21
- 16 (2009) 2 SCC 281
- 17 (2020) 15 SCC 251
- 18 (2011) 14 SCC 770
- 19 (2019) 14 SCC 522
- 20 (2010) 15 SCC 85
- 21 2025 SCC OnLine SC 456
- 22 2024 SCC OnLine SC 2611
- 23 (2013) 7 SCC 263
- 24 Rules 2007
- 25 JJB
- 26 CWC
- 28 (2021) 3 SCC 713
- 29 2025 SCC OnLine SC 1326
- 30 2023 SCC OnLine SC 846
- 31 2025 INSC 737
- 32 Crl.Misc.Bail Appl.No.18596 of 2024
- 33 2023: AHC : 204171
- 34 2024: DHC: 6100
- 35 Jayantibhai Babulbhai Alani v. State of Gujarat 2018 SCC Online Guj. 1223
- 36 2025 SCC OnLine SC 1094

IN THE SUPREME COURT OF INDIA

Kishorilal (D) through LRS. and Ors.

Vs.

Gopal and Ors.

**[Civil Appeal No. 172 of 2026
@ SLP (C) No(s). 36787 of 2017]**

**[Civil Appeal No. 173 of 2026
@ SLP (C) No(s). 397 of 2018]**

Head Note – Mere non-substitution of one of the legal heirs of a deceased party wouldn't render the suit abated if the deceased party's interest is adequately represented by other legal heirs.

Summarized the following legal principles:

(1) Before declaring a suit or proceeding to have abated on ground of non-substitution of the heirs/ legal representatives of a deceased party, the Court must examine whether the interest of the deceased party qua the subject matter of the proceeding is sufficiently represented by other parties already on record. If the interest of the deceased party is sufficiently represented by other parties already on record, and the decree/order eventually passed in the suit or proceeding would not be rendered nonexecutable for absence of that party, the suit or proceeding would not abate.

(2) In a suit for specific performance of an agreement for sale of an immovable property, vendor is a necessary party notwithstanding he has transferred his interest in the property to a third party. As a sequitur, a suit or an appeal emanating from such a suit would abate if, upon death of the vendor, his legal heirs/ representatives are not substituted.

(3) Though a transfer lis pendens is not always void, such transferee's title is subservient to the decree that may ultimately be passed in the pending suit. As a sequitur, a transferee lis pendens is not a necessary party in a suit for specific performance.

(4) However, a transferee lis pendens may pursue the appeal against a decree of specific performance against the vendor, as a legal representative/ inter-meddlor of the estate of the vendor. But, having regard to the nature of decree that is required to be passed in a suit for specific performance, as held in *Lala Durga Prasad and Ors. Vs. Lala Deep Chand and Ors.* (1953) 2 SCC 509 and *Dwarka Prasad Singh and Ors. Vs. Harikant Prasad Singh and Ors.*, (1973) 1

SCC 179 the vendor would have to be impleaded as a party in the appeal and on his death, on non-substitution of his heirs /legal representatives, the appeal would abate.

The law is settled that the vendor is a necessary party in a suit for specific performance of an agreement for sale, notwithstanding that vendor has transferred his interest in the subject matter of the agreement to a third party.

JUDGMENT

Manoj Misra, J.

SLP (C) No. 36787 of 2017

1. Leave granted.

Facts giving rise to appeal (i.e., SLP (C) No.36787 of 2017)

2. This appeal arises from Original Suit No. 5A of 1992 which was instituted by Gopal (first respondent) against Kishorilal (i.e., first appellant (since deceased), who is now represented through his LRs¹), inter alia, for declaration and injunction and, later, by way of amendment, for specific performance of agreement to purchase the suit scheduled property. During pendency of the suit, Brajmohan and Manoj (i.e., the appellants in the connected appeal), purchased the suit property from Kishorilal, vide sale-deed dated 20.04.1992.

3. The aforesaid suit was decreed on 18.10.2000. Aggrieved therewith, Kishorilal and the transferees lis pendens, namely, Brajmohan and Manoj, jointly filed appeal (i.e., F. A. No. 213 of 2000) before the High Court of Madhya Pradesh, Bench at Gwalior². During pendency of the appeal, Kishorilal died on 17.12.2005. Therefore, vide order dated 10.07.2006, his LRs, namely, (i) Suresh, (ii) Murarilal, (iii) Prakash and (iv) Sitabai were substituted as appellants No. 1(1), 1(2), 1(3) and 1(4), respectively.

4. On 22.07.2007 Murarilal i.e., appellant No. 1(2) died. On his death, the remaining appellants filed an application (i.e., IA No.17118 of 2010) on 19.10.2010 for deletion of Murarilal from the array of parties on the ground that interest of Kishorilal in the suit property is already represented by Brajmohan and Manoj (i.e., appellants No. 2 and 3 who had purchased the suit property) and other LRs of Kishorilal. The said application was allowed by order dated 09.05.2011, which reads as under:

"Heard on I.A. No. 17118/2010, which is an application under Order XXII Rule 2, 4(4) and under Section 11 of CPC (which should be read Rule 11) for

deleting the name of appellant no.1 who has died and sold the suit property to appellant no.2 and 3 who are his legal representatives.

Considering the averments made in this application, the same is allowed at the risk and cost of the appellants. The name of appellant no. 1 be deleted from the array of cause title within one week."

[Note: There appears typographical mistake in the above extracted order as the prayer in IA No.17118/2010 was not to delete Kishorilal (appellant no.1) from array of parties but to delete one of his LRs, namely, Murarilal i.e., appellant 1(2), as the estate of Kishorilal was represented by appellants 2 and 3 and other LRs of Kishorilal.]

5. On deletion of Murarilal's name from the array of parties in the appeal, and non-substitution of his LRs, an application (IA No.2667/ 2011) was filed by the plaintiff-respondent (i.e., Gopal) to dismiss the appeal as having abated. This application was dismissed by the High Court vide order dated 04.03.2013, which is reproduced below:

"Heard on I.A. No. 2667/2011, which is an application filed on behalf of respondents for treating the appeal as abated as the legal representatives of appellant Kishorilal have not been brought on record. Learned Counsel for the appellants submitted that appellants no.2 and 3 have already been brought on record as Legal Representatives of appellant Kishorilal vide order dated 09.05.2011 on the ground that the disputed property has been sold by Kishorilal to appellants no.2 and 3 therefore, appellants no.2 and 3, who are purchasers lis pendens, are legal representatives of appellant Kishorilal as the property has been purchased by them and legal heirs of appellant Kishorilal have no right, title or interest in the disputed property.

Since the Legal Representatives of appellant Kishorilal who are having the right, title and interest over the disputed property are already on record being appellants no.2 and 3, therefore, it cannot be said that the appeal has abated. Appellants may implead other legal heirs of appellant Kishorilal as Legal Representatives if they are necessary party in the appeal. List the case for final hearing in due course."

After the aforesaid order was passed, on 14.03.2013 an application (IA No.1438/ 2013) was filed, under Order 22 Rules 4 and 11 read with Order 1 Rule 10 of the Code of Civil Procedure, 19083, to implead heirs of Murarilal as respondents. On this application, an objection was filed by the plaintiff-respondent. However, the application was allowed vide order dated 03.05.2013, which is reproduced below:

"Heard on I.A. No. 1438/2013 which is an application under Order XXII Rule 4 and 11 C.P.C. and under Order I Rule 10 C.P.C. for deleting the name of original appellant no.1 as he has sold the property to appellant no.2 and 3 and to bring the Legal Representatives of appellant no. 1(2) on record. Other Legal Representatives of appellant no.1 are on record, therefore, there is no abatement of appeal. Let the necessary amendment be carried out within 7 days from today. List the case for final hearing in Second Week of July, 2013."

[Note: There appears some typographical error in this order as I.A. No.1438/2013 did not seek deletion of appellant no.1 rather it sought impleading the heirs of Murarilal as proforma respondents]

6. Thereafter, on 15.07.2017 an application was filed by the appellants for setting aside abatement of the appeal, if any, and for condoning the delay, if any, in the interest of justice. To this application, on 20.07.2017 an objection was filed by the plaintiff-respondent. While the aforesaid application was pending, an application was filed for recall of the order dated 09.05.2011 by which Kishorilal's name was erroneously deleted from the array of parties. To this application also, on 27.07.2017 an objection was filed by the plaintiff-respondent.

7. By the impugned order dated 12.09.2017, the High Court rejected the application of the appellants to recall the order dated 09.05.2011 and held that on deletion of Murarilal's name from the array of parties, the appeal had abated and, therefore, the appeal is liable to be dismissed as having abated. 8. Aggrieved by the order of the High Court dismissing the appeal as having abated, present appeal, by special leave, has been filed.

SLP (C) No. 397 of 2018

9. Leave granted.

Facts giving rise to connected appeal (i.e., SLP (C) No.397 of 2018

10. The connected appeal arises from Original Suit No. 10A of 1995. This suit was instituted by Brajmohan and Manoj (i.e., transferees of Kishorilal) for eviction of Gopal (i.e., plaintiff-respondent in the other appeal) from the suit scheduled property, inter alia, on the ground that the plaintiffs had purchased the suit property through sale deed executed by Kishorilal and the suit property is required for their use.

11. The Trial Court dismissed the suit vide judgment and order dated 18.10.2000. Against which, F. A. No. 217 of 2000 was filed before the High Court. As the High Court had dismissed First Appeal No. 213 of 2000 as

abated, the decree of specific performance in favour of Gopal attained finality, rendering the sale-deed in favour of Brajmohan and Manoj void, F.A. No.217 of 2000 was dismissed by the High Court vide separate order dated 12.09.2017.

12. Aggrieved by dismissal of F.A. No.217 of 2000, the present appeal has been filed, by special leave to appeal (i.e., SLP (C) No. 397 of 2018).

13. Since the decision of the High Court in F. A. No. 217 of 2000 is a consequence of dismissal of F.A. No. 213 of 2000 as abated, these two appeals were heard together and are being decided by a common judgment and order.

14. We have heard Sri Puneet Jain, Sr. Adv., for the appellant; and Sri Yatindra Singh, Sr. Adv., for the respondents.

SUBMISSIONS ON BEHALF OF APPELLANTS

15. Learned counsel for the appellants submitted:

(i) Kishorilal (i.e. judgment-debtor in O.S. No. 5A of 1992) had already transferred his interest in the suit scheduled property (i.e., subject matter of the agreement), therefore, his interest was fully represented by the purchasers i.e., transferees *lis pendens*, namely, Brajmohan and Manoj, who were on record as appellants No. 2 and 3 in F.A. No. 213 of 2000; hence, on death of Kishorilal, the appeal would not abate as the right to pursue the appeal survived on the surviving appellant(s).

(ii) A transfer hit by Section 52 of the Transfer of Property Act, 1882 (i.e. the doctrine of *lis pendens*) is not void though subservient to the rights of the parties under the decree or order which may be made in the suit or the proceeding. In such circumstances, Brajmohan and Manoj were entitled to represent the estate of Kishorilal not only as transferee but also as an intermeddler of the estate of Kishorilal.

(iii) Besides that, on death of Kishorilal, his four legal heirs, namely, Suresh, Murarilal, Prakash and Sitabai, were brought on record. Even if one of them died, the estate of Kishorilal was substantially represented through Suresh, Prakash and Sitabai. Hence, there was no question of abatement of the appeal for non-substitution of the legal representatives of Murarilal.

(iv) If Kishorilal's name was erroneously deleted after his death, it could be restored by recall/ correction. Moreover, his heirs and legal representatives were already on record, therefore, there was no question of abatement of the appeal.

(v) The High Court vide order dated 04.03.2013 had already negated the plea of abatement of appeal by observing that other LR's of Kishorilal were on record besides appellants No. 2 and 3 therefore, on non-substitution of one of the heirs of Kishorilal, High Court could not have declared appeal to have abated. Moreover, such declaration was barred by the principle of *res judicata*.

(vi) Otherwise also, High Court vide order dated 04.03.2013 had given liberty to implead other legal representatives of Murarilal, in case necessary, therefore, impleadment application was allowed vide order dated 03.05.2013. In such circumstances, when all LR's of late Kishorilal were on record, there was no justification to dismiss the appeal as having abated.

SUBMISSIONS ON BEHALF OF RESPONDENT(S)

16. Per contra, learned counsel for the respondents submitted:

(i) A suit for specific performance is for enforcement of contractual obligations. In such a suit, the decree must require the vendor and subsequent purchaser, if any, to execute the sale-deed in favour of decreeholder in terms of the agreement. This legal position is settled by this Court in *Lala Durga Prasad and Others v. Lala Deep Chand and Others*⁴, followed in *R.C. Chandiok and Anr. v. Chuni Lal Sabharwal and Ors.*⁵. Therefore, if all legal heirs of Kishorilal (i.e., vendor) including heirs of his legal heir (i.e., Murarilal) are not brought on record, within the limitation period, the decree of specific performance would attain finality qua one of the heirs of Kishorilal. And since decree of specific performance is inseparable, continuance of appeal might result in inconsistent decrees, therefore, the appeal would abate as a whole on non-substitution of one of the heirs of Kishori Lal, namely, Murarilal.

(ii) In a suit for specific performance, the vendor is a necessary party. Therefore, even if the subsequent purchaser is on record, the vendor would have to be on the record for a valid decree. In such circumstances, the benefit of Order 41 Rule 4 of CPC is not available as was held by this Court in *Dwarka Prasad Singh and Others v. Harikant Prasad Singh and Others*⁶.

(iii) Abatement is by operation of law. Therefore, even in absence of a formal order, the appeal or proceeding would abate for non-substitution within the period of limitation.

(iv) Once abatement takes place, it can be set aside by substitution after condoning the delay and not by way of impleadment. Therefore, if time for substitution has lapsed and the appeal has abated, in absence of an order condoning the delay in seeking substitution and setting aside abatement, by mere impleadment of LR's of a deceased party, abatement cannot be deemed

set aside. Hence, the order dated 03.05.2013 is of no consequence more so because Murarilal died on 22.07.2007 and by the time impleadment was allowed, the appeal had already abated.

(v) The application to set aside abatement was filed on 24.07.2017 i.e. about 10 years after Murarilal's death. Therefore, it was justifiably rejected by the High Court.

(vi) The order dated 09.05.2011 permitting deletion of Kishorilal was at the risk of appellants No. 2 and 3 and, therefore, the said order cannot obviate subsequent adjudication regarding abatement of appeal on ground of res judicata. Based on the aforesaid submissions, on behalf of respondents, it was submitted that both appeals are devoid of merit and should be dismissed.

17. We have considered the rival submissions and have carefully perused the materials on record.

ISSUES

18. Upon considering the rival submissions, in our view, following issues arise for our consideration:

(i) Whether F. A. No. 213 of 2000 abated on non-substitution of LR's of Murarilal i.e., appellant 1(2), who was one of the LR's of deceased-judgment debtor Kishorilal?

(ii) Whether the order of the High Court, dated 03.05.2013, holding that appellants No. 2 and 3 along with other heirs of Kishorilal sufficiently represented the interest of Kishorilal in the appeal, would, by the principle of res judicata, bar a declaration that the appeal had abated?

(iii) Whether by allowing impleadment of the heirs and legal representatives of Murarilal as proforma respondents in F. A. No. 213 of 2000, vide order dated 03.05.2013, the High Court, in effect set aside abatement, if any?

(iv) Whether, in the peculiar facts of the case, the High Court ought to have condoned the delay and set aside the abatement, if any, of F.A. No.213 of 2000?

ANALYSIS

Summary of undisputed facts

19. Before addressing the issues, a brief resume of undisputed facts of the case would be apposite. Suit No. 5A of 1992 was instituted by Gopal

(plaintiff-respondent) against Kishorilal for declaration and injunction and, later, by way of amendment, for specific performance of a purchase agreement between Kishorilal and Gopal concerning the suit property, which was sold by Kishorilal, during pendency of the suit, to Brajmohan and Manoj (i.e., the appellants), vide sale-deed dated 20.04.1992. In consequence, the appellants were also impleaded as defendants.

20. The suit was decreed by the trial court. Against which, F. A. No. 213 of 2000 was jointly filed by Kishorilal (i.e., appellant no.1), Brajmohan (appellant no.2) and Manoj (appellant no.3) before the High Court. During pendency of the appeal, Kishorilal died on 17.12.2005. His legal heirs including Murarilal were substituted vide order dated 10.07.2006. Thereafter, Murarilal died in the year 2007. An application was submitted for deleting him from the array of parties on the ground that interest of Kishorilal was sufficiently represented by his other LRs including appellants No. 2 and 3 (i.e., lis pendens transferees).

On this application, an order was passed on 09.05.2011 deleting appellant no.1 (Kishorilal) from the array of parties, when the prayer was to delete Murarilal. It is necessary to note that on the date when order dated 09.05.2011 was passed Kishorilal was already dead and stood substituted by his four legal heirs including Murarilal. Thus, it is clear that the direction to delete Kishorilal from the array of parties was nothing but a typographical mistake which ought to be read/considered as a direction to delete Murarilal as is clear from subsequent orders passed in the course of the appeal.

21. In the aforesaid context, when plaintiff-respondent filed an application for abatement on non-substitution of LRs of Murarilal, the High Court passed an order on 04.03.2013 holding that since LRs of Kishorilal, namely, appellants No. 2 and 3, who had purchased the property, and other legal heirs were there on record, the appeal cannot be said to have abated. However, the High Court gave liberty to implead other heirs of Kishorilal. Pursuant thereto, application was filed to bring on record heirs of Murarilal as proforma respondents. On this application, vide order dated 03.05.2013, the High Court allowed impleadment of Murarilal's heirs as proforma respondents.

22. Later, when, during hearing of the appeal, issue was raised by the decree holder that appeal has already abated consequent to non-substitution of the heirs of Murarilal, formal application was filed for setting aside abatement along with prayer to condone the delay. This application was rejected and the appeal (i.e., F.A. No.213 of 2000) was dismissed as having abated vide impugned order dated 12.09.2017.

23. In view of dismissal of F.A. No.213 of 2000, the decree of specific performance in favour of defendant in Suit No.10A of 1995 became operative, therefore, F.A. No.217 of 2000, arising from dismissal of Suit No.10A of 1995, was dismissed vide second impugned order dated 12.09.2017.

24. On summation of facts what becomes clear is that out of four heirs of Kishorilal, three remained on record. The fourth, namely, Murarilal, died and was not substituted within time. Though, later, his heirs and legal representatives were also brought on record as proforma respondents in the appeal. In that context, we shall address the issues.

Issues (i) and (ii)

25. Issues (i) and (ii) are inter-related, therefore we shall address them together.

26. As we have noticed above that on death of Kishorilal (i.e., appellant No.1) all his four heirs were brought on record of F.A. No.213 of 2000 and, later, on death of one of his heirs i.e., Murarilal, his LRs were also brought on record, though beyond the period prescribed by the law of limitation. It is thus not a case where deceased Kishorilal (i.e., the vendor) was totally unrepresented. Rather, he was represented, initially, through his four legal heirs and, later, on death of one of them, namely, Murarilal, by three of them and the purchaser of his interest in the property (i.e., the appellants No. 2 and 3). Later, even legal heirs of Murarilal were brought on record as proforma-respondents through an order of impleadment.

27. The thrust of the submissions of the learned counsel for the respondent(s) is on there being no application of mind on the part of the High Court in allowing impleadment of the heirs of Murarilal as proforma respondents because, by that date, the appeal had already abated. According to him, in absence of condonation of delay in filing an application to set aside abatement, or to substitute the legal heirs, the appeal had abated by operation of law and, therefore, such impleadment cannot revive the appeal.

28. Besides that, the learned counsel for the respondents submitted that the order dated 09.05.2011 deleting the name of Kishorilal/ Murarilal was at the risk and cost of the appellants which means that the order would not bar subsequent adjudication of the issue on the principle of res judicata.

29. On the other hand, the learned counsel for the appellants laid emphasis on the observations in the subsequent order dated 04.03.2013 wherein the Court had observed that since legal representatives of Kishorilal, who have right, title and interest over the disputed property, are already on record as

appellants No.2 and 3, the appeal would not abate. According to the appellants, this observation in the order dated 04.03.2013 coupled with subsequent order dated 03.05.2013 bars, by principle of res judicata, fresh consideration of the issue qua abatement of the appeal on non-substitution of the legal heirs of Murarilal (i.e., one of the heirs of deceased-party Kishorilal).

30. As far as the principle of res judicata is concerned, we are conscious of the law that it applies also as between two stages in the same litigation to the extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings⁷. However, what is important is that this does not preclude the appellate court or a higher court to test the correctness of that decision⁸.

31. However, before delving further on the above aspect, we shall first consider the decisions cited by the learned counsel for the respondents to canvass that a decree of specific performance must necessarily require the vendor to execute the sale deed even if the subject matter of sale agreement has been sold by the vendor to a third person. According to plaintiff-respondent's counsel, though a subsequent transferee may be required to join in the conveyance, particularly where the transferee is not a transferee lis pendens, the vendor would necessarily have to join in the execution of the sale deed. As a sequitur, it is argued, if the appeal abates qua the vendor it abates as a whole.

Vendor is necessary party in a suit for specific performance

32. In Lala Durga Prasad⁹, before this Court a question arose as to what would be the proper form of a decree in a suit for specific performance where the subject matter of the sale agreement has been sold and the title to the property has validly passed from the vendor and resides in the subsequent transferee i.e., where the sale to subsequent transferee is not void but only voidable at the option of the earlier contractor. On the said issue, this Court considered and rejected three alternative forms of decrees, namely, (a) compelling the vendor to execute the sale deed; (b) cancelling the subsequent sale and ordering conveyance in favour of plaintiff; and (c) conveyance in favour of plaintiff by the subsequent purchaser alone. After rejecting the above three options, this Court held:

"42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants

made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff."

33. In *R.C. Chandiok*¹⁰, decision of this Court in *Lala Durga Prasad* was followed.

34. In *Dwarka Prasad*¹¹, the question that arose before this Court was whether in absence of substitution of legal heirs of the vendor, the appeal by a subsequent purchaser against the decree of specific performance would abate. Two arguments were raised on behalf of the appellant therein, namely, (a) that vendor was not a necessary party as the subsequent purchaser represents his interest; and (b) the case would be covered by the provisions of Order 41 Rule 4 of CPC.

Both arguments were rejected by this Court. While rejecting the first argument, decision in *Lala Durga Prasad* was relied upon to hold that in a suit for specific performance the vendor is a necessary party as he must join in the execution of the sale deed. The second argument was rejected by holding that since the appeal qua the vendor would abate, the appeal at the behest of subsequent purchaser cannot continue as it might result in conflicting decrees.

35. The rationale of joining the vendor in the conveyance in favour of holder of a decree of specific performance, notwithstanding that vendor has passed on his interest in the property to a third person, is discernible from the following observations in *Dwarka Prasad*:

"9. In a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale the proper form of the decree is to direct specific performance of the contract between the vendor and the plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. Thus, the conveyance has to be executed by the vendor in favor of the plaintiff who seeks specific performance of the contract in his favor and the subsequent transferee has to join in the conveyance only to pass his title which resides in him. It has been made quite clear that he does not join in any special covenants made between the plaintiff and his vendor.

All that he does is to pass on his title to the plaintiff. It is thus difficult to sustain the argument that the vendor is not a necessary party when, according to the view accepted by this court, the conveyance has to be executed by him although the subsequent purchaser has also to join as to pass on the title which resides in him to the plaintiff. It must be remembered that if there are any special covenants and conditions agreed upon in the contract for sale between the original purchaser and the vendor those have to be incorporated in the sale

although it is only the vendor who will enter into them and the subsequent purchaser will not join in those special covenants.

But without the vendor joining in the execution of the sale deed special covenants, if any, between him and the original purchaser cannot be incorporated in the sale deed. The whole idea and purpose underlying a decree for specific performance is that if a decree for such a relief is granted the person who has agreed to purchase the property should be put in the same position which would have obtained in case the contracting parties i.e., vendor and the purchaser had, pursuant to the agreement, executed a deed of sale and completed it in every way. Therefore, it is essential that the vendor must join in the execution of the sale deed. If that be so, it is not possible to comprehend how he is not a necessary party."

36. The law is thus settled that the vendor is a necessary party in a suit for specific performance of an agreement for sale, notwithstanding that vendor has transferred his interest in the subject matter of the agreement to a third party. Reason being that the transferee/ third party cannot be subjected to special covenants, if any, between the vendor and the plaintiff-purchaser. Besides that, the object of the decree of specific performance is to put the person who has agreed to purchase the property in the same position which he would have obtained in case the contracting parties i.e., vendor and the purchaser had, pursuant to the agreement, executed a deed of sale and completed it in every way.

Decisions relied on behalf of the Appellants

37. Now, we shall consider the decisions cited by the appellant, namely,

(a) Bhurey Khan v. Yaseen Khan (Dead) by LRs & Ors.¹² The issue under consideration in this case was whether the High Court was justified in abating the second appeal for non-impleadment of some of the heirs of the deceased respondent. This Court, following its earlier decision in Mahabir Prasad v. Jage Ram & Others¹³, held that where the estate of a deceased party is sufficiently represented by his legal heirs on record, proceedings would not abate if some of the heirs are left out. The said view has been followed in Shivshankara & Anr. v. H.P. Vedavyasa Char¹⁴.

(b) Mohammad Arif v. Allah Rabbul Alamin & Ors.¹⁵ In this case, it was held that transferee from a deceased party could represent the interest of the deceased party as an intermeddler and if such transferee is already on record, there is no necessity for an application to bring on record the legal heirs of the deceased appellant. [Note: It is not clear from the reported judgment whether the suit here was for specific performance of a contract.]

(c) K. Naina Mohamed (Dead) through LRs v. A.M. Vasudevan Chettiar (dead) through LRs & Ors.¹⁶ In this case, following Mohd. Arif (supra), it was held that party which has purchased the property concerned can represent the estate of deceased. [Note: It is not clear from the reported judgment whether the suit was for specific performance of a contract. Although it appears to be based on right of pre-emption. Otherwise also, in this case decision in Lala Durga Prasad (supra) was not considered.]

(d) Y.B. Patil & Ors. v. Y.L. Patil¹⁷. In this case it was observed that principles of res judicata can be invoked not only in separate subsequent proceedings but also in subsequent stage of the same proceedings. Therefore, once an order is made during a proceeding it becomes final and is binding at any subsequent stage of that proceeding. The same principle was reiterated in Bhanu Kumar Jain v. Archana Kumar & Anr.¹⁸

(e) Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors.¹⁹. In this case, it was, inter alia, held that a simple prayer to bring LRs on record, without specifically praying for setting aside abatement, may in substance be construed as a prayer to set aside the abatement. Further, the prayer for setting aside abatement is to be considered liberally and the courts must adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disintitiled himself from seeking the indulgence of the court.

(f) Madhukar Nivrutti Jagtap & Ors. v. Pramilabai Chandulal Parandekar (Dead) through LRs & Ors.²⁰. In this case it was held that the effect of doctrine of lis pendens is not to annul all transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. [Note: This was cited so as to canvass that the sale deed executed by Kishorilal in favour of the second and third appellants was not void and, therefore, they could validly represent the interest of Kishorilal and, therefore, the appeal would not abate].

Relevant legal principles deducible from the decisions cited by both sides

38. Upon consideration of the decisions cited by both sides, the legal principles deducible therefrom, and relevant to the issue in hand, are summarized below:

(1) Before declaring a suit or proceeding to have abated on ground of non-substitution of the heirs/ legal representatives of a deceased party, the Court must examine whether the interest of the deceased party qua the subject

matter of the proceeding is sufficiently represented by other parties already on record. If the interest of the deceased party is sufficiently represented by other parties already on record, and the decree/order eventually passed in the suit or proceeding would not be rendered non-executable for absence of that party, the suit or proceeding would not abate.

(2) In a suit for specific performance of an agreement for sale of an immovable property, vendor is a necessary party notwithstanding he has transferred his interest in the property to a third party. As a sequitur, a suit or an appeal emanating from such a suit would abate if, upon death of the vendor, his legal heirs/ representatives are not substituted.

(3) Though a transfer lis pendens is not always void, such transferee's title is subservient to the decree that may ultimately be passed in the pending suit. As a sequitur, a transferee lis pendens is not a necessary party in a suit for specific performance.

(4) However, a transferee lis pendens may pursue the appeal against a decree of specific performance against the vendor, as a legal representative/ inter-meddler of the estate of the vendor. But, having regard to the nature of decree that is required to be passed in a suit for specific performance, as held in Lala Durga Prasad (supra) and Dwarka Prasad (supra), the vendor would have to be impleaded as a party in the appeal and on his death, on non-substitution of his heirs /legal representatives, the appeal would abate.

Kishorilal (deceased-defendant) sufficiently represented in the appeal before the High Court

39. Having culled out the relevant legal principles, we shall now consider whether, on non-substitution of the heirs of Murarilal, the appeal had abated or not. As noticed above, Murarilal was one of the four heirs of Kishorilal. Kishorilal (appellant No.1) had already transferred the property to appellants No. 2 and 3 during the course of suit proceeding. Therefore, on the date of filing the appeal, title in the subject matter of the sale agreement resided in those appellants albeit subservient to the decree. However, presence of Kishorilal was necessary to effectively execute the decree of specific performance which is in the nature of a direction to fulfil contractual obligations.

In such circumstances, on death of Kishorilal, his LRs were required to be brought on record. In the present case, on the death of Kishorilal (i.e., appellant No.1) all his LRs were substituted as appellants No. 1(1), 1(2), 1(3) and 1(4), though, later, one of them, namely, Murarilal i.e., appellant 1(2), died. Since three legal heirs of Kishorilal were already on record, besides the

appellants No.2 and 3 in whom title in the property resided, the estate of Kishorilal was sufficiently represented and, therefore, in our view, the appeal did not abate on nonsubstitution of LRs of Murarilal as was rightly held earlier by the High Court vide order dated 03.05.2013. The aforesaid view is in conformity with the law laid down by this Court in Bhurey Khan and Mahabir Prasad.

40. The decision in Dwarka Prasad (supra), relied by the learned counsel for respondents, in our view, is not of much help to the respondents because in that case the vendor's interest was not represented at all. Whereas in the present case, three out of four legal heirs of Kishorilal (i.e., the vendor) were already on record. In our view, there is a clear distinction between non-substitution of the legal representatives/ legal heirs of a deceased party and non-substitution of one of the heirs of a deceased party. In the latter, if the interest of the deceased party is sufficiently represented by other heirs/ legal representatives on record, there will be no abatement as was held in Mahabir Prasad (supra) and Bhurey Khan (supra). Therefore, in our view, Dwarka Prasad's decision is distinguishable on facts.

High Court's final decision is hit by principle of res judicata

41. Besides above, once the High Court, vide order dated 03.05.2013, had taken the view that appeal had not abated on non-substitution of heirs of Murarilal i.e., appellant No.1(2), as other heirs of Kishorilal were on record besides appellants 2 and 3, it was not open for the High Court to revisit the issue later, because such an exercise by the High Court was hit by principle of res judicata which applies with equal force to different stages of the same proceeding as it does to a separate subsequent proceeding. In this regard we are supported by decisions of this Court in Satyadhyan Ghosal²¹, Y.B. Patil (supra) and Bhanu Kumar Jain (supra).

42. The argument on behalf of respondent that order dated 09.05.2011 specifically mentions that deletion was at the risk of the appellant and, therefore, the issue was kept open does not cut much ice, because in the subsequent orders dated 04.03.2013 and 09.05.2013, the High Court specifically held that appeal had not abated.

43. We are, therefore, of the considered view that the appeal had not abated on non-substitution of the heirs of Murarilal within time. Issue (i) and (ii) are decided in the aforesaid terms.

Direction to delete name of Appellant No. 1 (i.e., Kishorilal's name) from the array of parties was nothing but a clerical/ typographical mistake in the order dated 9.5.2011

44. So far as the direction in the order dated 09.05.2011 to delete appellant No.1 is concerned, it was a pure clerical/ typographical error inasmuch as the prayer made was to delete appellant No.1(2) i.e., Murarilal from the array of parties as other LR's of Kishorilal sufficiently represented his interest. Such a mistake could be corrected at any stage in exercise of powers under Sections 151 and 152 of CPC. Therefore, the plaintiff-respondent cannot take advantage of the aforesaid mistake.

Issue (iii)

45. As we have already concluded that appeal had not abated on non-substitution of legal heirs of deceased Murarilal i.e., appellant No.1(2), there was no question of setting aside abatement. Rather, the High Court was well within its jurisdiction in allowing impleadment of his heirs as proforma respondents in exercise of powers under Order 1 Rule 10 of CPC. Issue (iii) is decided accordingly.

Issue (iv)

46. In view of our conclusion that the appeal had not abated, the High Court had the discretion to allow impleadment of Murarilal's heirs and for such impleadment, it was not required to condone the delay or to set aside abatement. Issue (iv) is decided accordingly.

Conclusion

47. In view of our findings on the issues framed above, the view of the High Court that the appeal had abated is erroneous and is liable to be set aside. Since the connected appeal was dismissed by the High Court only on account of dismissal of the other appeal as abated, the order dismissing the said appeal is also liable to be set aside.

48. Consequently, these appeals are allowed. The impugned order(s) dated 12.09.2017 passed by the High Court in F.A. No.213 of 2000 and F.A. No.217 of 2000 are set aside. Both the aforesaid first appeals are restored to their original number on the file of the High Court and they shall be decided in accordance with the law.

49. Pending applications, if any, in both the appeals shall stand disposed of.

.....**J. (Manoj Misra)**

.....**J. (Ujjal Bhuyan)**

New Delhi;

1 Legal Representatives

2 High Court

3 CPC

4 (1953) 2 SCC 509

5 (1970) 3 SCC 140

6 (1973) 1 SCC 179

7 See: Satyadhyan Ghosal & Ors. v. Deorajin Debi (Smt.) & Anr., 1960 SCC OnLine SC 15: AIR 1960 SC 941

8 See: Maharaja Moheshur Singh v. Bengal Government (1859) 7 MIA 283; affirmed in Satyadhyan Ghosal (supra), paragraph 16.

9 See: Footnote 4

10 See: Footnote 5

11 See: Footnote 6

12 1995 Supp (3) SCC 331

13 (1971) 1 SCC 265. See Paragraph 7, where it was observed:

"7. Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on the record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act, the proceeding will not abate."

14 (2023) 13 SCC 1, paragraphs 59 and 60

15 (1982) 2 SCC 455

16 (2010) 7 SCC 603

17 (1976) 4 SCC 66

18 (2005) 1 SCC 787

19 (2003) 10 SCC 691

20 (2020) 15 SCC 731

21 See; Footnote 7

IN THE SUPREME COURT OF INDIA

Alka Shrirang Chavan & Anr.

Vs.

Hemchandra Rajaram Bhonsale & Ors.

**[Civil Appeal No. _____ of 2026
arising out of SLP (Civil) No. 27660 of 2025]**

**[Civil Appeal No. _____ of 2026
arising out of SLP (Civil) No. 27868 of 2025]**

Head Note – A purchaser who acquires property during the pendency of litigation, as a transferee pendente lite, has no right to obstruct the execution of the decree and remains bound by the outcome of the proceedings, holding the transfer strictly subservient to the decree.

JUDGMENT

Ujjal Bhuyan, J.

1. Leave granted.

2. These two civil appeals by special leave are directed against the judgment and order dated 19.12.2024 passed by the High Court of Judicature at Bombay (briefly 'the High Court' hereinafter) in Second Appeal No. 396 of 2022 (Alka Shrirang Chavan and Anr. Vs. Hemchandra Rajaram Bhonsale & Ors.) and Second Appeal (ST) No. 22336 of 2022 (Jaymala Shriram Date Vs. Hemchandra Rajaram Bhonsale and Ors.).

2.1. Be it stated that by the impugned judgment and order dated 19.12.2024, the High Court has dismissed both the second appeals preferred by the appellants holding that there is no merit in any of the substantial questions of law raised by the appellants. However, the High Court granted stay for a period of three months.

3. Relevant facts may be briefly noted.

4. Respondent No. 1 is the plaintiff (decree holder). He had entered into an agreement for sale with the defendant Rajaram Bajirao Pokale on 26.04.1973.

5. Since the defendant failed to perform his part of the contract, respondent No. 1 (plaintiff) instituted Regular Civil Suit No. 910 of 1986 on 28.04.1986 in the Court of learned Civil Judge, Junior Division, Pune against respondent

No. 2 i.e. the defendant (judgment debtor). In the said suit, plaintiff sought for a decree ordering the defendant to execute the sale deed in favour of the plaintiff. In the event defendant failed to execute the sale deed, the court be pleased to execute the sale deed through its officers and to put the plaintiff in actual possession of the suit property.

6. On 02.05.1986, respondent No. 1 (plaintiff) registered lis pendens.

7. During the period from 07.05.1987 to 31.08.1987, respondent No. 2 (judgment debtor) by eight sale deeds transferred the right, title and interest of various parts of the suit property to different persons. Jaymala Shriram Date, the appellant in Second Appeal (ST) No. 22336 of 2022, is claiming right, title and interest on the basis of one such registered sale deed dated 07.07.1987.

8. In the year 1989, one Shri Sarangdhar, one of the transferee pendente lite, constructed a bungalow on an area admeasuring 5R, which is part of the suit property.

9. Learned 3rd Joint Civil Judge, Junior Division, Pune vide the judgment and order dated 30.11.1990 decreed Regular Civil Suit No. 910 of 1986. Operative portion of the decree dated 30.11.1990 reads as under:

(1) The suit is decreed ex parte.

(2) The plaintiff is directed to pay Rs. 1775.00 to the defendant and defendant is directed to execute the document of sale-deed in respect of the suit land bearing Survey No. 155 Pot Hissa 3 admeasuring 36 gunthas situated at village Dhayari, Taluka Haveli, District Pune in favour of the plaintiff, within two months from this order.

(3) If the defendant fails to execute the sale-deed in favour of the plaintiff, then the plaintiff is at liberty to get the document of sale deed executed through Court Commissioner and the defendant is directed to bear its cost.

(4) The defendant is also directed to hand over vacant possession of the suit land peacefully to the plaintiff.

(5) Defendant shall pay costs of this suit to the plaintiff and bear his own.

10. Regular Darkhast No. 205 of 1991 i.e. execution petition was filed by respondent No. 1 (decree holder) against respondent No. 2 on 03.07.1991 for execution of the decree.

11. On 25.03.1993, on orders of the Executing Court, the Court Commissioner on behalf of respondent No. 2 (judgment debtor) executed the sale deed in favour of respondent No. 1 (decree holder).

12. Respondent No. 2 (judgment debtor) filed an application under Section 47 of the Code of Civil Procedure, 1908 ('CPC' for short) below Ex. 28 in Regular Darkhast No. 205 of 1991 on 09.08.1994 stating that he had transferred the right, title and interest over the suit property to various purchasers in or about 1987. Therefore, he prayed that the sale deed executed by the Court Commissioner in favour of respondent No. 1 (decree holder) be cancelled.

13. By registered sale deed dated 27.11.1995 and by two separate registered sale deeds, both dated 16.11.1996, appellants in Second Appeal No. 396 of 2022 i.e. Alka Shrirang Chavan and Pradip Shrirang Chavan became owners of the land admeasuring 15 gunthas of the suit property including the land admeasuring 5R owned by Shri Sarangdhar who had constructed a bungalow thereon in the year 1989.

14. On 11.04.1996, Civil Suit No. 1720 of 1996 was filed by respondent No. 2 (judgment debtor) against respondent No. 1 (decree holder) for cancellation of the sale deed dated 25.03.1993. However, this civil suit was dismissed for non-prosecution on 03.03.2004.

15. In the meanwhile, respondent No. 2 (judgment debtor) filed an appeal on 10.11.1997 against the judgment and decree dated 30.11.1990 passed in Regular Civil Suit No. 910 of 1986. Alongwith the appeal, Miscellaneous Civil Application No. 850 of 1997 was also filed by respondent No. 2 (judgment debtor) for condonation of delay in filing the appeal. However, the Appellate Court vide order dated 26.06.1998 dismissed Miscellaneous Civil Application No. 850 of 1997 with cost. Consequently, the appeal also stood rejected.

16. Thereafter, respondent No. 2 (judgment debtor) filed Civil Revision Application No. 38 of 1999 before the High Court against the order dated 26.06.1998 whereby Miscellaneous Civil Application No. 850 of 1997 was dismissed. However, the said civil revision application was dismissed by the High Court for non-prosecution on 27.01.1999.

17. In the meanwhile respondent No. 2 (judgment debtor) had instituted Civil Suit No. 1720 of 1996 against respondent No. 1 (decree holder) for cancellation of the sale deed dated 25.03.1993. However, the same was dismissed for non-prosecution on 03.03.2004.

18. Thus, the judgment and decree dated 30.11.1990 as well as the sale deed executed by the Court Commissioner in favour of respondent No. 1 (decree holder) on 25.03.1993 attained finality.

19. The Executing Court by order dated 18.07.2013 rejected the application below Ex. 28 filed by respondent No. 2 (judgment debtor) under Section 47 CPC in Regular Darkhast No. 205 of 1991.

20. Assailing the aforesaid order dated 18.07.2013, respondent No. 2 (judgment debtor) filed Civil Revision Application No. 851 of 2013 before the High Court but the same was dismissed vide the order dated 14.03.2016. While dismissing the revision application, the High Court held as follows:

9. Judgment debtor has also contended in paragraph 4 of application Ex. 28 that he had laid the plots in the suit property and sold the plots to various persons in 1997. If that be so, judgment debtor cannot be said to have any locus to maintain proceedings under Section 47 of CPC. That apart, no such plea was taken in the earlier round of litigation. In my opinion, the entire attempt on the part of judgment debtor is to delay handing over possession. The decree of specific performance was passed on 30.11.1990 and till date decree holder is not put in possession.

21. Respondent No. 1 (decree holder) filed an application marked as Exhibit 190 on 02.04.2016 for issuance of possession warrant. Writ was issued for measurement of the suit property etc while directing the application below Exhibit 190 to be kept in abeyance till receipt of report.

22. Measurement having been done, report was submitted. At that stage, respondent No. 1 (decree holder) filed application under Exhibit 224 for possession warrant. On 09.02.2018, the Executing Court by passing order below Ex. 224 in Regular Darkhast No. 205 of 1991 issued possession warrant under Order XXI Rule 35 CPC for 18.01.2019.

23. When respondent No. 1 (decree holder) accompanied by bailiffs and policemen went to the suit property armed with the possession warrant for taking possession of the suit property, appellants resisted and obstructed possession.

24. Simultaneously, appellants as obstructionists raised objections below Ex. 236 on 18.01.2019 itself to the execution of the decree relating to handing over of possession on the ground that they are the owners of the suit property and that they are residing in the house constructed thereon.

25. Opposing the application below Ex. 236, respondent No. 1 (decree holder) filed two applications on 11.02.2019 for removal of obstruction bearing Ex.

238 and Ex. 238A under Order XXI Rule 97 CPC. By order dated 29.02.2020, the Executing Court i.e. the 26th Joint Civil Judge, Senior Division, Pune allowed the applications filed by respondent No. 1 (decree holder) and rejected the objection of the obstructionists (appellants). Thereafter, the Executing Court issued possession warrant under Order XXI Rule 97. More particularly, the Executing Court directed removal of obstruction in execution of the decree, further directing the obstructionists i.e. the appellants to vacate the premises within one month from the date of the said order. Relevant portion of the order dated 29.02.2020 is as follows:

21. It is well settled that the Executing Court cannot go behind the decree. The decree in R.C.S. No. 910/1986 has already attained finality. Though the obstructionists filed documents list Ex. 270 showing that since 1985 till date there were several execution of sale deeds, mutation entries, 7/12 extracts and other entries in revenue record, completion certificates, construction of buildings etc. will not be helpful to the obstructionists as they have purchased the suit land during the pendency of R.C.S. No. 910/1986. Moreover, the plaintiff/D.H. had already registered in notice of lispendens on 02.05.1986.

The obstructionists have purchased the part of the suit land during pendency of the suit, therefore, the submission of learned counsel for obstructionists that decree is not binding upon the obstructionists cannot be taken into consideration. The authorities relied by the obstructionists are not applicable in this case as the decree is executable and attained finality and the same is binding upon the obstructionists also, thus, I answer point Nos. 1 and 2 in affirmative in result of point No. 3 I pass following order:

26. The aforesaid judgment and decree dated 29.02.2020 of the Executing Court was challenged by the obstructionists (appellants) by filing Regular Civil Appeal No. 169 of 2020 (appellants - Alka Shrirang Chavan and Pradip Shrirang Chavan) and Regular Civil Appeal No. 68 of 2022 (appellant - Jaymala Shriram Date).

27. Appellants had also filed a stay application in Regular Civil Appeal No. 169 of 2020. However, the same was rejected by the appellate court vide the order dated 16.07.2020.

28. Challenging the legality and validity of the aforesaid order dated 06.07.2020, appellants in Regular Civil Appeal No. 169 of 2020 filed Writ Petition No. 3637 of 2021 which was dismissed by the High Court vide the judgment and order dated 03.08.2021, relevant portion of which reads thus:

16. Petitioners are purchasers of the suit property after initiation of R.C.S. No. 910/1986 as it is claimed by the petitioners that their predecessor-in-title

purchased the suit property from judgment debtor-defendant to the suit sometime in 1987 and in 1995/1996, title vested in them by virtue of registered sale deed.

17. As such, claim by the petitioners that they have purchased the property without notice cannot be accepted. Apart from above, it is quite apparent that all the efforts on the part of judgment debtor including that of raising an objection under Section 47 of the Code of Civil Procedure, 1908 is already rejected by this Court vide order dated 14.03.2016. That being so, petitioners cannot claim better title than his predecessor viz. judgment debtor as he has stepped into the shoes of judgment debtor-respondent No. 2.

18. Apart from above, petitioner though appears to have knowledge about Revision being preferred by the judgment debtor being Revision (ST) No. 7769/2021 which was dismissed on 01.03.2021, same is not brought to the notice of this Court by placing appropriate documents on record but for only mention about the same in independent list of dates and events submitted before this Court. It appears that decree passed in 1990 is not permitted to be executed for last 30 years even though sale deed pursuant to the decree for specific performance was executed in favour of respondent No. 1 decree holder on 25.03.1993.

19. Assistant Superintendent, Court of Senior Division, Pune in compliance with the decree in execution proceedings on March 25, 1993 executed the sale deed of the suit property in favour of decree holder whereas petitioners have purchased part of the suit property on 27.11.1995 and 16.11.1996. As such, it cannot be inferred that petitioners are purchasers of the suit property without notice.

20. Considering the very conduct of the petitioners-objectors referred above, this Court is prompted to infer that they are equally responsible for prolonging the execution proceedings.

21. As such, petition fails, stands dismissed. Decree if not already executed as directed by the Executing Court, to be executed expeditiously.

29. Respondent No. 2 (judgment debtor) then filed an application bearing Ex. 355 for dismissal of Regular Darkhast No. 205 of 1991. The said application was dismissed by the Executing Court vide the order dated 01.03.2021.

30. This order dated 01.03.2021 was assailed by the appellants by filing Civil Revision Application (ST) No. 7769 of 2021 which was dismissed by the High Court vide the order dated 15.04.2021 by directing that Regular Civil Appeal No. 169 of 2020 and the other connected civil appeal should be decided expeditiously within three months.

31. The appellate court i.e. District Judge - 13, Pune vide the common judgment and order dated 12.04.2022 dismissed both Regular Civil Appeal No. 169 of 2020 and Regular Civil Appeal No. 68 of 2022.

32. Aggrieved thereby, appellants preferred Second Appeal No. 396 of 2022 and Second Appeal (ST) No. 22336 of 2022 before the High Court.

33. By order dated 02.05.2022, High Court admitted the two second appeals on the following substantial questions of law, further directing that the Executing Court shall not proceed further. The substantial questions of law so framed are as under:

(i) Whether on the facts and in the circumstances of the case, the decree for specific performance passed in Regular Civil Suit No. 910 of 1986 is executable when the decree holder has not acquired title to the suit land by sale deed dated 25.03.1993 executed by the Court Commissioner?

(ii) Whether the learned courts below erred in law in not deciding the vital issue as to whether the decree holder is entitled to recover possession of the suit land in execution of decree for specific performance?

34. By the impugned judgment and order dated 19.12.2024, the High Court dismissed both the second appeals by holding that there is no merit in the two substantial questions of law so framed. However, in the interest of justice, the interim relief granted by the High Court directing the Executing Court not to proceed further has been extended for a period of three months.

35. This Court vide the order dated 19.09.2025 issued notice in the related special leave petitions, further directing the parties to maintain status quo. The order dated 19.09.2025 is as under:

1. Delay condoned.

2. Application of respondent seeking permission to appear and argue in person is allowed.

3. The submission on behalf of the petitioner is that pursuant to the decree for specific performance in favour of the first respondent, the court executed a sale deed on behalf of the judgment debtor. However, on the date when the sale deed was executed, the judgment debtor had already lost title as he had transferred the suit property, but the transferee was not joined to execute the sale deed. It is argued that as the transferee *lis pendens* was not privy to the sale deed executed in favour of the decree holder, and the judgment debtor had already lost title by the date when the sale deed was executed, there was no valid title transferred in favour of the decree holder so as to enable him to

maintain a claim for possession from the transferee of the transferee lis pendens (i.e., the petitioner).

4. The decree holder (i.e., respondent) has appeared in person along with his son, who is an advocate. He prays for opportunity to file brief written submissions to elucidate that since lis pendens was registered, transferee lis pendens was not required to be joined as a party and, therefore, to create a valid title, there was no necessity to implead the subsequent transferees in the execution proceeding.

5. Considering the question of law that emerges for our consideration, we request both parties to submit their brief written submissions along with the citations of the authorities which they propose to rely.

6. List these matters on 06.10.2025.

7. In the meantime, the parties shall maintain status quo.

36. Mr. Vinay Navare, learned senior advocate for the appellants, at the outset submits that the impugned judgment and order of the High Court dated 19.12.2024 is wholly untenable on facts as well as on law. He submits that appellants are bona fide subsequent purchasers of the suit property. By a registered sale deed dated 27.11.1995 and thereafter again by two separate registered sale deeds, both dated 16.11.1996, appellants had purchased 15R part of the suit land from Laxmibai Maruti Shinde, Sushma Mohan Kulkarni and Ramakant Gajanan Sarangdhar who had purchased the said 15R part of the suit land from respondent No. 2 in the year 1987. Thus, appellants had acquired title over the said 15R part of the suit land whereafter they are in actual physical possession over the said land.

36.1. High Court had failed to appreciate that respondent No. 1 had notice of the transfer of the suit property by the judgment debtor (respondent No. 2) by way of eight registered sale deeds in 1987 to the purchasers including the vendors of the appellants; that the names of the purchasers were mutated in 7/12 extract of the suit land; and that a bungalow was constructed by the vendor of the appellants in the year 1989. Hence, the subsequent purchasers of the suit land including the appellants should have been joined to the sale deed dated 25.03.1993 executed by the Court Commissioner for passing on title which still reside with them.

In this regard, learned senior counsel has placed reliance on a decision of this Court in Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited¹ to contend that transfer pendente lite is neither illegal nor void ab initio though it remains subservient to rights effectually determined by the court in the pending litigation. Therefore, the transferees pendente lite

should have been impleaded in the conveyance or in the execution proceedings or atleast in the application for possession which would have enabled such subsequent purchasers to raise their defence.

36.2. Mr. Navare, learned senior counsel, submits that the High Court erred by not considering the law laid down by this Court in *Lala Durga Prasad Vs. Lala Deep Chand*². In the said decision, it has been held that the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff.

36.3. Learned senior counsel further submits that transferee *lis pendens* is not void. High Court failed to appreciate that the decree for specific performance merely recognizes claim for specific performance of contract for sale; it does not elevate the status of the decree holder to that of owner of the property. In fact, it does not create any right, title and interest in or charge over the immovable property in favour of the decree holder. Hence, the decree holder i.e. respondent No. 1 has not acquired title over the suit land by virtue of the sale deed dated 25.03.1993 executed by the Court Commissioner without joining the subsequent purchasers including the appellants to the sale deed.

36.4. In this connection, Mr. Navare asserts that the subsequent purchasers including the vendors of the appellants had acquired valid title to the suit land by way of registered sale deeds executed by the judgment debtor (respondent No. 2) in the year 1987 during the pendency of the suit as Section 52 of the Transfer of Property Act, 1882 ('Transfer of Property Act' hereinafter) does not annul the *lis pendens* transfer. Hence, the subsequent purchasers including the appellants had acquired valid title to the suit land.

36.5. It is further submitted that High Court had failed to appreciate that under Order XXI Rule 101 CPC, all questions including those relating to right, title and interest over the property arising between the parties to the proceedings or their representatives on application under Order XXI Rule 97 CPC are to be determined by the court dealing with the application. Hence, the question raised by the appellants that the decree holder had not acquired title over the suit land because he had not joined the subsequent purchasers including the appellants to the sale deed dated 25.03.1993 is fully justified calling for an affirmative response from the High Court.

36.6. Merely because appellants are *lis pendens* purchasers, their objection to the execution could not have been rejected as has been done in the instant case.

36.7. That apart, learned senior counsel has highlighted that respondent No. 1 (decree holder) had initiated proceedings for delivery of possession only on 09.02.2018 i.e. 27 years after the execution petition was filed under Order XXI Rule 11 CPC. In the meanwhile, much development had taken place including change of ownership by way of registered sale deeds. Adverting to the decision of this Court in Anwarbi Vs. Pramod D.A. Joshi³, Mr. Navare submits that in view of the obstruction so caused, it was for the decree holder to have taken appropriate steps under Order XXI Rule 97 CPC for removal of the obstruction and to have the rights of the parties including that of the obstructionists adjudicated under provisions of Order XXI Rule 101 CPC.

36.8. He, therefore, submits that the belated application filed by respondent No. 1 (decree holder) for possession of the suit land was not maintainable. This aspect was not considered. In this connection, he has referred to Articles 129 and 134 of the Limitation Act, 1963 and submits that the High Court had overlooked the above aspect of the matter.

36.9. Finally Mr. Navare, learned senior counsel, submits that the impugned judgment and order requires a re-look. Therefore, the same may be set aside and quashed.

37. Respondent No. 1 appearing in person submits that there is no merit at all in the civil appeals. No such law exists which permits joining of the transferee pendente lite to the sale deed which was executed by the Court Commissioner when execution of the decree has attained finality and rights of the obstructionists have been adjudicated under Order XXI Rules 97 to 101 to the complete satisfaction of the court. In this connection, he submits that all the courts below upon hearing the contentions advanced by the obstructionists have upheld the decree in favour of the decree holder (respondent No. 1).

37.1. Further submission is that there is concurrence in the findings of all the courts below. All the courts have rejected the contention of the obstructionists that they have independent title over the suit property. On the contrary, it was admitted by the obstructionists that they are bound by the decree which was passed in favour of respondent No. 1 (decree holder) on 30.11.1990. Notwithstanding the same, when respondent No. 1 (decree holder) went for execution of the decree at the suit property, obstructionists offered resistance to execution of the decree by not letting the possession warrant from getting executed on 18.01.2019. Within 30 days thereafter respondent No. 1 (decree holder) filed application before the Executing Court for removal of obstruction.

37.2. Appellants i.e. obstructionists had purchased a portion of the suit property during pendency of Regular Civil Suit No. 910 of 1986 and after

registration of the lis pendens notice. Hence, their purchase is governed by Section 52 of the Transfer of Property Act. That being so, such transactions are pendente lite with the decree of specific performance binding on them. All the transferee pendente lite have no right or locus standi to obstruct execution of the decree for possession as they have stepped into the shoes of the judgment debtor.

37.3. If the contention of the appellants is accepted, then it will defeat the very object of Section 52 of the Transfer of Property Act. This will amount to the Executing Court going behind the decree which is not permissible.

37.4. Such a transferee, as the appellants in this case, is subservient to the decree. In other words, he is bound by the ultimate decree of the civil court. In this case, appellants are bound by the directions given to the judgment debtor (respondent No. 2) to execute the sale deed in favour of the plaintiff (decree holder) and in the event of failure to do so, the Court Commissioner to execute the sale deed in favour of the plaintiff (decree holder) and upon such execution, the title over the suit land to pass on to the plaintiff (decree holder). A transferee pendente lite is bound by the decree just as much as he was a party to the suit. In fact, title of the obstructionists stood extinguished under Section 52 of the Transfer of Property Act.

37.5. A combined reading of Section 52 of the Transfer of Property Act read with Section 19(b) of the Specific Relief Act and Section 47 CPC alongwith Order XXI Rules 97, 98 and 101 thereof would show that title of a transferee pendente lite cannot supersede the decree. It is subject to the said decree and such transferee is bound by the decree.

37.6. He further submits that once the objection/obstruction is adjudicated by the court under the aforesaid provisions and the court is satisfied that such obstruction is caused by the transferees, then Order XXI Rule 98 CPC mandates removal of the obstructionists and delivering possession of the suit property to the decree holder. That being the legal framework, appellants cannot claim any right, title and interest over the suit property once the sale deed is executed by the court which makes the title of the decree holder valid as per decree of the court. In this connection, he pointed out the scheme of Order XXI Rules 97 to 102 CPC read with the Bombay Amendment.

37.7. According to respondent No. 1, appellants had purchased portions of the suit property after institution of the civil suit on 28.04.1986 and after registration of lis pendens on 02.05.1986. Adverting to Section 52 of the Transfer of Property Act, he submits that in a suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit

or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein. The Explanation to Section 52 makes it very clear that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint and continues till such time the suit is disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained.

37.8. Contention of the appellants that in order to convey title over the suit property to the decree holder the obstructionists should have been joined in the conveyance in order to pass on title to the decree holder which currently vests with the obstructionists is completely wrong and without any substance. This is because the doctrine of lis pendens does not annul the conveyance of such transferee pendente lite but makes it subservient to the rights of the parties and dependent upon the final decision of the suit.

That being the position, no valid title vested with the obstructionists or any of the transferee pendente lite. In this connection, respondent No. 1 has referred to the decision of this Court in Jayaram Mudaliar Vs. Ayyaswami⁴ which has been approved in the subsequent decision in Celir LLP Vs. Somati Prasad Bafna⁵. He also places reliance on a decision of this Court in Sanjay Verma Vs. Manik Roy⁶.

37.9. Respondent No. 1 asserts that the doctrine of lis pendens is in accordance with the principles of equity, good conscience and justice. It is a principle of public policy. Any dilution of Section 52 of the Transfer of Property Act would defeat the rights of the parties and undermine the very sanctity of the judicial process.

37.10. In so far reliance placed by learned senior counsel for the appellants on the decision of this Court in Lala Durga Prasad, respondent No. 1 submits that the factual context in which the decision in Lala Durga Prasad was rendered is totally different from the present case. The distinction has been clearly brought out by the High Court. In this connection, he has referred to paragraphs 27, 31, 32, and 33 of the impugned judgment.

37.11. He finally submits that by one method or the other appellants have been frustrating execution of the decree in favour of respondent No. 1 for more than three decades. There is no merit at all in the civil appeals. Therefore, the civil appeals are liable to be dismissed.

38. Submissions made by learned counsel for the parties have received the due consideration of the Court.

39. At the outset, let us advert to Section 52 of the Transfer of Property Act on which the entire lis between the parties are centered around. Section 52 of the Transfer of Property Act reads thus:

52. Transfer of property pending suit relating thereto.-

During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

40. This section has been subjected to judicial dissection on numerous occasions. It is not necessary for us to advert to the long line of precedents inasmuch as two recent judgments of this Court have succinctly summed up the essence and amplitude of this provision. Section 52 of the Transfer of Property Act encapsulates the doctrine of lis pendens.

41. In Celir LLP, this Court examined the expression 'lis pendens' in the following manner:

155. The term "lis pendens" as explained in the Law Lexicon is as under:-

"Lis means a suit, action controversy, or dispute, and lis pendens means a pending suit. The doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim pendente lite nihil innovetur, that is, pending the suit nothing should be changed.

A pending suit.

As soon as proceedings are commenced to recover or charge some specific property [Ex parte Thornton [L.R.] 2 Ch. 178] there is "lis pendens" - a

pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice of the other.

41.1. Explaining the aforesaid doctrine, this Court has held that nothing new can be introduced during the pendency of a petition and if anything new is introduced, the same would be subject to the final outcome of the petition. This Court explained that the doctrine of lis pendens is duly recognized in Section 52 of the Transfer of Property Act which declares that during the pendency of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings.

Explanation to Section 52 clarifies that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or institution of the proceeding in a court and shall continue until the suit or proceeding is disposed of by a final decree or order and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of expiry of any period of limitation. This Court held thus:

156. As per the doctrine of lis pendens, nothing new can be introduced during the pendency of a petition and if at all anything new is introduced, the same would also be subject to the final outcome of the petition, which would decide the rights and obligations of the parties.

157. The doctrine of lis pendens is duly recognized in Section 52 of the TPA which states that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. The explanation to the provision states that for the purposes of the Section, the pendency of a suit or proceedings shall be deemed to commence from the date of the presentation of the plaint or institution of the proceeding in a court, and shall continue until the suit or proceeding is disposed of by a "final decree or order" and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation.

41.2. Elaborating further, this Court culled out five conditions which must be fulfilled for application of the doctrine of lis pendens. It has been noted that the only exception to the principle of lis pendens is when the property is transferred under the authority of the court. But where one of the parties to the suit transfers the suit property or a portion thereof to a third party, the latter would be bound by the result of the proceedings even if he did not have notice of the suit or proceeding. Relevant portion of the decision of this Court in Celir LLP is extracted hereunder:

158. The following conditions ought to be fulfilled for the doctrine of lis pendens to apply:-

- i. There must be a pending suit or proceeding;
- ii. The suit or proceeding must be pending in a competent court;
- iii. The suit or proceeding must not be collusive;
- iv. The right to immovable property must be directly and specifically in question in the suit or proceeding;
- v. The property must be transferred by a party to the litigation; and,
- vi. The alienation must affect the rights of any other party to the dispute.

159. In short, the doctrine of lis pendens, which Section 52 of the TPA encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding.

41.3. It was canvassed on behalf of the subsequent transferee that it was a bona fide third party purchaser of the secured asset since it was neither arrayed as a party to the proceedings in the main appeals nor was issued a notice of the said proceedings either by the petitioner or by the bank. Repelling such contention, this Court referred to its previous decision in Sanjay Verma where it was held that the principle of lis pendens enshrined in Section 52 of the Transfer of Property Act is not only based on equity, good conscience and justice but is also a principle of public policy.

No party can claim exemption from the application of this doctrine on the ground of bona fide or good faith. Further, this Court referred to another of its earlier decisions in Guruswamy Nadar Vs. P. Lakshmi Ammal⁷ where it was held that the principle of lis pendens will apply irrespective of whether the subsequent purchaser had bought the property, which is a subject-matter of a pending proceeding, in good faith or not.

42. It may be mentioned that in a recent judgment of this Court in M/s. Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta Sujatha Reddy⁸ it has been held that the doctrine of lis pendens kicks in the moment a proceeding is instituted irrespective of whether such institution or filing is defective or notice is yet to be issued by the court.

43. One of the questions which fell for consideration in *Danesh Singh Vs. Har Pyari*⁹ is whether transfer of the suit property in favour of respondent Nos.1 and 2 is hit by Section 52 of the Transfer of Property Act and the doctrine of *lis pendens*? It was in that context this Court looked into Section 52 and held as follows:

49. Section 52 of the 1882 Act stipulates that during the pendency of any suit in a court of competent jurisdiction in which any right to the immovable property is directly and specifically in question, such property cannot be transferred or otherwise be dealt with by any party to the suit or proceedings with a view to affect or defeat the rights of any other party under any decree or order. The only exception that the provision carves out is with regard to a situation where the transfer of the property is made permissible under the authority of the court and in accordance with the terms imposed by the court.

50. The explanation to the section further elaborates that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint and would continue until the suit is disposed of by a final decree, and the "complete satisfaction or discharge of such decree" has been obtained, unless the same cannot be obtained due to the expiry of the prescribed limitation period.

43.1. This Court also referred to its earlier decision in *Celir LLP* and noted the essentials of Section 52. Thereafter, this Court held thus:

52. This Court in *Celir LLP* (supra) had also emphasized that such a pendente lite transferee would be bound by the result of the proceedings irrespective of whether they had notice of the pending suit or not. In other words, the lack of knowledge of the proceedings would not be a valid defence against the application of the doctrine of *lis pendens*.

44. Section 52 has undergone an amendment in the State of Maharashtra by virtue of the Bombay Amendment Act, 1939 (Act XIV of 1939). Section 52, as amended in Maharashtra, stands restructured in as much as there are two sub-sections with an explanation, sub-section (2) being the Maharashtra insertion. Section 52 as amended in Maharashtra reads as under:

52. Transfer of property pending suit relating thereto.-

(1) During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the

property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

(2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particulars, namely:

(a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;

(b) the description of the immovable property the right to which is in question;

(c) the court in which the suit or proceeding is pending;

(d) the nature and title of the suit or proceeding; and

(e) the date on which the suit or proceeding was instituted.

Explanation.-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

45. The aforesaid amendment has been examined in Celir LLP. This Court has held that the requirement of registration of notice of pendency of suit or proceeding is to prevent any undue or unwarranted hardship to a third party who even after a reasonable due diligence has bona-fidely purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequences of losing the rights by a mechanical application of lis pendens.

This additional requirement is only for effective application of the doctrine of lis pendens. The objective is to discourage any thwarting or frustration of rights of the litigating parties by unscrupulous and unanticipated transactions. This Court cautioned against mechanical application of the aforesaid rule because if it is held that absence of notice registration would render the doctrine of lis pendens inapplicable, it would encourage exploitation of procedural gaps and thereby undermine the very sanctity of the judicial process.

Such an interpretation would lead to a very chilling effect whereby third parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or mischievously execute back dated agreements in collusion with a party to a lis prior to registration of such notice of pendency to circumvent the due court process. This Court held thus:

171. We have carefully gone through the aforesaid state amendment made to Section 52 of the TPA. The amended Section 52 sub-section (1) of the TPA casts upon a party who is claiming any right to a property which is a subject matter of any pending suit or proceeding an additional duty to register a notice of pendency in respect of such property so as to caution and put to notice any third-party who might otherwise be unaware of such proceeding or litigation despite the best of due diligence either due to inadvertence or deliberate misleading by one of the parties to the lis and as result might be genuinely considering to purchase or acquire any right in the subject-matter proceeding.

The requirement of registration of notice of pendency is to prevent any undue or unwarranted hardship to such third-parties who even after a reasonable due diligence have bona-fidely purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequence of losing their rights by a mechanical application of lis pendens.

172. This additional requirement of registration of notice of pendency is for the benefit of the party claiming any right in such subject-matter property and also for the benefit of any third-party interested in such subjectmatter property by enabling the former to claim the benefit of lis pendens as an absolute right after having duly taken steps towards ensuring that the public is well-aware of the impending litigation in respect of such property by registering a notice of pendency and to enable the latter to ascertain the veracity of title of such property by exercise of its due diligence.

Although, the said provision is for the benefit of the third-party, yet such subsequent purchasers cannot as a matter of absolute right claim any title to such property solely on the ground of want of any notice of pendency being registered. To hold otherwise would undermine the object and purpose of the doctrine of lis pendens which is based on the principle of equity, good conscience, and public policy and discourage any thwarting or frustration of rights of the parties so litigating by unscrupulous and unanticipated transactions.

173. The vital essence of this additional duty imposed upon the party claiming a right to a property which is a subject matter of a pending proceeding, is only

to aid a third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, if the absence of notice registration were to render the doctrine entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive rights of the parties and undermine the very sanctity of judicial proceedings.

Such an interpretation would lead to a very chilling effect whereby, third parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a lis prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.

46. At this stage, we may also advert to the provisions of Section 19 of the Specific Relief Act, 1963 ('the Specific Relief Act' hereinafter). Section 19 is included in Chapter II of the Specific Relief Act which deals with specific performance of contracts. Heading of Section 19 is 'Relief against parties and persons claiming under them by subsequent title'. Section 19 reads thus:

19. Relief against parties and persons claiming under them by subsequent title.-

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

46.1. The only clause which may be of some relevance is clause (b) of Section 19. It says specific performance of a contract may be enforced against any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract.

46.2. Section 19 in general and clause (b) thereof in particular acknowledges the claim of a person to a contract qua a subsequent transferee. But clause (b) carves out an exception when a subsequent transferee acts in good faith and without notice of the original contract.

47. In *K.S. Manjunath Vs. Moorasavirappa*¹⁰, the subsequent purchasers were seeking to bring themselves within the status of bona fide purchaser under Section 19(b) of the Specific Relief Act. It was in that context, this Court examined Section 19(b) as under:

68. Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause.

In the case of *Ram Niwas Vs. Bano*¹¹, this Court had set out three factors that a subsequent transferee must show to fall within the excluded class: (a) he has purchased for value the property, which is the subject matter of the suit for specific performance; (b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale specific performance of which is sought to be enforced against him. The Court observed that "notice" can be (i) actual notice or (ii) constructive notice, or (iii) imputed notice. As per Section 3 of Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for wilful

abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it.

47.1. Thereafter, this Court referred to a decision of the Madhya Pradesh High Court and held thus:

69. Similarly, in Durg Singh Vs. Mahesh Singh¹², the Madhya Pradesh High Court had observed that there are two factors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser:

(i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree, and

(ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour of the plaintiff. Both these factors need to have nexus with the facts of each case and conduct of parties.

47.2. This Court analysed the expressions 'wilful abstention from inquiry or search', 'notice' and 'good faith' and concluded that to claim protection under Section 19(b), the purchaser must show three things: (a) purchase for value, (b) payment in good faith, and (c) absence of notice of the earlier contract. 'Notice', it has been emphasized, includes not merely actual knowledge but also constructive and imputed knowledge. 48. However, it is evident that Section 19(b) of the Specific Relief Act operates at a stage prior to institution of a suit or proceeding.

49. We have already analysed Section 52 of the Transfer of Property Act and the interpretation given thereto by this Court. In our view, the interpretation and understanding of clause (b) of Section 19 has to align with the interpretation given to Section 52 of the Transfer of Property Act as any other interpretation would lead to an incongruous and anomalous situation which should be avoided.

50. As pointed out above, Section 19(b) of the Specific Relief Act would be available to a party to a contract who suffers a subsequent transfer of property. However, the moment a suit or proceeding is instituted by a party to the contract whereafter there is transfer of the suit property, Section 19(b) of the Specific Relief Act would have to give way to Section 52 of the Transfer of Property Act in which event the doctrine of lis pendens would come into force.

51. We may now refer to Section 47 CPC which deals with questions to be determined by the court executing decree. As per sub-section (1), all

questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Sub-section (3) clarifies that where a question arises as to whether any person is a representative of a party to the suit or not, such question shall be determined by the Executing Court.

While according to Explanation I, a plaintiff and a defendant are parties to the suit, Explanation II(a) makes it clear that for the purposes of Section 47, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed and clause (b) of Explanation II says that all questions relating to delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of Section 47.

51.1. Thus, Section 47 CPC provides that all questions which arise between the parties to the original suit in which the decree was passed or their representatives and which relate to the execution, discharge or satisfaction of the decree shall be determined by the Executing Court. There is a bar to filing of a separate suit in matters relating to the questions covered by Section 47.

52. Order XXI CPC deals with execution of decrees and orders.

53. Rule 97 of Order XXI CPC deals with resistance or obstruction to possession of immovable property. Rule 97 reads thus:

97. Resistance or obstruction to possession of immovable property.-

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

53.1. Thus, what Rule 97 contemplates is a situation where the decree holder for possession of immovable property is resisted or obstructed by any person in obtaining possession of the suit property. In such a case, the decree holder may make an application to the Executing Court complaining of such resistance or obstruction. Sub-rule (2) makes it very clear that when such an application is made, the Executing Court shall proceed to adjudicate upon the

application in accordance with the provisions contained in Rule 97 of Order XXI.

54. Then comes Rule 98 which deals with orders after adjudication. Rule 98 is as under:

98. Orders after adjudication.-

(1) Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgmentdebtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

54.1. Sub-rule (1) of Rule 98 says that upon hearing such an application, the Executing Court may make an order allowing the application or dismissing the application. In the event the application is allowed, a consequential direction should follow putting the applicant into possession of the suit property. Sub-rule (2) specifically deals with the resistance or obstruction put forth by any person to obtaining possession of the suit property, including in a situation where the transfer was made during the pendency of the suit or execution proceeding.

It says that where upon adjudication, the Executing Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf or by a transferee where the transfer was made during pendency of the suit or execution proceeding, the Executing Court shall direct that the applicant be put into possession of the suit property. If the resistance continues further, the Executing Court has the mandate to order such person including the judgment

debtor to be detained in civil prison for a term which may extend to thirty days.

54.2. There is a Bombay amendment to Rule 98(2) vide the Maharashtra Government Gazette notification dated 15.09.1983 which has come into effect from 01.10.1983. As per this amendment, in addition to civil imprisonment, the Executing Court also has the mandate to order the persons whom it holds responsible for putting such resistance or obstruction to pay jointly or severally in addition to costs, reasonable compensation to the decree holder or the purchaser, as the case may be, for the delay and expenses caused to him in obtaining possession.

55. This brings us to Rule 101 of Order XXI which says that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 (or under Rule 99) or their representatives, and relevant to the adjudication to the application, shall be determined by the Executing Court dealing with an application under Rule 97 (or under Rule 99) and not by a separate suit.

55.1. There is a Bombay amendment to Rule 101 vide the Maharashtra Gazette dated 15.09.1983 w.e.f. 01.10.1983 whereby a proviso has been inserted. The proviso deals with a situation where the Executing Court is not competent to decide such a question due to want of pecuniary jurisdiction. Since such an issue does not arise for consideration in this case, we are of the view that it may not be necessary to further dilate on the Bombay amendment to Rule 101.

56. Though Rule 102 says that Rules 98 and 100 are not applicable to a transferee pendente lite, the same has been omitted by the aforesaid Bombay amendment vide the Maharashtra Gazette dated 15.09.1983 w.e.f. 01.10.1983. However, as per this amendment, in Rule 100, a proviso has been added. Rule 100 as applicable to the State of Maharashtra is extracted as under:

100. Order to be passed upon application complaining of dispossession.-

Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit. Where it is determined that the application is made by person to whom the judgment-debtor has transferred the property after the institution of the suit in

which the decree was passed, the court shall dismiss the application under sub-rule (a) above.

57. Rule 103 makes it clear that where any application has been adjudicated upon under Rule 98 or under Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

58. Thus Rules 97 to 103 of Order XXI CPC provides the procedural framework when a decree holder seeks possession of immovable property and is resisted or obstructed by any person in obtaining such possession. It is not necessary to repeat what we have already analysed supra.

59. In *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust*¹³, a sub-tenant, who was not a party to a decree for eviction, resisted execution of the decree and the court ordered an inquiry under Section 151 CPC. The High Court upheld that order and that was challenged in appeal before this Court. While disagreeing with the view taken by the High Court that resistance or obstruction made by a third party to the decree for execution cannot be gone into under Order XXI Rule 97 CPC, this Court observed as under:

9. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree.

No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to

resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property.

Similarly, a third party, who questions the validity of a transfer made by a decreeholder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

13. In the above context we may refer to Order 21 Rule 35(1) which reads thus:

"35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property."

59.1. This Court held that it is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and whether he refuses to vacate the property. It has been held thus:

14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.

60. NSS Narayana Sarma Vs. Goldstone Exports (P) Ltd.¹⁴, also makes an analysis of Order XXI Rules 97 to 101 CPC. In this case, the contest was between two sets of transferees of the subject property, including the appellants. The objections filed by the appellants under Order XXI Rule 99 read with Rule 101 CPC having been dismissed by the High Court as non-maintainable, the appellants were before this Court assailing the judgment of the High Court. In that context, this Court examined the aforesaid provisions in the following manner:

15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy.

Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with "all issues" relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree.

Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a

proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case.

60.1. After adverting to Silverline and other decided cases, this Court concluded as under:

19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree.

61. The next case on this issue is Usha Sinha Vs. Dina Ram¹⁵. After agreeing with the proposition of law laid down in Silverline, this Court held as under:

25. We are in respectful agreement with the proposition of law laid down by this Court in Silverline Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment-debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment-debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

26. For invoking Rule 102, it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and

sought to be executed against the judgment-debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21.

62. Having noticed the broad legal framework, we may now revert back to the facts of this case which as we have adverted supra are not disputed. Nonetheless, for proper application of the legal principles we may briefly summarize the admitted factual position.

63. Respondent No. 1 (plaintiff) had entered into an agreement for sale of the subject property with the defendant (judgment debtor) on 26.04.1973. Since the defendant failed to perform his part of the contract, respondent No. 1 as the plaintiff instituted Regular Civil Suit No. 910 of 1986 on 28.04.1986. Thereafter, on 02.05.1986, respondent No. 1 (plaintiff) registered lis pendens.

63.1. During the pendency of the suit, from 07.05.1987 to 31.08.1987, respondent No. 2 (judgment debtor) by eight sale deeds transferred the right, title and interest of various parcels of the suit property to different persons from whom the present appellants further purchased portions of the suit property. In the year 1989, one of the transferee pendente lite constructed a bungalow over a part of the suit property.

63.2. The trial court vide the judgment and order dated 30.11.1990 decreed the suit in favour of respondent No. 1 (plaintiff). 64. Within a period of one year from the date of the said judgment and decree, respondent No. 1 filed execution petition being Regular Darkhast No. 205 of 1991 against respondent No. 2 (judgment debtor) on 03.07.1991.

64.1. On 25.03.1993, on orders of the Executing Court, the Court Commissioner executed the sale deed in favour of respondent No. 1 (judgment debtor), thus transferring title over the suit property to respondent No. 1 (decree holder).

64.2. Though respondent No. 2 (judgment debtor) attempted to belatedly challenge the judgment and decree dated 30.11.1990, the same was unsuccessful. Further, his challenge to execution of sale deed by the Court Commissioner was also rejected by all the courts. As a result, the said judgment and decree dated 30.11.1990 and execution of the sale deed by the Court Commissioner in favour of respondent No. 1 (decree holder) on 25.03.1993 attained finality.

64.3. Again, though respondent No. 2 (judgment debtor) had resisted the execution petition of respondent No. 1 (plaintiff), the same was dismissed by the Executing Court vide the order dated 18.07.2013. Though this order dated

18.07.2013 was challenged by respondent No. 2 in civil revision, the High Court did not entertain such revision application.

64.4. In the execution proceedings i.e. in Regular Darkhast No. 205 of 1991, on completion of various procedural steps, the Executing Court passed order on 09.02.2018 issuing possession warrant for 18.01.2019.

64.5. Appellants as obstructionists resisted execution on 18.01.2019 and raised objections before the Executing Court on 18.01.2019 itself. Opposing such objections, respondent No. 1 (decree holder) filed applications on 11.02.2019 for removal of obstruction. By order dated 29.02.2020, the Executing Court allowed the application of respondent No. 1 (decree holder) and rejected the objection of the obstructionists. Executing Court directed the obstructionists i.e. the appellants to vacate the premises within one month from the date of the said order.

64.6. This order dated 29.02.2020 of the Executing Court was assailed by the appellants in appeal. However, the appellate court vide the judgment and order dated 12.04.2022 dismissed the appeals.

64.7. In the meanwhile, respondent No. 2 (judgment debtor) filed an application before the Executing Court for dismissal of Regular Darkhast No. 205 of 1991 which was however dismissed vide the order dated 01.03.2021. Though there was a further challenge before the High Court by way of revision application, the same was also dismissed. 64.8. Against the appellate judgment and order dated 12.04.2022, the related second appeals were filed by the appellants which came to be dismissed by the High Court vide the impugned judgment and order dated 19.12.2024.

65. In the aforesaid factual background, it is clear as day light that the rights of the appellants who are subsequent purchasers are subservient to the rights of the decree holder. After the judgment and decree of the trial court and following execution of the sale deed by the Court Commissioner, a valid title qua the suit property passed on to respondent No. 1 (decree holder). Admittedly in the present case, the transfer of the suit property is pendente lite. Therefore, the doctrine of lis pendens as encapsulated in Section 52 of the Transfer of Property Act is squarely applicable. All the courts have recorded a clear finding of fact that the appellants were fully aware of the pendency of the suit.

However, even that is not necessary. As has been held by this Court in Silverline, the scope of adjudication is limited to the only question as to whether the objector who has resisted execution is a transferee pendente lite or not and if the finding is in the affirmative, then such a transferee has no

right to resist. In so far the present case is concerned, the rights of the appellants have been duly adjudicated under Order XXI Rules 97 to 102 CPC to the complete satisfaction of the Executing Court. That being the position, there is no merit at all in the case projected by the appellants and the Executing Court rightly passed the order dated 29.02.2020.

66. Reliance placed by Mr. Navare on Thomson Press is totally misplaced. There is no dispute to the proposition that transfer pendente lite is neither illegal nor void ab initio. But it remains subservient to the decree that may be passed by the court. Now that the decree and conveyance in favour of respondent No. 1 have attained finality, the transferee pendente lite i.e. the appellants have to give way and hand over actual physical possession of the suit property to respondent No. 1.

67. Mr. Navare, learned senior counsel for the appellants also placed heavy reliance on the decision of this Court in Lala Durga Prasad. According to us, given the facts of this case, Lala Durga Prasad will have no application at all. High Court has noted in paragraph 26 of the impugned judgment the factual position in Lala Durga Prasad which is clearly distinguishable from the facts of the present case. Thereafter, High Court held as under:

27. Thus, it is clear that in the said case the issue involved is not a transaction pendente lite but the transaction is a subsequent transaction after the execution of agreement dated 7th February 1942 executed with the Plaintiff. However; the subsequent transaction executed on 4th April 1942 in favour of the Appellants in that case, has been executed prior to filing of the Suit and therefore the original vendor as well as the subsequent purchaser have been made parties to the Suit. Thus, the issue involved in the case of Lala Durga Prasad (supra) is totally different. In that case, the vendor executed agreement with the Plaintiff on 7th February 1942. Thereafter, with subsequent purchaser a transaction was executed on 4th April 1942 and the property has been sold.

67.1. High Court referred to paragraphs 40 and 41 of Lala Durga Prasad and held that in the factual context of that case, Section 52 of the Transfer of Property Act was not attracted. Relevant portion of the finding of the High Court is extracted as under:

28. Thus, it is clear that the factual position in said Lala Durga Prasad (supra) and Paragraph 40 and 41 in said Lala Durga Prasad (supra), clearly shows that in the said decision Section 52 of the TP Act and the parameters concerning the same are not under consideration and in fact in those cases Section 52 is not even applicable. In the said decision, admittedly the sale in favour of subsequent purchaser by the Defendant/Vendor is before filing of the Suit by

the Plaintiff. Thus, the said decision of Lala Durga Prasad (supra) has no application to the facts of the present case.

67.2. Concluding the analysis, the High Court held that if the subsequent transferee acquires right, title and interest with respect to the subject property before filing of the suit, the law laid down in Lala Durga Prasad would be applicable. In paragraph 41 of the impugned judgment, the High Court noted that since in the present case, the transfers are pendente lite, such transactions are covered by Section 52 of the Transfer of Property Act and hence the law laid down in Lala Durga Prasad would have no application.

68. We are in complete agreement with the views expressed by the High Court. Lala Durga Prasad was a case which arose out of a vendee's suit for specific performance of a contract of sale dated 07.02.1942. The only question which this Court was called upon to decide except for certain subsidiary matters was whether the agreement dated 07.02.1942 was a concluded one or not. Appellant's case was that the plaintiff's so-called agreement of 07.02.1942 was not a concluded one as the parties never reached finality. In the facts of that case, this Court held that there was a completed contract on 07.02.1942 which the plaintiff was entitled to have specifically performed.

It was in that context, this Court considered the question viz., the proper form of decree in such cases. At this stage, it may be mentioned that the vendor in this case was the first defendant who had migrated to Pakistan following partition and his property was taken over by the Custodian, Uttar Pradesh. After noticing that the practice of the courts in India till that point of time was not uniform, this Court opined that in such cases the proper form of decree would be to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff.

He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. Therefore, it is quite evident that the fact situation in Lala Durga Prasad is distinguishable from the present case and in any view of the matter, Section 52 of the Transfer of Property Act was not at all an issue therein. As such, this judgment can be of no assistance to the appellants.

69. Towards the end of the hearing, Mr. Navare, tried to introduce the question of limitation by contending that respondent No. 1 (decree holder) had slept over his rights. Despite being fully aware of transfer of the suit land and construction of permanent structure thereon, he moved for possession warrant only in the year 2018; rather, he filed application in 2019 seeking

removal of obstruction. In this regard, learned senior counsel has placed reliance on Articles 129 and 134 of the Limitation Act, 1963 ('the Limitation Act' hereinafter).

70. I am afraid, such a submission has no merit at all and has to be recorded only to be rejected. The point of limitation was nowhere pleaded by the appellants including before the High Court. In fact, no such substantial question of law was framed by the High Court. All throughout the proceedings, it was the case of the appellants that they being subsequent purchasers, they ought to have been brought on record while executing the sale deed and also during execution proceeding. As already noted above, appellants being transferee pendente lite, the doctrine of lis pendens applies with full force to them. That apart, respondent No. 1 (decree holder) had sought for execution within a period of one year from the date of the judgment and decree of the trial court.

71. Article 129 of the Limitation Act prescribes a period of limitation of 30 days for filing an application for possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree. This period of 30 days is to be counted from the date of resistance or obstruction. Likewise, under Article 134, the period of limitation for delivery of possession by a purchaser of immovable property at a sale in execution of a decree is one year which limitation period would begin to run from the date when the sale becomes absolute.

Obviously, Article 134 is not attracted in the present case. Respondent No. 1 got the title over the suit land transferred to him by way of a sale deed executed by the Court Commissioner since respondent No. 2 failed to comply with the judgment and decree of the trial court. In so far Article 129 is concerned, the present appellants raised objections to the execution of the decree concerning handing over of possession on 18.01.2019. Respondent No. 1 filed the application for removal of obstruction on 11.02.2019, which is well within the period of 30 days.

72. Thus on a thorough consideration of all aspects of the matter, we do not find any error or infirmity in the view taken by the High Court. There is no merit in the two appeals which are liable to be dismissed.

73. Appellants are directed to hand over actual physical possession of the suit property to respondent No. 1 (decree holder) on or before 15.02.2026.

74. We were seriously pondering whether to conclude the judgment here or to proceed further for issuing certain directions, considering the peculiar facts of this case, which in the very nature of things would be under Article 142 of the

Constitution. The related suit was instituted by respondent No. 1 in the year 1986 for specific performance of contract dated 26.04.1973.

The decree is dated 30.11.1990. Execution proceedings were initiated on 03.07.1991. Court Commissioner executed sale deed on 25.03.1993. Since then it has been more than 3 decades but respondent No. 1 is yet to enjoy the fruits of his litigation success as actual physical possession of the suit property has still not been handed over to him, despite adjudication of the objection of the appellants as obstructionists to the complete satisfaction of the Executing Court.

In the process, he has suffered multiple rounds of litigation either at the hands of the judgment debtor or at the instance of the appellants. In order to ensure that respondent No. 1 (decree holder) does not have to undergo the ordeal of further frivolous litigation thus prolonging his hardship, we deem it appropriate to issue certain direction(s).

Accordingly, we direct that no further application(s) or petition(s) either by the appellants or by the judgment debtor i.e. respondent No. 2 or by any other person claiming right qua the suit property through them shall be entertained by any court. We consider such a direction to be necessary to ensure that respondent No. 1 is not subjected to any further harassment which will meet the ends of justice.

75. Consequently, both the appeals are dismissed in the aforesaid terms. No cost.

.....J. [Manoj Misra]

.....J. [Ujjal Bhuyan]

New Delhi;

January 12, 2026.

1 (2013) 5 SCC 397

2 (1953) 2 SCC 509

3 (2000) 10 SCC 405

4 (1972) 2 SCC 200

5 (2024) SCC Online SC 3727

6 (2006) 13 SCC 608

7 (2008) 5 SCC 796

8 2024 SCC OnLine SC 3214

9 2025 SCC OnLine SC 2805

10 2025 SCC Online SC 2378

11 (2000) 6 SCC 685

12 2004 SCC Online MP 9

13 (1998) 3 SCC 723

14 (2002) 1 SCC 662

15 (2008) 7 SCC 144

IN THE SUPREME COURT OF INDIA

Centre for Public Interest Litigation

Vs.

Union of India

[Writ Petition (c) No. 1373 of 2018]

Head Note – Split verdict on the constitutionality of Section 17A of the Prevention of Corruption Act, inserted by the 2018 amendment, which mandates that there should be a prior sanction from the Government to launch an investigation against a public servant under the Act.

Justice BV Nagarathna held that Sec. 17A is unconstitutional.

Justice KV Viswanathan refused to do so and instead read it down to hold that the question of sanction must be decided by the Lok Pal or the Lok Ayukta. In view of the divergence of opinion in the bench, the matter was directed to be placed before the Chief Justice of India for the constitution of an appropriate bench to decide the issue.

Justice Nagarathna observed that the provision was an attempt to protect the corrupt. Section 17A is unconstitutional and it ought to be struck down. No prior approval is required to be taken. This provision is an attempt to resurrect what has been earlier struck down in Vineet Narain and Subramanian Swamy judgments. The requirement of prior sanction is contrary to the object of the Act, and it forecloses inquiry and protects the corrupt rather than seeking to protect the honest and those with integrity who really do not require any protection.

Justice Viswanathan held that an independent agency, which is free from the executive, must decide the question of sanction. Therefore, he directed that the sanction must be decided by the Lok Pal/Lokayukta. Section 17A was read down to that extent. Section 17A is constitutionally valid subject to the condition that the sanction must be decided by the Lok Pal or the Lok Ayukta of the State.

Justice KV Viswanathan observed that striking down the provision will amount to "throwing the baby out with the bath water" and that unless honest and public servants are shielded from frivolous investigations, a "policy paralysis" will set in. He emphasised that a fine balance has to be maintained between the need to protect a public servant from mala fide cases and the importance of upholding probity in public offices.

Section 17A has no vice of invalid classification. The possibility of abuse is no ground to strike down Section 17A. If Section 17A is struck down, complaints routed through Lok Pal will face screening and complaints routed through police will not face screening. This will create a dichotomy and structural imbalances.

JUDGMENT

K.V. Viswanathan, J.

- A. TEXT OF SECTION 17A.....
- B. CONTENTIONS OF THE PETITIONER.....
- C. CONTENTIONS OF THE RESPONDENT.....
- D. QUESTION FOR CONSIDERATION.....
- E. PRECURSOR TO SECTION 17A.....
- F. RATIO, SPIRIT AND ESSENCE OF VINEET NARAIN
- G. INTRODUCTION OF SECTION 6A IN THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 2003...
- H. HOLDING IN SUBRAMANIAN SWAMY.....
- I. METAMORPHOSIS OF SECTION 17A.....
 - i) RECOMMENDATION OF THE LAW COMMISSION.....
 - ii) RECOMMENDATION OF THE RAJYA SABHA SELECT COMMITTEE.....
- J. QUALITATIVE DIFFERENCE BETWEEN THE ERSTWHILE SECTION 6A AND THE PRESENT SECTION 17A.....
- K. MANNER OF FUNCTIONING OF GOVERNMENT MACHINERY....
- L. IMPORTANCE OF HONEST AND FEARLESS ADVICE BY

PUBLIC SERVANTS...

- M. CONSTITUTIONAL VALIDITY OF SECTION 17A.....
- N. EXISTING STANDARD OPERATING PROCEDURE (SOP) GOVERNING THE GRANT/REJECTION OF APPROVAL...
- O. SOP - DOES NOT CONTEMPLATE SCREENING BY AN INDEPENDENT AGENCY.....
- P. THROWING BABY OUT WITH THE BATHWATER - NOT AN OPTION.....
- Q. POSSIBILITY OF ABUSE - NO GROUND TO HOLD PROVISION UNCONSTITUTIONAL...
- R. THE LOKPAL AND THE LOKAYUKTAS ACT, 2013.....
- S. BODIES NOT COVERED UNDER THE JURISDICTION OF LOKPAL...
- T. TEST OF READING DOWN.....
- U. CONSTRUCTIVE APPROACH TO REMOVE DICHOTOMY.....
- V. ANALOGY WITH JUDICIARY-NOT TENABLE.....
- W. EXISTENCE OF JUDICIAL REVIEW-NOT ADEQUATE TO PASS THE SUBRAMANIAN SWAMY TEST.....
- X. POSTSCRIPT AND DIRECTIONS.....

1. Independent India's first Home Minister Shri Sardar Vallabhbhai Patel referred to civil servants as the 'Steel Frame of India'. In a similar vein, noted economist Joseph Schumpeter said - 'Bureaucracy is not an obstacle to democracy but an inevitable complement to it'. This case brings into sharp focus the enduring profundity and the everlasting significance of these words of wisdom.

2. By this writ petition, the petitioner is challenging the constitutional validity of Section 17A of the Prevention of Corruption Act, 1988 [for short "the

Act"]. The said section was introduced by virtue of Section 12 of the Prevention of Corruption (Amendment) Act, 2018 (for short 'the Amendment Act'). It should be recorded that yet another prayer challenging the validity of Section 7 of the Amendment Act on the assumed premise that the ingredients of the erstwhile Section 13(1)(d)(ii) of the Act were not engrafted, had been given up during the course of the arguments by Mr. Prashant Bhushan, learned counsel for the petitioner.

TEXT OF SECTION 17A:

3. Section 17A, as introduced w.e.f. 26.07.2018, reads as under:-

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.-

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

4. It will be noticed that under the said section, no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been

committed by a public servant under the Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval of the authority prescribed therein.

The proviso prescribes that no such approval is necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person. It is also prescribed that the concerned authority is to convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

CONTENTIONS OF THE PETITIONER:

5. Mr. Prashant Bhushan, learned counsel for the petitioner, ably assisted by Mr. Anurag Tiwary and Ms. Cheryl D'Souza, learned Counsels contends that Section 17A of the Act is violative of Articles 14 and 21 of the Constitution of India. According to the learned counsel, this is an attempt to reintroduce a provision which had already been struck down twice by this Court in Vineet Narain and Others vs. Union of India and Another¹ and Subramanian Swamy vs. Director, Central Bureau of Investigation and Another². According to the learned counsel, in Subramanian Swamy (supra), this Court found that the provision prevented the investigating agency from collecting material evidence.

He contends that all that Section 17A does is to extend the scope of protection to all levels of public servants and not just to a particular category. Pointing to the data filed by the Union of India pertaining to the Central Bureau of Investigation [CBI], it is contended by the learned counsel for the petitioner that out of 2395 cases, prior approval was refused in 41.3% of the cases, namely, in 989 cases. According to the learned counsel, there is no indication as to any transparent criteria for grant or refusal of sanction. It is contended that there is a reasonable apprehension of arbitrariness on the part of the authority.

According to the learned counsel, this will give room for selectively targeting officials and also result in protecting and shielding the politically connected officials. Learned counsel for the petitioner contends that Section 17A, by vesting the power in the government to grant approval, is repugnant to the provisions of the Lokpal Act and Lokayuktas Act, 2013 (for short 'the Lokpal Act') defeating the purpose of an independent mechanism.

Learned counsel further contends that the impugned provision (Section 17A) runs contrary to the dictum of this Court in *Lalita Kumari vs. Government of Uttar Pradesh and Others*,³ which according to the learned counsel for the petitioner, mandated registration of FIR on the disclosure of a cognizable offence. Learned counsel also contends that the provision is contrary to the United Nations Convention against Corruption, particularly Articles 6(2), 19 and 36.

Learned counsel submits that there is an obligation to interpret domestic law in the light of the obligation under the International Conventions. Alternatively, without prejudice to his arguments on the invalidity of Section 17A of the Act, Mr. Prashant Bhushan, learned counsel, in the rejoinder submissions, argued that if the regime of prior approval is to be preserved then screening by an independent agency, like for example the Lokpal, be engrafted.

CONTENTIONS OF THE RESPONDENT:

6. Mr. Tushar Mehta, learned Solicitor General, very ably assisted by Mr. Kanu Agrawal and Mr. Rajat Nair, learned counsels, vehemently opposed the submissions of the petitioner while defending the validity of Section 17A. It is contended that there is a presumption of constitutionality in favour of a statutory provision. It is further contended that a challenge to the validity can only be made in the background of an actual fact scenario. According to the learned Solicitor General, an extensive consultation, was undertaken before the enactment of the said provision.

Apart from the Parliamentary Standing Committee, the matter was also examined by the Law Commission of India and further by the Rajya Sabha Select Committee. The learned Solicitor General contended that Section 17A, as it stands, being a statutory provision, the principles laid down in *Vineet Narain (supra)* can have no application as the single directive in *Vineet Narain (supra)* was struck down on the ground that an executive instruction cannot be ultra vires the statute.

Similarly, according to the learned Solicitor General, Section 6A of the Delhi Special Police Establishment Act, 1946 [for short "the DSPE Act"] which applied only to a class of individuals was found to be discriminatory and that vice is not attracted herein as Section 17A is applied across the board to all public servants. Learned Solicitor General also referred to the Standard Operating Procedure [SOP] for the grant or refusal of approval under Section 17A. The contents of the SOP have been dealt with in detail hereinbelow.

7. The learned Solicitor General contended that Section 17A was a salutary provision with substantial checks and balances enacted for a specific purpose, i.e. to protect honest public servants from harassment by way of enquiry or inquiry or investigation in respect of the recommendations made or decisions taken in bona fide performance of their official functions or duties. It was contended that the said provision was part of the larger parliamentary policy to protect genuine bona fide executive decisions taken by public servants while discharging their official functions or duties.

The learned Solicitor General contends that the screening mechanism was introduced to prevent misuse of the legal process and to ensure that only genuine cases are proceeded with. The provision, according to the learned Solicitor General, was intended to maintain a balance between accountability and administrative efficiency. Learned Solicitor General, however, in para 5 of his written submissions expressly stated as under:-

"Before a public servant is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct and a FIR is lodged against him, there must be some suitable preliminary inquiry into the allegations by a responsible officer."

8. Learned Solicitor General traced the legislative history leading to the enactment of Section 17A. The same has been discussed later in this judgment in detail. Learned Solicitor General brought out the qualitative distinction between Section 6A and Section 17A and the scope, sweep and ambit of the said two provisions. According to the learned Solicitor General, while Vineet Narain (supra) struck down the single directive on the ground of it being an executive instruction contrary to the statutory provision, in Subramanian Swamy (supra), Section 6A was struck down on the ground of classification only.

9. Learned Solicitor General submitted that preinvestigative sanctions are not an anathema to the rule of law and illustrated the point with reference to the judgment of this Court in K. Veeraswami vs. Union of India and Others⁴ and contended that the protection is not confined to judges in constitutional courts but have been extended to all members of the judiciary.

Learned Solicitor General emphasized on the use of the phrase "discharge of official duties" in Section 17A to bring home the point about narrow tailoring of Section 17A. Reliance was placed on Matajog Dobey vs. H.C. Bhari⁵ to contend that like in Section 197 of the Code of Criminal Procedure, 1973 (for short 'the CrPC'), protection is extendable under Section 17A only when there is a reasonable connection between the act and the discharge of official duty.

It was further emphasized that the Section is further confined to recommendation made and decision taken as is clear from the use of the phrase "relatable to any recommendation made or decision taken" which qualifies the phrase "in discharge of official duties". This was argued to make good the point that all acts are not protected.

10. It was argued that the prescription of time-limits for the decision to be taken itself is a guarantee against misuse. It was also argued that post the grant or refusal, remedies by way of judicial review are available. Learned Solicitor General laid emphasis on the proviso to Section 17A to contend that on the spot arrests are outside the purview of the screening mechanism. Learned Solicitor General contended that in view of Section 56 of the Lokpal Act, the Lokpal Act has an overriding effect and whenever there is an investigation ordered or FIR is ordered to be registered by the Lokpal, the provision of Section 17A has no application. A large number of judgments of the High Court interpreting Section 17A were placed for consideration.

11. It was argued by the learned Solicitor General that there was no breach of Lalita Kumari (supra) as even Lalita Kumari (supra) contemplated exceptions to the rule of mandatory registration of FIR and amongst the exceptions, corruption cases were covered. It was argued that where the statute creates a new procedure and sets out a machinery dealing with it, the general provisions of the CrPC will not apply to those matters covered by the special statute.

12. Much emphasis was laid on the pre-investigative sanction prescribed for members of judiciary to contend that Section 17A which extends similar protection to the executive cannot be faulted with. Citing U.P. Judicial Officers' Association vs. Union of India and Others⁶, it was argued that the protection has been extended to the higher judiciary which are not constitutional courts. It was submitted that Subramanian Swamy (supra) wrongly understood the protection given to the judicial officers as being confined to the judges of the constitutional courts. It was argued that mere possibility of abuse of provision cannot be the basis to judge its validity.

QUESTION FOR CONSIDERATION:

13. In the above background, the question that arises for consideration is, whether Section 17A of the Act as introduced w.e.f. 26.07.2018 by Section 12 of the Amendment Act, is constitutionally valid?

PRECURSOR TO SECTION 17A:

14. Prior to the judgment dated 18.12.1997 in Vineet Narain (supra), a directive popularly known as the Single Directive was in vogue. It was in the

form of an executive order which contained certain instructions to the CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. Directive No. 4.7(3) read as under:-

"4.7(3)(i) In regard to any person who is or has been a decision-making level officer (Joint Secretary or equivalent or above in the Central Government or such officers as are or have been on deputation to a Public Sector Undertaking; officers of the Reserve Bank of India of the level equivalent to Joint Secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the bank officers who are one level below the Board of Nationalised Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up any enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.

(ii) All cases referred to the Administrative Ministries/Departments by CBI for obtaining necessary prior sanction as aforesaid, except those pertaining to any officer of the rank of Secretary or Principal Secretary, should be disposed of by them preferably within a period of two months of the receipt of such a reference. In respect of the officers of the rank of Secretary or Principal Secretary to Government, such references should be made by the Director, CBI to the Cabinet Secretary for consideration of a Committee consisting of the Cabinet Secretary as its Chairman and the Law Secretary and the Secretary (Personnel) as its members. The Committee should dispose of all such references preferably within two months from the date of receipt of such a reference by the Cabinet Secretary.

(iii) When there is any difference of opinion between the Director, CBI and the Secretary of the Administrative Ministry/Department in respect of an officer up to the rank of Additional Secretary or equivalent, the matter shall be referred by CBI to Secretary (Personnel) for placement before the Committee referred to in clause (ii) above. Such a matter should be considered and disposed of by the Committee preferably within two months from the date of receipt of such a reference by Secretary (Personnel).

(iv) In regard to any person who is or has been Cabinet Secretary, before SPE takes any step of the kind mentioned in (i) above the case should be submitted to the Prime Minister for orders." Vineet Narain (supra) dealt with the validity of the said directive. Two questions arose in relation to the said Directive No. 4.7(3) of the Single Directive, namely, its propriety/legality and the extent of its coverage.

15. In defending the validity of the Single Directive, the then Attorney General had contended that the CBI being a special agency created by the Central Government, was required to function according to the mandate of the Central Government which had constituted the special agency. It was also contended that the Officers at the decision-making level needed protection against malicious or vexatious investigations in respect of honest decisions taken by them.

While dealing with these contentions, this Court held that the general power to review the working of the agency would not extend to permitting the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the officers concerned are to be governed entirely by the mandate of law and the statutory duty cast upon them [para 28 of Vineet Narain (supra)].

16. This Court quoted the judgment in Union of India and Others vs. Sushil Kumar Modi and Others⁷, which, in turn, relied on the observations of Lord Denning in R v. Metropolitan Police Commr.⁸ to the following effect:-

"I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace.

He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

[Emphasis supplied]

17. Thereafter, Vineet Narain (supra) distinguished the judgments in State of Bihar and Another vs. J.A.C. Saldanha and Others⁹ and K. Veeraswami (supra) and held that statutory powers cannot be fettered by single directives which are in the nature of executive instructions. This Court further held that unlike the power to sanction prosecution under the then Section 6 of the DSPE Act which was statutorily prescribed, the Single Directive was in the nature of an executive order. This Court held that in the absence of any statutory requirement of prior permission or sanction for investigation, the

same cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence statutorily.

18. Going further, this Court held that the law does not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life. This Court found that the Single Directive was applicable only to certain persons above the specified level who are described as "decisionmaking officers". Further, this Court first excluded from the applicability of the Single Directive accusation of bribery which is supported by direct evidence including trap cases and offence of possession of assets disproportionate to known sources of income. Thereafter, dealing with cases where accusation could not be supported by direct evidence and is a matter of inference of corrupt motive, this Court held as under:-

"46. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision-maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy.

This is, therefore, an area where the opinion of persons with requisite expertise in decision-making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that the CBI or the police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation.

In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the CBI with the aid of that advice and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself."

19. What is important to note is, this Court held that the final opinion whether to investigate or not has to be made by the CBI and not by anybody else and

exhorted the CBI to have within its midst body of experts to make the required decision. What was emphasized was that the final decision whether to investigate or not was to rest with the agency. Holding so, the Single Directive was held to be invalid.

20. A minute reading of Vineet Narain (supra) indicates that this Court first addressed the question of propriety/legality of the Single Directive. In answering the question, this Court held that the executive cannot dictate to the investigating machinery as to whom to prosecute or not to prosecute. This Court also reiterated that the formation of the opinion as to whether or not a case has to be placed for trial is that of a police officer and by no other authority. (See para 29)

RATIO, SPIRIT AND ESSENCE OF VINEET NARAIN (SUPRA)

21. Though said in the context of examining the validity of the executive instruction, the ratio, true spirit and essence of the judgment in Vineet Narain (supra) is that the executive on its own cannot foreclose enquiry into any allegation of corruption as that will be entering the domain of the investigative agency.

This is the principle that permeates the warp and woof of the entire judgment in Vineet Narain (supra). The fact that what was struck down as an executive instruction and the observations on the aspect of classification have all to be read in the context of this one fundamental underpinning in the judgment, namely, that any decision to foreclose an enquiry against a public servant has to be taken by a body which is independent of the executive.

22. In Vineet Narain (supra), this Court proceeded to give certain directions to implement the rule of law, to reiterate as far as possible the recommendations of the Independent Review Committee popularly known as N.N. Vohra Committee. The following words of this Court from Vineet Narain (supra) repays study:-

"26. There can also be no doubt that the conclusions reached by the IRC and its recommendations are the minimum which require immediate acceptance and implementation in a bid to arrest any further decay of the polity. It follows that the exercise to be performed now by this Court is really to consider whether any modifications/additions are required to be made to the recommendations of the IRC for achieving the object for which the Central Government itself constituted the IRC. We are informed by the learned Attorney General that further action on the report of the IRC could not be taken so far because of certain practical difficulties faced by the Central

Government but there is no negative reaction to the report given by the Central Government."

23. This Court reiterated some of the recommendations made by Lord Nolan of U.K. dealing with "Standards in Public Life" wherein one of the recommendations was as follows:-

"Independent scrutiny

7. Internal systems for maintaining standards should be supported by independent scrutiny."

In conclusion, this Court in Vineet Narain (supra) held as under:-

"61. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusions and recommendations of the IRC, and that is a large area, we have adopted the same in the formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned."

INTRODUCTION OF SECTION 6A IN THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

24. By the insertion of Section 26(c) to the Central Vigilance Commission Act, 2003 [CVC], Section 6A was introduced to the DSPE Act in 2003. Section 6A read as under:

"6-A. Approval of Central Government to conduct inquiry or investigation.-

(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to-

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)."

25. A Constitution Bench of this Court in Subramanian Swamy (supra) examined the challenge to the validity of Section 6A of the DSPE Act. It is crucial to notice the argument of learned Amicus Curiae Shri Anil B. Divan, learned senior counsel, in supporting the challenge to the validity:-

a) That the provision has to be struck down as it strikes at the core of rule of law as explained in Vineet Narain (supra) and the principle of independent, unhampered, unbiased and efficient investigation;

b) That the provision was subversive of independent investigation;

c) The very group of persons, namely, high-ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether the CBI should even start an inquiry or investigation;

d) There will be no confidentiality and insulation of the investigating agency from political as well as bureaucratic control and influence because the approval has to be taken from the Central Government which would involve leaks and disclosures at every stage.

e) The very nexus of the criminal-bureaucrat-politician which is subverting the whole polity would be involved in granting or refusing prior approval before an inquiry or investigation can take place.

f) The essence of a police investigation is skilful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The submission made being that the prior sanction of the same department would result in indirectly putting to notice the officers to be investigated before the commencement of investigation.

g) Lastly, the classification contained in Section 6A created a privileged class of government officers of the level of Joint Secretary and above level and certain officials in Public Sector Undertakings, which is directly destructive and ran counter to the object of the Act and undermined the object of detecting and punishing high-level corruption.

26. The validity of the statute was defended by contending that those in decision-making positions could become target of frivolous complaints and they need to be protected. Hence, a screening mechanism is legitimate as

otherwise governance would be affected and decision makers instead of tendering honest advice would only give safe and non-committal advice.

It was argued that the screening mechanism was to filter out frivolous or motivated investigation that could be initiated against senior officers to protect them from harassment to enable them to take decision without fear. The decision in Matajog (supra) was cited to contend that Section 197 of the CrPC was held to be valid and not violative of Article 14 and on similar logic Section 6A should also be upheld. It was argued that there was intelligible differentia since highranking public servants took policy decisions.

HOLDING IN SUBRAMANIAN SWAMY (SUPRA)

27. This Court, after analyzing the various arguments and after considering several precedents including the judgments in Vineet Narain (supra), JAC Saldanha (supra) and K. Veeraswami (supra), held as under:-

i) The classification made in Section 6A on the basis of status in government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the Act. (para 59)

ii) Irrespective of their status or position, corrupt public servants are corrupters of public power and whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally (para 59). Section 6A neither eliminates public mischief nor achieves some positive public good. It advances public mischief and protects the crimedoor. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down the corrupt public servants. (para 60)

iii) The essence of police investigation is skillful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval from the Government necessarily required under Section 6A would result in indirectly putting to notice the officers to be investigated before the commencement of investigation, if CBI is not even allowed to enquire. (para 61)

iv) A preliminary enquiry is intended to ascertain whether a prima facie case for investigation is made out or not. If CBI is not even allowed to verify complaints by a preliminary enquiry, how can the case move forward? A fetter is put to enable the CBI to gather relevant material. (para 61)

v) As a matter of fact, CBI is not able to collect the material even to move the Government for the purpose of obtaining previous approval from the Central Government. (para 61)

vi) In the criminal justice system, the inquiry and investigation into an offence is the domain of the police. Even this exercise of scrutiny of records and gathering relevant information to find out whether the case is worth pursuing further or not is not possible. (para 62)

vii) As per the CBI Manual, a preliminary enquiry relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which being necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not. (para 62)

viii) The very power of CBI to enquire and investigate into the allegations of bribery and corruption against a certain class of public servants and officials in public undertakings is subverted and impinged by Section 6A. (para 62)

ix) Section 6A continues to suffer from the other two infirmities a) Where inference is to be drawn that the decision must have been for corrupt motive and direct evidence is not there, the expertise to take decision whether to proceed or not in such cases should be with CBI itself and not with the Central Government, and;

b) In any event, the final decision to commence investigation into the offences must be of CBI with the internal aid and advice and not of anybody else. (para 65)

x) Section 6A also suffers from the vice of classifying offenders differently for treatment thereunder for inquiry and investigation of offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. (para 65)

xi) The impugned provision blocks inquiry and investigation by CBI by conferring the power of previous approval on the Central Government. (para 66)

xii) CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations and thus the object of Section 6A itself is discriminatory. (para 68)

xiii) That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has a rational relation to the object sought to be achieved. (para 68)

xiv) The criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted (Para 86).

xv) It is equally important that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. These are important facets of the rule of law. Breach of rule of law amounts to negation of equality under Article 14. Section 6A fails in the context of these facets of Article 14 (Para 86).

xvi) Whether decision-maker or not, an independent investigation into such allegations is of utmost importance and unearthing the truth is the goal. The aim and object of investigation is ultimately to search for truth and any law that impedes that object may not stand the test of Article 14. (para 91)

28. The ratio, spirit and essence of the judgment in Subramanian Swamy (supra) indicates that the Constitution Bench was primarily concerned with the untenability of foreclosing any enquiry or inquiry by an independent agency before the grant or refusal of approval under Section 6A. It also emphasized on how vesting the power in the government would forewarn the officials who are subject matter of the inquiry. The Constitution Bench held that irrespective of the status of the public servants, they must be confronted with the same process of inquiry/investigation. It frowned upon the erstwhile Section 6A for subverting an inquiry by an independent agency and for that reason found the object of Section 6A to be discriminatory. Additionally, it found the classification of high-level public servants as illegal.

29. It is in this background that the validity of Section 17A, as introduced in 2018, needs to be tested.

METAMORPHOSIS OF SECTION 17A: RECOMMENDATIONS OF THE LAW COMMISSION

30. The Law Commission of India in its 254th report considered the Prevention of Corruption (Amendment) Bill, 2013. The proposed Section 17A, after certain minor amendments suggested by the Law Commission, read as follows:-

"17A. Investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.

(2) No police officer shall conduct any investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by a public servant in the discharge of his official functions or duties, without the previous approval-

(c) of the Lokpal, in the case of a public servant 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, and is a person referred to in clauses (a) to (h) of sub-section (1) of section 14 of the Lokpal and Lokayuktas Act, 2013;

(d) of the Lokayukta of the State or such authority established by law in that State under whose jurisdiction the public servant falls, in the case of a person who is employed, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State, conveyed by an order issued by the Lokpal in accordance with the provisions contained in Chapter VII of the Lokpal and Lokayuktas Act, 2013 or Lokayukta of the State or such authority referred to in clause (b) for processing of investigation against the public servant.

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person."

31. It will be noticed that the section, as recommended by the Law Commission, provided for previous approval of the Lokpal in case of a public servant employed with the affairs of the Union and Lokayukta of the State or such authority established by law in that State under whose jurisdiction the public servant fell, in case of a person who is employed with the affairs of the State. This draft Bill is significant.

32. A close and minute reading of the judgments in Vineet Narain (supra) and Subramanian Swamy (supra) clearly brings to the fore the aspect that the Constitution Bench had found fault with foreclosing any independent investigation before the papers are put for approval to the Government. Moreover, the Court had expressly observed that under the impugned provisions therein, the very group of persons, namely, high-ranking bureaucrats whose misdeeds and illegalities may have to be inquired into were to decide whether CBI should even start an inquiry or investigation

against them or not. The finding on discrimination was only an additional finding as is clear from the use of the word "also" employed in the judgment in Subramanian Swamy (supra) in para 65 set out hereinabove.

33. The draft, as proposed by the Law Commission, addressed this issue squarely and vested the power in the Lokpal in accordance with Chapter VII of the Lokpal Act. The draft Bill carrying amendments to the Prevention of Corruption Act was thereafter placed before the Rajya Sabha Select Committee in August 2016.

RECOMMENDATIONS OF THE RAJYA SABHA SELECT COMMITTEE:

34. The Select Committee, in its Report, observed that several stakeholders stated that the grant of sanction of prosecution by Lokpal/Lokayukta for prosecuting public servants under Section 23 of the Lokpal Act would be ultra vires Article 311 of the Constitution.

It was felt that disciplinary/appointing authority should retain the power to grant sanction of prosecution of government servant as that authority is well placed with the functioning and conduct of his/her employee. (See para 15.2 of the Report). The Select Committee further observed that almost all State Governments/UT Administration were of the view that the power of granting sanction for prosecution should remain with the competent/appointing authority of appropriate government for practical reasons and administrative convenience.

35. What is significant is that there was no discussion on the serious concerns pointed out by the Constitution Bench in Subramanian Swamy (supra) about the unconstitutionality in vesting the power of grant of approval in the Government without any independent screening mechanism.

36. The ultimate Section 17A which emerged has been set out in para 3 hereinabove.

QUALITATIVE DIFFERENCE BETWEEN THE ERSTWHILE SECTION 6A AND THE PRESENT SECTION 17A:

37. It will be seen that unlike Section 6A which was applicable to "any offence alleged to have been committed under the Act" [except those mentioned in sub-section (2)], Section 17A applies only to "any offence alleged to have been committed by a public servant under this Act (the PC Act) where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties." Section 17A also excepted cases involving arrest of a person on the

spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

Section 6A applied only to employees of the Central Government of the Level of Joint Secretary and above and to such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government. The Section, as such, did not mention about its applicability to State employees. Section 17A applies to all public servants and in that sense does not make any classification and also applies to employees at the State Government level.

MANNER OF FUNCTIONING OF GOVERNMENT MACHINERY:

38. The phrase "is relatable to any recommendation made or decision taken" is crucial because it considerably limits the applicability of the filter mechanism to offences relatable to recommendations made or decisions taken in discharge of official duties or functions of the public servant.

39. In *A. Sanjeevi Naidu, Etc. vs. State of Madras and Another*,¹⁰ K.S. Hegde, J. felicitously speaking for the Constitution Bench of six Judges of this Court, while explaining the method of administration under the Council of Ministers with civil servants manning each department observed as under:-

"9. We think that the above submissions advanced on behalf of the appellants are without force and are based on a misconception of the principles underlying our Constitution. Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government.

All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers.

10. The cabinet is responsible to the Legislature for every action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Council of Ministers to discharge all or any of the Governmental functions. Similarly an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility.

Even the most hard working Minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government.

When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the "Rules" or the standing orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates."

40. Further, explaining how when civil servants discharge the functions allotted to them, they do so as limbs of the government and not as persons to whom the power of the government has been delegated, this Court observed as under:-

12. In *Ishwarlal Girdharlal Joshi, etc. v. State of Gujarat and Another*, [(1968) 2 SCR p. 266], this Court rejected the contention that the opinion formed by the Deputy Secretary under Section 17(1) of the Land Acquisition Act cannot be considered as the opinion of the State Government. After referring to the rules of business regulating the Government business, this Court observed at p. 282:

"In our case the Secretaries concerned were given the jurisdiction to take action on behalf of Government and satisfy themselves about the need for acquisition under Section 6, the urgency of the matter and the existence of waste and arable lands for the application of sub-sections (1) and (4) of Section 17. In view of the Rules of business and the instructions their

determination became the determination of Government and no exception could be taken."

13. In *Capital Multi-purpose Cooperative Society v. State of M.P. and others*, [Civil Appeal No. 2201 of 1966, decided on 30-3-1957] this Court dealing with the scope of Section 68 (d) of the Act observed that the State Government obviously is not a natural person and therefore some natural person has to give hearing on behalf of the State Government and hence the hearing given by the special secretary pursuant to the power conferred on him by the business rules framed under Article 166 (3) is a valid hearing.

14. As mentioned earlier in the very nature of things, neither the Council of Ministers nor an individual Minister can attend to the numerous matters that come up before the Government. Those matters have to be attended to and decisions taken by various officials at various levels. When those officials discharge the functions allotted to them, they are doing so as limbs of the Government and not as persons to whom the power of the Government had been delegated. In *Halsbury Laws of England*, Vol. I, 3rd Edn. at p. 170, it is observed:

"Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister."

This crucial aspect of transacting business in government has to be borne-in-mind while considering the validity of Section 17A. If as laid down in *Sanjeevi Naidu (supra)*, the law is that the officers take decisions on behalf of the government and that they are limbs of the government and not its delegates, one question that arises is should there not be an independent agency which will screen the information before grant or refusal of approval under Section 17A and ought that decision not bind the government?

IMPORTANCE OF HONEST AND FEARLESS ADVICE BY PUBLIC SERVANTS:

41. Civil servants should have the necessary freedom to take administrative decisions and express their views fearlessly without any threat of frivolous or vexatious complaints, for if they were to be exposed to such complaints in future, there will be a chilling effect on them and their hands will be shackled. The net result will be a "policy paralysis". It will be the tendency of every civil servant then to play it safe by taking no decision at all. Though said in the context of a debate on the erstwhile Section 6A, the observations of *Shri Shivraj V. Patil* in the Lok Sabha merits mention herein:-

"I have seen files which have been moving not, only from one table to the other, but they have been moving from one Ministry to the other. If the Ministry of Defence has to take a decision, the matter is referred to the Finance Ministry. The Finance Ministry's opinion is obtained and then the Finance Ministry also does not give the final opinion. It says that it could go to the Industries Ministry and let the Industries Ministry decide whether a particular thing is to be imported or whether it can be manufactured in the country. If the Industries Ministry says that can be manufactured in the country or it can be imported from outside also, then they would say that they should examine the legal position.

So, the matter goes to the Law Ministry and it opines something and then it comes back to the Ministry of Defence. Then, the Ministry of Defence again says that they have taken decisions separately sitting in their own offices, but they should take the decision jointly sitting in a meeting. Again, the file goes back and then the officers have to come together and take a decision. The result of this kind of procedure adopted is that not only months, but years pass before the final decision is taken.

When years pass, the cost of acquiring the equipments or the cost of implementing a project goes up by 25 per cent or 30 per cent or even 50 per cent. The delays are there; time has its own cost. If you do not respect time now, it will certainly increase the cost. This aspect has to be considered. So, while governing and administering, a balanced attitude is required; and that balanced attitude is that there should not be corruption and at the same time, there should not be undue delays which can increase the cost of doing things.

So, it is easy to allege anything against anybody but it is very difficult to substantiate an allegation. As a Government it has a responsibility to see that there is no corruption and everything that is necessary for this purpose should be done. At the same time it has a responsibility to see that delays are avoided. That is a very important thing. That is why we shall have to be careful in seeing that corruption is not there, delay is not there and the innocent people are not put to any inconvenience."

[Emphasis supplied]

42. This Court in *State of Bihar and Others vs. Kripalu Shankar and Others*¹¹, while holding how file notings cannot be the basis for an action for contempt made the following telling observations. Speaking through V. Khalid, J., this Court observed thus:-

"13. In our considered view the internal notes file of the Government, maintained according to the rules of business, is a privileged document. If the

government claims privilege or quasi-privilege regarding the notes file we will not be justified in rejecting the claim outright. In this case, the notes file was brought to the court not voluntarily by the Government. It was summoned by the court. The court can always look into it. The right of the court to look into any file can never be denied. The contents of the notes file brought to court got communicated to the court because the court looks into it.

It would be dangerous to found an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavoury notes, on a perusal of the notes file by the court after getting them summoned. This would impair the independent functioning of the civil service essential to democracy. This would cause impediments in the fearless expression of opinion by the officers of the Government. The notings on files differ from officer to officer.

It may well be that the notes made by a particular officer, in some cases, technically speaking is in disobedience of an order of the court or may be in violation of such order but a more experienced officer sitting above him can always correct him. To rely upon the notings in a file for the purpose of initiating contempt, in our view, therefore, would be to put the functioning of the Government out of gear. We must guard against being over-sensitive, when we come across objectionable notings made by officers, sometimes out of inexperience, sometimes out of over-zealousness and sometimes out of ignorance of the nuances of the question of law involved.

30. Before parting with this case we would like to observe the need for restraint and care in dealing with the internal files of the Government. We have already indicated its privileged position and limited areas where exposure is permissible of the notings in the file. This is not to say that absolute privilege can be claimed of its exposure and protection from the view of the courts. But what is to be borne in mind is that the notings in the departmental files by the hierarchy of officials are meant for the independent discharge of official duties and not for exposure outside.

In a democracy, it is absolutely necessary that its steel frame in the form of civil service is permitted to express itself freely uninfluenced by extraneous considerations. It might well be that even orders of court come in for adverse remarks by officers dealing with them, confronted with difficult situations to straightway obey such orders. Notings made on such occasions are only for the benefit of the officers concerned.

When a subordinate official commits a mistake higher official will always correct it. It is necessary for courts also to view such notings in the proper perspective. In this case, the court, after looking into the notes file could have

passed appropriate orders giving relief to the affected party and expressing its displeasure at the manner in which its order was implemented instead of initiating action on the notings made in the file. That way the court would have enhanced its prestige."

43. In *P. Sirajuddin, Etc vs. State of Madras, Etc*¹², speaking about the incalculable harm the lodging of FIR can do to an honest public servant, this Court observed as under:-

"17. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner."

[Emphasis supplied]

44. Very recently, I had occasion to make the following observations in *MMTC Limited vs. Anglo American Metallurgical Coal Pvt. Limited*¹³ about the need to protect the honest public servants who are faced with the duty to take decisions during the day-to-day administration:-

"99. Before we part, a small postscript. Whether in Government, Public Sector Corporations or even in the private sector, the driving force of the entity are the persons who administer them. A certain play in the joints is inevitable for their day-to-day functioning. If they are shackled with the fear that, their decisions taken for the day-to-day administration, could years later with the benefit of hindsight, be viewed with a jaundiced eye, it will create a chilling effect on them. A tendency to play it safe will set in. Decision making will be avoided. Policy paralysis will descend.

All this will in the long run prove detrimental not just to that entity but to the nation itself. We are not to be understood to be condoning decisions taken for improper purposes or extraneous considerations. All that we are at pains to drive home is that great caution and circumspection have to be exercised before such allegations are brought forward and adequate proof must exist to back them. Otherwise for fear that carefully built reputations could be

casually tarnished, best of talent will not be forthcoming, especially for government and public sector corporations."

CONSTITUTIONAL VALIDITY OF SECTION 17A:

45. Viewed in this background, the object behind Section 17A to provide that without the previous approval, no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, cannot be found fault with. However, the question that arises is, whether Section 17A addresses the issue of an independent agency being involved in the filtering mechanism before the decision is taken by the Government.

46. As adverted to earlier, a minute reading of the judgment in Subramanian Swamy (supra) would clearly indicate that the reasoning was not only on the ground of untenable classification contrary to Article 14 but on larger grounds of upholding the majesty of the rule of law because Section 6A was perceived as foreclosing any enquiry before grant or rejection of approval. If the ingredients of Section 6A were to be reincarnated and made applicable to all public servants irrespective of the level at which they are working, the said section would still be unconstitutional, applying the ratio, spirit and essence of Subramanian Swamy (supra). As noticed earlier, there is a qualitative difference between Section 6A and the present Section 17A.

EXISTING STANDARD OPERATING PROCEDURE (SOP) GOVERNING THE GRANT/REJECTION OF APPROVAL:

47. When a query was put to the learned Solicitor General as to whether there was any Standard Operating Procedure [SOP] for processing of cases under Section 17A of the Act, the learned Solicitor General produced before the Court a Standard Operating Procedure circulated with the letter of 03.09.2021 of the Additional Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions to all the Chief Secretaries of all State Governments/Union Territory administrations. The SOP provides for-

- "a) Stage-wise processing of information received by a Police Officer;
- b) Specifying the rank of the police officer entitled to seek prior approval under Section 17A in respect of different categories of public servants;
- c) Consideration of the proposals under Section 17A of the Act by the Appropriate Government or Authority;

d) Laying down of single window procedure to specify receipt stage of the proposal; and

e) Check List for submitting proposals under Section 17A."

48. The SOP provides that on receipt of an information, the police officer shall place the matter before the police officer of the appropriate rank for seeking prior approval under Section 17A of the Act, by such police officer of appropriate rank. Thereafter, it states that the police officer of the appropriate rank shall make a proposal to the appropriate government/authority under Section 17A of the Act, in respect of a person who is or has been a public servant in accordance with the prescription in Annexure-I thereon. Thereafter, it states that the police officer of the appropriate rank shall decide whether the information received, merits to be a) enquired; or b) inquired into; or c) investigated. The police officer of the appropriate rank shall thereafter make a proposal containing the following information:

"i. the office held by the public servant(s) when the offence was alleged to have been committed;

ii. the present rank and status of the public servant; or

iii. the post/office last held by the person who ceases to be a public servant; and

iv. the appropriate Government or Authority, before whom the proposal of previous approval is to be made in accordance with the provisions of clauses (a) to (c) of section 17A of the Act.

Thereafter, it states that the said proposal shall be made to the appropriate government or authority through the single window procedure as laid down by the SOPs and shall ensure that the proposal is in accordance with the requirements laid down in the Check List and shall enclose legible and authenticated documents as may be required. Separate proposals were to be submitted for enquiry/inquiry or investigation, as the case may be. Separate proposals were to be made in respect of each public servant, where a composite offence is alleged against more than one public servant and the proposal shall be submitted in a sealed cover in accordance with the Check List as prescribed in Annexure-2 thereon. The Check List is as follows:-

Annexure-II

CHECK LIST OF ITEMS FOR MATTERS RELATING TO SECTION 17A OF THE PREVENTION OF CORRUPTION ACT, 1988

S. No.	Head	Yes / No	Folder No. / Page No.
1.	Name, designation or office held by the public servant against whom the allegation of an offence under the Prevention of Corruption Act, 1988 has been made. If the person has ceased to be a public servant, the post or office last held by such person may also be indicated.		
2.	The post or office held by such public servant at the time of alleged commission of offence under the Prevention of Corruption Act. Please furnish the details of the Appropriate Government or Authority the public servant was serving at the relevant point of time.		
3.	(i) Whether the request is based on a complaint received? Please enclose a copy thereof. (ii) If yes, please enclose an authenticated translation thereof where the original complaint has been made in a vernacular language.		
4.	Whether the complaint prima facie reveals deriving of an undue advantage by a public servant for self or any other person? Please furnish details.		
5.	Whether any information is available in respect of the bribe giver? If so, please furnish details.		
6.	Mention clearly, the offences under specific provisions of the Prevention of Corruption Act, 1988 as alleged against the person who is or has been a public servant.		
7.	Please provide specific details of the recommendation made or decision taken by a public servant, which is relatable to the offence alleged against the public servant.		
8.	In case any preliminary enquiry/ inquiry was undertaken at any earlier stage, please enclose the findings thereof and it may also be confirmed as to whether prior approval was sought for such PE/ inquiry?		
9.	Whether any criminal offences under the Indian Penal Code or offences under any other law have also been alleged against the public servant? If so, please furnish		

	details thereof.		
10.	Any other information which is considered to be relevant for consideration of the proposal.		
11.	Name, designation and contact details of person authorized by the Police Officer of Appropriate Rank to rectify inadequacies and deficiencies in the proposal seeking Previous Approval, as pointed out by the Officer designated to receive the proposal by Appropriate Government or Authority.		

Signature_____

Date:_____

Name _____ of _____ Police _____ officer _____ authorised
to _____ seek _____ prior _____ approval
(in Block letters)_____

Designation_____

Telephone_____

email ID_____

No._____

49. The Check List makes for an interesting reading. Apart from some biographical particulars, Serial No.4 prescribes the following:

"Whether the complaint prima facie reveals deriving of an undue advantage by a public servant for self or any other person? [please furnish details]

7.	Please provide specific details of the recommendation made or decision taken by a public servant, which is relatable to the offence alleged against the public servant.
8.	In case any preliminary enquiry/ inquiry was undertaken at any earlier stage, please enclose the findings thereof and it may also be confirmed as to whether prior approval was sought for such PE/ inquiry?

SOP - DOES NOT CONTEMPLATE SCREENING BY AN INDEPENDENT AGENCY:

50. To say the least, the SOP is only a compilation of documents and does not indicate any independent examination being carried out by any independent agency. The crucial holding in Subramanian Swamy (supra) that the investigating agencies are not able to proceed even to collect the material to unearth prima facie substance into the merits of the allegations has not been addressed at all in the SOP. The further finding in Subramanian Swamy (supra) that the criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted and it is important to ensure that interested or influential persons are not able to

misdirect, hijack and throttle a fair investigation has not been recognized at all in the SOP.

51. There cannot be two opinions on the fact that honest and independent public servants have to be protected from frivolous prosecutions. In fact, that is the reason why when the validity of Section 197 CrPC was questioned, this Court in *Matajog Dobey* (supra) held as follows:-

"13. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard."

52. The only distinction is that Section 197 CrPC like Section 19 of the Act would operate at the stage of cognizance. By then the material is collected by the investigating agency and that the sanctioning authority does is to weigh the material and grant or refuse sanction. The sanctioning authority is not groping in the dark unlike in a scenario that is prescribed in the SOP of the government, as set out earlier.

THROWING BABY OUT WITH THE BATHWATER - NOT AN OPTION:

53. What is the solution then? Is the option then to strike down Section 17A and throw the baby out with the bathwater? Certainly not. If honest public servants are not given a basic assurance that decisions taken by them will not be subjected to frivolous complaints, it is the nation that will suffer. Public servants will resort to a play it safe syndrome and that will result in policy paralysis. The panacea of striking down will turn out to be worse than the disease. Instead, the correct course is to find whether within the framework of law the mischief pointed out in *Subramanian Swamy* (supra) and *Vineet Narain* (supra) could be addressed in the process of grant or refusal of approval under Section 17A.

54. *Vineet Narain* (supra) found the executive instructions to be ultra vires the statutory provisions and held the foreclosing of enquiry, to be a serious threat to the rule of law. *Subramanian Swamy* (supra) echoed the same sentiments and additionally found classification to be invalid. There can be no manner of doubt that if an independent inquiry was to precede a grant of approval no fault can be found. Section 17A has no vice of invalid classification.

POSSIBILITY OF ABUSE - NO GROUND TO HOLD PROVISION UNCONSTITUTIONAL:

55. There is no merit in the submission of Mr. Prashant Bhushan that Section 17A could be struck down because there is a possibility of the power being

abused. It is well settled that mere possibility of an abuse of an otherwise valid provision cannot be a ground for declaring a provision unconstitutional. The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity.

The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. [See *The Collector of Customs, Madras vs. Nathella Sampathu Chetty and Another*¹⁴].

56. This case cannot be viewed only in a binary manner, that is either to accept the SOP of the government and uphold the provision under the rubric of protecting honest public servants or to strike down the law on the ground that the SOP does not contemplate an independent inquiry.

57. The SOP is only an executive instruction. Section 17A has to be construed with the interpretative tools at our command. A constitutional court in this scenario cannot throw up its hands in despair and say that it is caught between Scylla and Charybdis - between a rock and a hard place. This Court in *Manzoor Ali Khan vs. Union of India and Others*¹⁵, while upholding a validity of Section 19 of the Act made the following observations:-

"13. Thus, while it is not possible to hold that the requirement of sanction is unconstitutional, the competent authority has to take a decision on the issue of sanction expeditiously as already observed. A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand."

(Emphasis supplied)

58. As was rightly observed, a fine balance has to be maintained between the need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other. It is necessary to notice that Article 30(2) of the United Nations Convention Against Corruption also advocates the striking of adequate balance by providing as follows:-

"Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges

accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention."

59. Echoing the need for an independent screening mechanism by an impartial agency before prior approval is granted, the Fourth Report (January 2007), of the Second Administrative Reforms Commission had the following emphatic observations to make:-

7.1 The *raison d'être* of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organization. Risk-taking should form part of government functioning. Every loss caused to the organization, either in pecuniary or non pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. One possible test for determining the bona-fides could be whether a person of common prudence working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organization.

7.5 There is a general perception among officers and managers that anti-corruption agencies do not fully appreciate administrative and business risks and that they tend to misinterpret the motives where the decision has gone awry or where a loss is caused in a commercial transaction. Such a perception is not without foundation. It is essential therefore for the investigating agencies to establish that their actions are designed in such a way as to protect honest officers. This depends on the ethical standards and professional competence of the personnel manning anti-corruption agencies. Allegations can be made by dishonest subordinates against whom the officer has initiated disciplinary proceedings or he may have stood in the way of dishonest intentions of the corrupt subordinate. More sinister could be the role of "aggrieved" outsiders who failed to have their wrongful way.

7.6 It is generally assumed by the investigating agencies that (1) a decision should be wrong for there to be corruption, and (2) it is easier to involve everyone in the chain of decision making and allege 'conspiracy' than to take pains to find out the individuals who are actually involved. It is often overlooked that a corruption can take place even when the decisions are correct and that it also takes place at specific points inside and outside the system. This entrenched approach to investigation has led to conviction rates being dismally low, honest functionaries getting demoralized and dishonest ones often going scot free.

7.7 The crucial question is one of ensuring a balance between equality before law and protection of an honest civil servant who has his reputation to

safeguard, unlike a corrupt one. Such a balance could be achieved by an impartial agency which would screen cases of prior permission for investigation and sanction prosecution of public servants involved in corruption. The Commission has already recommended that the Central Vigilance Commission should be empowered to give such permission.

[Emphasis supplied]

60. Here is where the need for an independent agency to consider the matter before the grant or refusal of the approval under Section 17A becomes primordial. The stage is set now to have a closer look at the provisions of the Lokpal Act.

THE LOKPAL AND THE LOKAYUKTAS ACT, 2013:

61. The Lokpal Act was enacted to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into the allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The Act was enacted to give effect to the United Nations Convention Against Corruption. It was enacted to give effect to the Government's commitment to clean and responsive governance and to punish acts of corruption. It was enacted for providing prompt and fair investigation and prosecution in cases of corruption.

62. Section 3 provides for establishment of Lokpal and reads as follows:-

"3. Establishment of Lokpal.-

(1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

(2) The Lokpal shall consist of-

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes. Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,-

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be-

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if-

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession."

63. Section 4 prescribes that the Chairperson and Members of the Lokpal shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of a) the Prime Minister as the Chairperson; b) the Speaker of the House of the People as Member; c) the Leader of Opposition in the House of the People as Member; d) the Chief Justice of India or a Judge of the Supreme Court nominated by the Chief Justice as Member and e) one eminent jurist, as recommended by the Chairperson and Members referred to in Clauses (a) to (d) to be nominated by the President as Member.

64. Section 11 provides for the establishment of an Inquiry Wing of the Lokpal. It prescribes that the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Act.

65. Section 11, which occurs in Chapter III, reads as under:-

"11. Inquiry Wing.-

(1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988 (49 of 1988):

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27."

66. Chapter IV speaks of the Prosecution Wing. Section 12, which occurs in Chapter XII, reads as under:-

"12. Prosecution Wing.-

(1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act:

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988).

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973 (2 of 1974)."

67. Chapter VI deals with jurisdiction in respect of inquiry by the Lokpal. Section 14, which occurs in Chapter VI, reads as under: -

"14. Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and Officials of Central Government.-

(1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:-

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,-

(i) insofar as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in subclauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served, in connection with the affairs of the Union;

(e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has

served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;

(f) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify:

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

Explanation. For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) and the provisions of that Act shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 (49 of 1988) against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

(4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952).

Explanation.- For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity."

68. It will be noticed that Lokpal has jurisdiction to inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint even in respect of the Prime Minister of the country. Apart from the Prime Minister, the Lokpal has jurisdiction over the Ministers of the Union and other civil servants mentioned therein.

69. Chapter VII prescribes the procedure in respect of preliminary inquiry and investigation. Section 20, which occurs in Chapter VII, reads as under:-

"20. Provisions relating to complaints and preliminary inquiry and investigation.-

(1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order (a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or (b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003:

Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry referred to in subsection (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A Bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:-

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may-

(a) grant sanction to its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;

(b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

(8) The Lokpal may, after taking a decision under subsection (7) on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency.

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations."

70. It will be noticed that, under Section 20, on receipt of a complaint, the Lokpal may decide to proceed further or may decide otherwise. If it decides to proceed further, the Lokpal may order a) the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the DSPE) to ascertain whether there exists a prima facie case for proceeding in the matter; or b) investigation by any agency (including the DSPE) when there exists a prima facie case ordinarily.

71. In case of utterly frivolous complaints, the Lokpal may decide not to proceed further in its discretion for reasons to be recorded. If it decides to proceed further, it may order a preliminary inquiry to ascertain whether there exists a prima facie case and investigation by any agency where prima facie case exists. The proviso prescribes that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission [CVC] constituted under sub-section (1) of Section 3 of the Central Vigilance Act, 2003.

The proviso further provides that the CVC in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-Sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the CVC Act, 2003.

72. In case the Lokpal decides to order an investigation, before ordering the investigation, the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation. Sub-section (2) of Section 20 prescribes that during the preliminary enquiry

referred to in sub-section (1), the Inquiry Wing or any agency (including the DSPE) shall conduct a preliminary inquiry and on the basis of material, information and documents collected, seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within 60 days from the date of receipt of the reference, a report to the Lokpal.

73. What is crucial to notice is that in proceedings under the Lokpal Act when a preliminary inquiry is conducted an opportunity is given not only to the public servant to explain but also opportunity is given to the competent authority before furnishing a report to the Lokpal.

74. Competent authority has been defined in Section 2(c) of the Act as under:-

"(c) "competent authority", in relation to-

(1) the Prime Minister, means the House of the People;

(ii) a member of the Council of Ministers, means the Prime Minister;

(iii) a member of Parliament other than a Minister, means-

(A) in the case of a member of the Council of States, the Chairman of the Council; and

(B) in the case of a member of the House of the People, the Speaker of the House;

(iv) an officer in the Ministry or Department of the Central Government, means the Minister in charge of the Ministry or Department under which the officer is serving;

(v) a chairperson or members of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such Department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of Parliament, then, the competent authority shall be-

(A) in case such member is a member of the Council of States, the Chairman of the Council; and

(B) in case such member is a member of the House of the People, the Speaker of the House;"

75. Reverting back to Section 20 of the Lokpal Act, subsection (7) of Section 20 prescribes that not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the DSPE) and after obtaining the comments of the competent authority and the public servant may - grant sanction to its Prosecution Wing or investigation agency to file charge-sheet or direct the closure of report before the Special Court against the public servant. Sub-clause (b) of Section 20(7) provides not less than three members of the Lokpal may direct the competent authority to initiate the disciplinary proceedings or any other appropriate action against the concerned public servant.

Under sub-section (8) of Section 20, the Lokpal may, on the filing of the chargesheet, direct its Prosecution Wing or any investigating agency (including the DSPE) to initiate prosecution in the Special Court in respect of the cases investigated by the agency. Under Section 23, the Lokpal has the power, notwithstanding anything contained in Section 197 of the CrPC or the erstwhile Section 6A of the DSPE Act or Section 19 of the Act, to grant sanction for prosecution under clause (a) of sub-section (7) of Section 20.

76. Sub-section (2) of Section 23 prescribes that no prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.

77. The reason why the above provisions are set out is to demonstrate that while drafting the amendments to the provisions of the Act which ultimately culminated in the Amendments of 2018, the Lokpal Act was also being drafted and brought into force w.e.f 16.01.2014. Even the Prime Minister is subject to a certain procedure under the Lokpal Act. Any complaint could be made to the Lokpal and for the rigors of Section 14 to kick in, the Lokpal may apply the procedure under Section 20, on the same, subject to the restrictions

prescribed therein. The provision is so couched that the Lokpal can decide not to proceed in absolutely frivolous complaints and if it decides to proceed, it is vested with an Inquiry Wing to conduct a preliminary Inquiry where an opportunity is given to the public servant and the competent authority.

78. The statement of object and reasons which led to the enactment of the Lokpal Act provide as under:-

"STATEMENT OF OBJECTS AND REASONS

The need to have a legislation for Lokpal has been felt for the quite sometime. In its interim report on the "Problems of Redressal of Citizens' Grievances" submitted in 1966, the Administrative Reforms Commission, inter alia, recommended the setting up of an institution of Lokpal at the Centre. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 bill which was subsequently withdrawn after its introduction.

2. In pursuance of the efforts to constitute a mechanism for dealing with complaints on corruption against public functionaries including in high places, the Government constituted a Joint Drafting Committee on 8th April, 2011 to draft a Lokpal Bill. Divergent views emerged during deliberations in the JDC. Government introduced a revised Bill namely 'Lokpal Bill, 2011' in the Lok Sabha on 4th August, 2011. This Bill was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 8th August, 2011 for examination and report and this was followed by discussions in both the Houses of Parliament on 27th August, 2011. A sense of the House was communicated to the Standing Committee on the basis of discussions in the Houses.

The Department-related Parliamentary Standing Committee after extensive discussion with all the concerned Stakeholders suggested major amendments as regards the scope and content of the Bill introduced in August 2011. It also recommended that Lokpal at the Centre and Lokayukta at the States be conferred constitutional status in its report of 9th December, 2011. Upon consideration of the recommendations of the Standing Committee it was decided to withdraw the Lokpal Bill, 2011 pending in Lok Sabha and to introduce a thoroughly revised bill for carrying out the necessary amendments to the Constitution for the setting up of Lokpal and Lokayuktas as constitutional bodies.

3. India is committed to pursue the policy of 'Zero Tolerance against Corruption'. India ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on 9th May, 2011. This Convention imposes a number of obligations, some mandatory, some recommendatory and some optional on the member States. The Convention, inter alia, envisages that State Parties ensure measures in the domestic law for criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. The obligations of the Convention, with reference to India, have come into force with effect from 8th June, 2011.

As a policy of Zero Tolerance against Corruption the Bill seeks to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants including Ministers, MPs, Chief Ministers, Members of Legislative Assemblies and public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which are being set up for the purpose will be constitutional bodies. This setting up of these bodies will further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention."

79. As the statement of objects and reasons indicates, it was enacted to give effect to the recommendations of the Administrative Reforms Commission to provide a mechanism for dealing with complaints of corruption against public functionaries including in high places. The statement of objects and reasons makes it clear that India as a nation has committed to pursue the policy of "Zero Tolerance against Corruption." The Lokpal and Lokayuktas have been set up to further strengthen the existing legal and institutional mechanism for effective implementation of the United Conventions against Corruption.

80. It will be useful to recall that even the Law Commission in its 254th Report wanted to vest the power of prior approval in the Lokpal. This aspect has been discussed hereinabove. However, when the matter went to the Select Committee in order to give effect to the wishes of the State Government and on some assumed notion that it will be contrary to Article 311 the said clause was given up and Section 17A was enacted in the present form. The Rajya Sabha Select Committee had recorded that several stakeholders had opined that Article 311 of the Constitution would be violated if the Lokpal or Lokayukta is mandated with the task of screening the information prior to the grant of approval under Section 17A.

One is at a loss to understand how Article 311 would be violated. The Lokpal Act as well as the State Acts permit the authorities concerned in those statutes to inquire into the conduct of public servant. Further, the interpretation that is placed in this judgment is only to vest the screening mechanism with the

Lokpal/Lokayukta to bring the provision in line with the holding of the decision of the Constitution Bench in Subramanian Swamy (supra). Article 311 deals with dismissal/removal or reduction in rank. Hence the reference to Article 311 in this scenario is totally incorrect.

81. The only way the validity of the provision can be sustained from a challenge under Article 14 and the consequent negation of rule of law, is to have the examination of the information which the appropriate government receives under Section 17A to be forwarded to the Lokpal. The Lokpal/Lokayukta may if it finds the information frivolous, recommend for reasons to be recorded in writing that the government reject the approval.

If the Lokpal finds that the complaint calls for an inquiry it may order an inquiry by the Inquiry Wing. It may have the inquiry conducted under Chapter III and where it finds that there is no prima facie case, it can make the appropriate recommendations. On the contrary, if it finds a prima facie case it may forward the same to the Government which Government will be obliged to follow the recommendation and proceed to grant the approval.

Thereafter, the investigating agency may follow the appropriate procedure laid down in the appropriate manual and regulate their investigation. This mechanism will also take care of the serious concern to the threat to rule of law envisaged in Vineet Narain (supra) and Subramanian Swamy (supra), by vesting the decision to grant approval or not in the government without any inquiry by an independent agency.

82. Similar mechanism is available in the different Lokayukta Acts of the States and with regard to approval sought in the case of persons employed in connection with the affairs of the State. Reference will be made by the authority to whom approval is sought to the State Lokpal.

83. A question may arise as to how in this mechanism the officials covered by Section 17A(c) would be governed. Section 17A(c) reads as under:-

"In the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed."

84. The jurisdiction of Lokpal under the Central Act as prescribed under Section 14 applies also to:-

a) Group 'A' or Group 'B' officer or equivalent or above, who has served or is serving, in connection with the affairs of the Union.

b) Group 'C' or Group 'D' official or equivalent, from amongst the public servants who have served or have been serving in connection with the affairs of the Union.

c) Any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it.

d) Any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust, by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

e) Any person who is or has been a director, manager, secretary or other officer or every other society or association of persons or trust in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

85. These officials will be subject to the jurisdiction of Lokpal and any Section 17A information can easily be referred to the Lokpal and the grant or refusal of approval under Section 17A would depend on the recommendation of the Lokpal.

86. It is reiterated that, as prescribed in Section 20, the Lokpal may in case where it decides to proceed further, may order a) preliminary inquiry by its Inquiry Wing or any agency (including the DSPE) to ascertain whether exists a prima facie case for proceeding in the matter; or b) investigation by any agency (including the DSPE) when there exists a prima facie case.

87. The proviso empowers the Lokpal by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of a public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub91 Section (1) of Section 3 of the Central Vigilance Act, 2003. The second proviso further provides that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Act, 2003.

88. Section 8A of the CVC Act, 2003 deals with action on preliminary inquiry in relation to public servants insofar as Group C and Group D officials are concerned. Section 8A is set out hereinbelow:-

"8A. Action on preliminary inquiry in relation to public servants.-

(1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a prima facie violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 (49 of 1988) by such public servant, the Commission shall proceed with one or more of the following actions, namely:-

(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014).

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint."

Both the provisos in Section 20 apply only when there exists general or special order under the said Section of the Lokpal Act. This will not be relevant when information is forwarded by the Government to the Lokpal in the scenario that is being contemplated here.

89. For the purpose of Section 17A all that Vineet Narain (supra) and the Constitution Bench in Subramanian Swamy (supra) have mandated is the need for an independent examination to uphold the rule of law. Information under Section 17A when being forwarded to the Lokpal may be inquired into by the Inquiry Wing or any agency as the Lokpal may deem appropriate. Based on the report submitted to the Lokpal, the Lokpal may make a recommendation to the government which recommendation will be binding on the government for the grant or refusal of approval under Section 17A for all public servants. Question of involvement of CVC does not arise here.

90. Similarly, the State Lokpal Acts are designed broadly on the same pattern as the Central Lokpal and Lokayuktas Act, 2013. To illustrate, under the Maharashtra Lokayukta and Upa- Lokayuktas Act, 1971, which is currently in force, the "public servant" is defined as under:-

"(k) "public servant" denotes a person falling under any of the descriptions hereinafter following, namely:

(i) every Minister referred to in Clause (h);

(ii) every officer referred to in Clause (i);

(iii) (a) every President, Vice-President and Councillor of a Zilla Parishad, Chairman, Deputy Chairman and Member of a Panchyat Samiti, and Chairman of the Standing or any Subjects Committee, constituted under the Maharashtra Zilla Parishads and Panchyat Samitis Act, 1961 (Mah. V of 1962);

(b) every President, Vice-President and Councillor of a Municipal Council, and Chairman of the Standing or any Subjects Committee, constituted or deemed to be constituted under the "Maharashtra Municipal Councils, Nagar Panchyats and Industrial Townships Act, 1965 (Mah. XL of 1965);

(c) every Mayor, Deputy Mayor and Councillor of all Municipal Corporations and Chairman of Standing or any Subject Committee, constituted under the Mumbai Municipal Corporation Act (Bom. III of 1888), the City of Nagpur Corporation Act, 1948 (C. P. and Berar II of 1950) and the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949);

(iv) every person in the service or pay of,-

(a) any local authority in the State of Maharashtra, which is notified by the State Government in this behalf in the Official Gazette,

(b) any corporation (not being local authority) established by or under a State of Provincial Act and owned or controlled by the State Government,

(c) any Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent. of the paid up share capital is held by the State Government, or any company which is a subsidiary of a company in which not less than fifty-one per cent. of the paid up share capital is held by the State Government,

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860), which is subject to the control of the State Government and which is notified by that Government in this behalf in the Official Gazette,"

91. Section 7 deals with matters which may be investigated by the Lokayukta or Upa-Lokayukta, which reads as under:-

"7. Matters which may be investigated by Lokayukta or Upa-Lokayukta.

(1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by, or with the general or specific approval of,

(i) a Minister or a Secretary, or

(ii) any public servant referred to in sub-clause

(iii) of clause (k) of section 2; or

(iii) any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta in this behalf, in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

(2) Subject to the provisions of this Act, an Upa-Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being a Minister, Secretary or other public servant referred to in sub-section (1) in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upa-Lokayukta, the subject of a grievance or an allegation.

(3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Upa-Lokayukta under that sub-section whether or not a complaint has been made to the Lokayukta in respect of such action.

(4) Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that, no investigation made by an Upa- Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall

be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order."

Apart from a Minister or a Secretary, any action which is taken by or with the general or specific approval of, a public servant referred to in Section 2(k)(iii), as extracted above, and any other public servant being a public servant of a class or subclass of public servants notified by the State Government in consultation with the Lokayukta in his behalf, are all within the ken of the Lokayukta.

92. Section 10 deals with procedure for investigation and authorizes the Lokayukta or Upa-Lokayukta to carry a preliminary enquiry. Section 10 reads as under:-

"10. Procedure in respect of investigations.

(i) Where the Lokayukta or an Upa-Lokayukta proposes (after making such preliminary inquiry, as he deems fit) to conduct any investigation under this Act, he-

(a) shall forward a copy of the complaint or, the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefore, to the public servant concerned and the competent authority concerned;

(b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint or statement; and

(c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit.

(2) Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation:

Provided that, the Lokayukta or an Upa-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.

(3) Save as aforesaid the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Upa-Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta or an Upa-Lokayukta may, in his discretion, refuse to investigate or ceases to investigate any complaint involving a grievance or an allegation if in his opinion,-

(a) the complaint is frivolous or vexatious, or is not made in good faith;

(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokayukta or Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefore and communicate the same to the complainant and the public servant concerned.

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation."

Similar provisions exist in other States.

93. In view of these provisions, insofar as public servants employed with the affairs of the Central Government and those public servants who are employed in bodies controlled by the Central Government, the Lokpal will conduct the inquiry. With regard to employees with the affairs of the State Government and with the agencies controlled by the State Government, the State Lokayukta will make an inquiry and forward the recommendation to the appropriate government/authority competent to remove.

94. If while forwarding the information received under Section 17A for screening and obtaining of recommendation any issue arises as to whether the concerned Lokpal will be Central Lokpal or the State Lokpal the issue will be resolved by applying the following test:-

With regard to the concerned public servant covered under Section 17, whether the Central Lokpal or the State Lokayukta would be the jurisdictional Lokpal/Lokayukta for receiving a complaint directly in case a complaint were to be made to the Lokpal directly?

Applying this test, the issue would be resolved and the information for approval received under Section 17A would be forwarded by the authorities concerned in Section 17A to the concerned Lokpal. For example, in the case

of a public servant covered under Section 17A(c) if the authority competent to remove receives an information with a request for grant of approval, the authority competent to remove would apply the test set out hereinabove and forward the information to the concerned Lokpal/Lokayukta accordingly.

BODIES NOT COVERED UNDER THE JURISDICTION OF LOKPAL:-

95. Insofar as the judiciary is concerned, already Veeraswami (supra) and U.P. Judicial Officers' Association (supra) have provided a mechanism. Section 17A(c) could also be attracted in cases where the body/organization/public servant is not covered within the jurisdiction of Lokpal. For such associations/bodies/public servants, when a scenario presents itself the authority competent to remove the public servant in question, would before grant or refusal of approval, commission any appropriate independent investigative agency to screen the information received and act in accordance with the recommendation of the said independent investigative agency.

96. This is the appropriate course to adopt for the reason that if the complainants were to proceed with the complaint to the Lokpal directly, there will be no choice but to follow the procedure under the Lokpal Act. That is the procedure the highest executives of the government at the Centre and of the States are being subjected to. Why cannot the public servants engaged in the affairs of the Union or the State or those covered under Section 17A be subjected to the same rigour? Merely for the reason that the information is not lodged as a complaint in the Lokpal should a different procedure be adopted.

There is no good reason to hold so. By this mechanism, what is being followed is the procedure laid down by Parliament and the State Legislature by setting up of an independent machinery. No prejudice will be caused to honest public servants also. Section 17A can be retained in its same form except that the procedure, as set out hereinabove, will have to be followed. A constitutional court faced with a challenge to the validity of the statute can always interpret a provision in the manner so as to save its validity and to harmonize it in such a manner that the provision does not fall foul of the provisions of the constitution or of any earlier binding judgments of the court.

TEST OF READING DOWN

97. In considering the validity of a statute, to save a statute from being rendered unconstitutional, the Court can apply the test of reading down. In B.R. Enterprises vs. State of U.P. and Others¹⁶, this Court held as under:-

"81. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, maybe beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward.

Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation.

The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated."

98. Further, in *Subramanian Swamy* (supra), dealing with the concept of reading down, this Court mentioned as under:-

"61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be summarised as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission.

If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well-established and wellaccepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents."

99. In the present case, the object of preventing frivolous and vexatious complaints against honest public servants is sub-served by Section 17A. The only aspect missing expressly from the statute is the provision for an independent screening mechanism. Section 17A has been enacted after the judgments of this Court in Vineet Narain (supra) and Subramanian Swamy (Supra).

Two of the infirmities pointed out in those judgments, namely, that an executive instruction cannot go ultra vires to a statutory provision and that there has to be a valid classification among public servants have been taken care of in the enactment of Section 17A. Vineet Narain (supra) and Subramanian Swamy (Supra) both emphasize the need for an independent screening mechanism before the grant or refusal of an approval to prosecute.

100. When Parliament enacts a law it is deemed to be conscious of the judicial pronouncements having a bearing on the subject-matter. Viewed in that light, one has to presume that Section 17A does contemplate in the grant or refusal of the previous approval of exercise of a screening by an independent mechanism. No doubt, it has not been expressly set out.

However, the simultaneous enactment of the Lokpal and Lokayuktas Act in the Centre and the States and the Law Commission's recommendation that the approval itself under Section 17A has to vest with the Lokpal/Lokayukta do have a bearing on the interpretation of the provision. The Lokpal Act contemplates an Inquiry Wing, Investigation Wing and a Prosecution Wing. In this judgment, all that has been done is to avail the advantage of the independent Inquiry Wing for screening the information received under Section 17A for the purpose of grant or refusal of approval.

If direct complaints could be entertained by the Lokpal and those complaints could be subjected to the procedure under the Act, there is no reason why Section 17A information received by the Government cannot be screened by the Inquiry Wing of the Lokpal and why that recommendation of the Lokpal after the screening was done ought not to be binding on the Government. This interpretation will take care of the mischief pointed out in Vineet Narain (supra) and Subramanian Swamy (Supra). The SOP prevalent now is wholly unsatisfactory and does not address the serious infirmity pointed in Vineet Narain (supra) and Subramanian Swamy (Supra).

101. We are a country governed by the rule of law and not by rule of men. Executives at the highest level, including the Prime Minister and Ministers have subjected themselves to the jurisdiction of the Lokpal. There is no reason why, as set out earlier, public servants against whom information is

placed for previous approval with the concerned authority in Section 17A cannot be subjected to the screening mechanism of the Lokpal/Lokayukta.

102. This interpretation will also address the discriminatory situation that would prevail if with regard to information received under Section 17A, Government/authority competent to remove is the screening authority and with regard to complaints directly addressed to the Lokpal/Lokayukta, the Lokpal/Lokayukta becomes the authority to proceed with after following the screening mechanism under the Act. The Lokpal is an independent body headed by people who have held high offices and who will bring to bear on the discharge of their duty a great deal of independence which the judgments in Vineet Narain (supra) and Subramanian Swamy (Supra) exhort.

103. If Section 17A is invalidated on the ground that prior approval should not exist at all, the immediate consequence would be that any complaint alleging corruption in official decision-making could straightaway result in a police inquiry or investigation. This would permit immediate registration of FIRs, commencement of investigation and resort to coercive steps in cases involving recommendations and decisions in discharge of duty, regardless of whether the complaint is frivolous, motivated, or based on hindsight. Such a result would be regressive.

104. Under Section 20 of the Lokpal Act, the Lokpal may order a preliminary inquiry or may direct investigation. The use of the word "may" is significant. It reflects a deliberate legislative choice to vest the Lokpal with discretionary gatekeeping power at the very threshold of the process. The Lokpal does not automatically direct investigation upon receipt of a complaint. Instead, it exercises institutional judgment, often through a preliminary inquiry, before deciding whether further escalation is warranted. This demonstrates that screening is treated as an indispensable safeguard, even when oversight is exercised by an independent statutory body.

105. If Section 17A is struck down, there would be an anomalous situation:

- Complaints routed through the Lokpal would continue to be subject to screening and escalation whereas,
- Complaints routed through the police would face no screening at all.

This would create a structural imbalance, where identical allegations involving the same category of public servants are treated differently solely based on the fora chosen by the complainant. Such structural imbalances would result in parties bypassing the Lokpal Act to deny the public servant the benefit of the screening mechanism. This would result in undermining the

Lokpal's role as an independent gatekeeper apart from perpetuating a dichotomy in procedure.

106. The Prevention of Corruption Act and the Lokpal Act operate in the same normative field. Both address allegations of corruption against public servants, both recognize the need for screening, and both seek to balance accountability with protection against misuse. My Sister B.V. Nagarathna, J., has raised a hypothetical question as to what if the Lokpal Act of 2013 is repealed. If that were the line of enquiry, then one may as well ask the question - What if the Prevention of Corruption Act, 1988 itself is repealed? The constitutional validity of Section 17A has to be judged in the context of the existing legal regime and not on such hypothetical considerations.

107. Section 17A is textually neutral. It applies to any "public servant" in relation to a decision or recommendation taken in the discharge of official functions. The provision does not classify public servants by rank, level, or seniority. Protection under Section 17A depends not on who the public servant is, but on what the public servant did.

108. The assumption that lower-level officers merely perform clerical tasks and do not make recommendations is factually incorrect and inconsistent with administrative practice. In governance and administration:

- File notings, scrutiny reports, technical evaluations, and compliance assessments constitute recommendations in law;
- Numerous statutory and regulatory frameworks vest recommendatory power in officers below senior ranks;

The expression "recommendation" is deliberately broad and is not confined to final policy decisions alone.

CONSTRUCTIVE APPROACH TO REMOVE DICHOTOMY:

109. This Court in Vishundas Hundumal and Others vs. State of Madhya Pradesh and Others¹⁷ adopting a constructive approach to remove discrimination held as under: -

"6. Conceding that this was discrimination unconsciously indulged into by inadvertence or oversight on the part of a governmental agency, by this order we only propose to rectify the same and not reject the whole scheme. Such an approach would be destructive of a wholesome effort towards nationalisation of bus transport which is generally undertaken in public interest. When discrimination is glaring the State cannot take recourse to inadvertence in its action resulting in discrimination.

The approach is, what is the impact of State action on the fundamental rights of citizen. In this case denial of equal protection is complained of. And this denial of equal protection flows from State action and has a direct impact on the fundamental rights of the petitioners. We, therefore, propose to take a constructive approach by removing the discrimination by putting the present petitioners in the same class as those who have enjoyed favourable treatment by inadvertence on the part of the Regional Transport Authority.

7. Accordingly we hereby direct that the order/conditions in permits curtailing the permits of the petitioners prohibiting them from passing over the overlapping portion of their route with the notified route be quashed and declared to be of no consequence till all the operators including those excluded and similarly situated are similarly treated."

110. In *D.S. Nakara and Others vs. Union of India*,¹⁸ while reading down the office memoranda and refusing to set aside the entire liberalized pension scheme, this Court again adopted a constructive approach and held as under:-

"58. Now if the choice of date is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing an otherwise homogeneous class, the question is whether the liberalised pension scheme must wholly fail or that the pernicious part can be severed, cautioning itself that this Court does not legislate but merely interprets keeping in view the underlying intention and the object, the impugned measure seeks to subserve? Even though it is not possible to oversimplify the issue, let us read the impugned memoranda deleting the unconstitutional part. Omitting it, the memoranda will read like this:

"At present, pension is calculated at the rate of 1/80th of average emoluments for each completed year of service and is subject to a maximum of 33/80 of average emoluments and is further restricted to a monetary limit of Rs 1000 per month. The President is, now, pleased to decide that with effect from March 31, 1979 the amount of pension shall be determined in accordance with the following slabs."

If from the impugned memoranda the event of being in service and retiring subsequent to specified date is severed, all pensioners would be governed by the liberalised pension scheme. The pension will have to be recomputed in accordance with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague, unenforceable or unworkable.

59. In reading down the memoranda, is this Court legislating? Of course "not". When we delete basis of classification as violative of Article 14, we merely set at naught the unconstitutional portion retaining the constitutional portion.

60. We may now deal with the last submission of the learned Attorney-General on this point. Said the learned Attorney-General that principle of severability cannot be applied to augment the class and to adopt his words "severance always cuts down the scope, never enlarges it". We are not sure whether there is any principle which inhibits the court from striking down an unconstitutional part of a legislative action which may have the tendency to enlarge the width and coverage of the measure. Whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification, by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation, the court can strike down the words of limitation in an enactment.

That is what is called reading down the measure. We know of no principle that "severance" limits the scope of legislation and can never enlarge it. To refer to the Jaila Singh case [(1976) 1 SCC 602 : AIR 1975 SC 1436 : 1975 Supp SCR 428] , when for the benefit of allotment of land the artificial division between pre-1955 and post-1955 tenant was struck down by this Court, the class of beneficiaries was enlarged and the cake in the form of available land was a fixed quantum and its distribution amongst the larger class would pro tanto reduce the quantum to each beneficiary included in the class.

Similarly when this Court in Randhir Singh case [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] held that the principle of "equal pay for equal work" may be properly applied to cases of unequal pay based on no classification or irrational classification it enlarged the class of beneficiaries. Therefore, the principle of "severance" for taking out the unconstitutional provision from an otherwise constitutional measure has been well recognised. It would be just and proper that the provision in the memoranda while retaining the date for its implementation, but providing "that in respect of government servants who were in service on March 31, 1979 but retiring from service on or after that date" can be legally and validly severed and must be struck down.

The date is retained without qualification as the effective date for implementation of scheme, it being made abundantly clear that in respect of all pensioners governed by 1972 Rules, the pension of each may be recomputed as on April 1, 1979 and future payments be made in accordance with fresh computation under the liberalised pension scheme as enacted in the

impugned memoranda. No arrears for the period prior to March 31, 1979 in accordance with revised computation need be paid."

111. In the present case, there is no need to resort to the principle of severance. Section 17A has to be brought in line with the pronouncements in Vineet Narain (supra) and Subramanian Swamy (Supra) so that while section remains on the statute book it ensures that there exists a screening mechanism by an independent agency before the grant or refusal or approval by the government and the recommendations of the independent agency are binding on the government. This will ensure that the otherwise salutary provision in preventing frivolous complaints against honest public servants is not completely set at naught.

112. Recently, in Association of old settlers of Sikkim and Others vs. Union of India and Another¹⁹, while interpreting explanation to Section 10 (26-AAA) of the Income Tax Act, it was held as under (M.R. Shah, J.):-

"43. In view of the above and for the reasons stated above, we are of the firm opinion that Section 10(26-AAA) to the extent it excludes the Old Indian Settlers, who have settled in Sikkim prior to the merger of Sikkim with India on 26-4-1975, but whose names are not recorded as "Sikkim Subjects", from the definition of "Sikkimese" is ultra vires, being arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

The definition of "Sikkimese" in Section 10(26-AAA) of the Income Tax Act shall also include all Indians, who have permanently settled in Sikkim prior to the merger of Sikkim with India on 26-4-1975 irrespective of the fact that whether their names have been recorded in the register maintained under the Sikkim Subjects Regulations, 1961 or not. Therefore, it is held that the "Sikkimese" like the petitioners, who are Old Indian Settlers and who have settled in Sikkim prior to the merger of Sikkim with India on 26-4-1975 shall also be entitled to the exemption under Section 10(26-AAA) of the Income Tax Act, 1961."

113. In the same judgment, B.V. Nagarathna, J. in an erudite opinion had the following to say on the explanation to Section 10 (26-AAA):-

"146. Hence, it has to be directed that till such amendment is made to the down the Explanation to Section 10(26-AAA) of the IT Act, 1961, all individuals domiciled in Sikkim up to 26-4-1975 shall be entitled to the exemption under the said provision. This direction is being issued in exercise of powers under Article 142 of the Constitution so as to eliminate discrimination and disparity in respect of the aforesaid category of Sikkimese, who subsequently have become citizens of India w.e.f. 26-4-1975 and to save

the Explanation from being rendered unconstitutional vis-à-vis such individuals who form a small percentage of Sikkimese and who are also entitled to such an exemption. Such an approach is being adopted rather than striking down the Explanation to Section 10(26-AAA) of the IT Act, 1961 which would have the effect of withdrawing the benefit of exemption even from those categories of persons who are presently eligible for the same.

147. Hence, until the amendment is made, the following clause shall be read as a part of the Explanation to Section 10(26-AAA) of the IT Act, 1961, possibly as subclause (iv) thereof:

"(iv) any other individual, whose name does not appear in the Register of Sikkim Subjects but it is established that such individual was domiciled in Sikkim on or before 26-4-1975."

This provision would extend the benefit of exemption to those individuals, domiciled in Sikkim on the day it merged with India i.e. 26-4-1975.

148. In the result, the writ petitions are disposed of in the following terms:

148.1. That the benefit of income tax exemption presently is restricted only to those Sikkimese who fall within the three clauses of the Explanation to Section 10(26-AAA) of the IT Act, 1961, or those persons domiciled in Sikkim, or are Sikkimese as covered under the 1961 Regulations.

148.2. In terms of the Sikkim (Citizenship) Order, 1975 as amended by the Sikkim (Citizenship) Amendment Order, 1989, issued by the Government of India any person who was a Sikkim Subject under the 1961 Regulations was to be deemed to be a citizen of India w.e.f. 26-4-1975. Conversely, it is held that all citizens of India, having a domicile in Sikkim on the day it merged with India i.e. 26-4-1975 must be covered under the Explanation in order to avail the benefit of the exemption under Section 10(26-AAA) of the IT Act, 1961.

148.3. The Union of India shall make an amendment to the Explanation to Section 10(26-AAA) of the IT Act, 1961, so as to suitably include a clause to extend the exemption from payment of income tax to all Indian citizens domiciled in Sikkim on or before 26-4-1975. The reason for such a direction is to save the Explanation from unconstitutionality and to ensure parity in the facts and circumstances of the case.

148.4. Till such amendment is made by Parliament to the Explanation to Section 10(26-AAA) of the IT Act, 1961, any individual whose name does not appear in the Register of Sikkim Subjects but it is established that such

individual was domiciled in Sikkim on or before 26-4-1975, shall be entitled to the benefit of exemption.

148.5. This direction is being issued in exercise of powers under Article 142 of the Constitution so as to eliminate discrimination and disparity in respect of the aforesaid category of Sikkimese, who subsequently have become citizens of India w.e.f. 26-4-1975 and to save the Explanation from being rendered unconstitutional vis-à-vis such individuals who form a small percentage of Sikkimese.

148.6. The proviso to Section 10(26-AAA), insofar as it excludes from the exempted category, "a Sikkimese woman who marries a non-Sikkimese man after 1-4-2008" is hereby struck down as being ultra vires Articles 14, 15 and 21 of the Constitution of India".

114. By a process of reading down and with no need to resort to Article 142, Section 17A can be aligned, in the present case, with Vineet Narain (supra) and Subramanian Swamy (Supra). In view of the precedents set out hereinabove, there is enough legal support for the course of action adopted.

ANALOGY WITH JUDICIARY - NOT TENABLE

115. One contention that the learned Solicitor General so strongly urged was the analogy drawn with the screening mechanism for the judiciary. The comparison is completely unjustified. The very nature of the functioning of the judiciary and the need for it to be completely insulated from the executive, demands the nature of protection that Veeraswami (Supra) envisaged. Vineet Narain (Supra) and Subramanian Swamy (supra) have both dealt with similar contentions advanced and rejected the same.

The learned Solicitor General is right that the screening mechanisms provided are not confined to the constitutional court judges but to the members of the judiciary across the board. That does not denude the reasoning in Subramanian Swamy (Supra) and the ratio decidendi therein. Nothing more needs to be said on this aspect of the matter.

EXISTENCE OF JUDICIAL REVIEW - NOT ADEQUATE TO PASS THE SUBRAMANIAN SWAMY (SUPRA) TEST

116. Equally, the argument that orders granting or refusing approval being subject to Judicial review, there is enough check against the misuse of power by Government is not a tenable argument. Though attractive at first blush, it does not survive a deeper probe. The parameters for judicial review are well known and need no reiteration.

A court in judicial review is primarily concerned not so much with the decision itself but the decision-making process. Unless the safeguard of a screening by Lokpal/Lokayukta is read into the validity of the section, it cannot be sustained in view of the binding earlier rulings of larger Benches. A court in judicial review will only look at the screening done by the Government to uphold or reject the challenge. Hence, this argument of the learned Solicitor General, cannot be accepted.

POSTSCRIPT AND DIRECTIONS:

117. In a democracy governed by the rule of law, each organ of the State plays a significant part. Ultimately, as was echoed in the Constituent Assembly by late Shri Babu Rajendra Prasad and Dr. Babasaheb Ambedkar, the functioning of the organs will depend upon the persons who work them. Work they must do and do it well, for if they don't, the progress of the nation may come to a standstill.

118. One essential component of the executive wing are the bureaucrats and officers who engage in its operation and keep the wheels of governance moving. It is presumed that official acts are regularly performed and there is statutory backing too for the same.

119. Here is a case where Parliament in all its wisdom stepped in and engrafted a mechanism in the form of enacting Section 17A to give impetus to decision making by the administrative machinery so that "policy paralysis" does not set in. The concern was that if it were not so, fearing that carefully built reputations could be casually tarnished, a "play it safe syndrome" may set in and decision making will be avoided, causing serious detriment to the progress of the nation.

120. The object of incorporating Section 17A of the Act was certainly not to condone official acts done for improper purposes or for extraneous considerations. The singular object is to protect bona fide recommendations and decisions taken by officials and bureaucrats.

121. For an honest person, personal integrity and reputation is priceless and is valued even higher than life. As was said in the sacred Bhagavad Gita -

“सम्भावितस्य चाकीर्तिर्मरणादतिरिच्यते”

"Sambhaavitasya cha akeerti, maranaat atirichyate"

"For a self-respecting man, death is preferable to dishonour." In a similar vein, Divine Poet Tiruvalluvar said in his immortal work Tirukkural:

“மயிர்நீப்பின் வாழாக் கவரிமா அன்னார் உயிர்நீப்பர் மானம் வரின்”

"Mayirnippin vālāk kavārimā annār
Uyirnīppar māṇam varin".

"Just as a yak, which is shorn of its wool does not survive,
A man of honour will not live if he loses it."

[Translated by Dr. S.M. Diaz and Dr. N. Mahalingam]

With the extent of public gaze prevalent today, propelled by social media, arrest and the consequential parading in court, of a honest person itself causes incalculable harm to the fair name and goodwill of the individual and the family. Even a subsequent exoneration in the investigation cannot redeem the permanent damage done to the integrity and reputation of the individual. It is no answer to say that protection is available at the stage of Section 19 when the file seeking sanction for prosecution is processed, for by then irreversible and immeasurable harm would have ensued.

122. If in the process of examining the validity of the said provision (Section 17A), to avoid dichotomy in procedure and to align it with the pronouncements of this Court, certain safeguards are ensured for its implementation, that certainly does not tantamount to "substitution" or "judicial legislation".

123. The safeguards provided for will not only strengthen the hands of honest officers but will also ensure that the corrupt are brought to book. More importantly, the safeguards would guarantee that the administrative machinery continues to attract the best of talent for the service of the nation.

124. For the reasons stated above, the writ petition is disposed of with the following directions:-

i) Section 17A of the Prevention of Corruption Act, 1988 inserted by virtue of Section 12 of the Prevention of Corruption (Amendment) Act, 2018 is constitutionally valid, subject to the condition that grant or refusal of the approval by the competent authority mentioned therein will depend on the recommendation of the Lokpal/Lokayukta (in case of States) respectively in accordance with the reasoning set out in the body of the judgment.

ii) The Union of India or State Governments and the authorities competent to remove set out in Section 17A will, on receipt of the information under Section 17A, immediately forward the information to the Lokpal/Lokayukta

(insofar as the States are concerned) and the Lokpal/Lokayukta shall in accordance with the reasoning set out in the body of the judgment may have an inquiry on the information in accordance with the provisions of the Lokpal/Lokayukta statutes and forward the recommendation to the appropriate authority who shall be bound and shall act in accordance with the recommendation insofar as grant or refusal of permission under Section 17A is concerned.

Bodies not covered under the jurisdiction of Lokpal:-

iii) Insofar as the judiciary is concerned, already Veeraswami (supra) and U.P. Judicial Officers Association (supra) have provided a mechanism. Section 17A(c) could also be attracted in cases where the body/organization/public servant is not covered within the jurisdiction of Lokpal. For such associations/bodies/public servants, when a scenario presents itself the authority competent to remove the public servant in question, would before grant or refusal of approval, commission any appropriate independent investigative agency to screen the information received and act in accordance with the recommendation of the said independent investigative agency.

iv) The time-limit stipulated in the proviso to Section 17A shall apply and all the authorities concerned will act in accordance with the time-limit laid out therein.

v) Needless to say, the Lokpal/Lokayukta while forwarding their recommendation, shall set out reasons for the said recommendation. No order as to costs.

.....J. [K. V. Viswanathan]

New Delhi;

January 13, 2026

- 1 (1998) 1 SCC 226
- 2 (2014) 8 SCC 682
- 3 (2014) 2 SCC 1
- 4 (1991) 3 SCC 655
- 5 (1955) 2 SCR 925
- 6 (1994) 4 SCC 687
- 7 (1997) 4 SCC 770
- 8 (1968) 1 All ER 763
- 9 (1980) 1 SCC 554
- 10 (1970) 1 SCC 443
- 11 (1987) 3 SCC 34

12 (1970) 1 SCC 595
13 2025 INSC 1279
14 (1962) 3 SCR 786
15 (2015) 2 SCC 33
16 (1999) 9 SCC 700
17 (1981) 2 SCC 410
18 (1983) 1 SCC 305
19 (2023) 5 SCC 717

**Centre for Public Interest Litigation
Vs.
Union of India**

[Writ Petition (C) No. 1373 of 2018]

JUDGMENT

Nagarathna, J.

Index

Facts:

Section 17A of the Act : A Historical Perspective:

Submissions on behalf of the Petitioner:

Submissions on behalf of the Respondents:

Reply Arguments:

Corruption in India:

United Nations Convention Against Corruption:

Vineet Narain:

Subramanian Swamy:

Analysis of Section 17A of the Act:

Meaning of "Government" under Section 17A of the Act:

Relevant Provisions of the Constitution:

Functioning of Government Departments:

Institutions to Check Corruption:

Establishment of CVC, CBI and Lokpal & Lokayukta:

The Indian Ombudsman System: Lokpal and Lokayukta:

Scheme of the 2013 Act:

The Overarching Object of the Act and Section 17A: At Odds ?

Impermissibility of Substitution of Plain Meaning of Words in Section 17A:

Summary of Conclusions:

Post Script:

1. I have perused the judgment authored by my learned Brother K.V. Viswanathan, J. I wish to author a separate opinion by holding that Section

17A of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") is contrary to the objects of the said Act and unconstitutional and hence ought to be struck down. The reasons for saying so may be summarily stated as under:

(i) Firstly, the question is, whether prior approval within the meaning of Section 17A of the Act has to be given at all? The question is not about who, within the Government or outside the Government, should give such an approval. In my view, no such prior approval is required to be taken for the reasons that I have explained hereinafter.

(ii) Secondly, the larger Benches of this Court in *Vineet Narain vs. Union of India*, (1998) 1 SCC 226 ("Vineet Narain") (three- Judge Bench) and *Subramanian Swamy vs. Director, Central Bureau of Investigation*, (2014) 8 SCC 682 ("Subramanian Swamy") (five-Judge Bench) have struck down the Single Directive 4.7(3) as well as Section 6A of the Delhi Special Police Establishment Act, 1946 (for short, "DSPE Act, 1946"), respectively. In my view, Section 17A of the Act inserted in the year 2018 is nothing but another attempt to resurrect on the statute book, what was struck down by this Court earlier.

(iii) Thirdly, in my view, the requirement of prior approval within the meaning of Section 17A of the Act is contrary to the object and purpose of the Act, inasmuch as it forestalls an enquiry and thereby in substance protects the corrupt rather than seeking to protect the honest and those with integrity, who really do not require any such protection.

(iv) Fourthly, in view of the above, I do not concur with the view taken by my learned Brother K.V. Viswanathan, J. for seeking to substitute the expression "Government" in Section 17A of the Act and the expression "of the authority competent to remove him from his office" with "Lokpal" or "Lokayukta", as the case may be, as such substitution is impermissible by way of interpretation.

(v) Fifthly, by such an interpretation, the question as to whether the requirement of seeking prior approval within the meaning of Section 17A of the Act is justified has to be addressed and which I propose to discuss hereinafter.

(vi) The following aspects also require consideration which makes the provision arbitrary while considering a request for grant of approval under Section 17A of the Act:

(a) "policy bias" on the part of the public servants of an administrative department which could result in an absence of neutrality or objectivity while

considering a request for approval for carrying out an enquiry, inquiry or investigation into a complaint vis-à-vis a recommendation made or decision taken by a public servant during the course of discharge of his duties;

(b) that no single public servant may be responsible for making a recommendation or taking a decision during the course of discharge of his public duties and therefore, the difficulty in giving approval for conducting an enquiry, inquiry or investigation into such matter in respect of a single public servant within the meaning of Section 17A of the Act.

(c) "conflict of interest" inasmuch as public servant entrusted with the power to grant or refuse approval for conducting an enquiry, inquiry or investigation under Section 17A of the Act may himself have played a vital role in making such a recommendation or taking a decision either individually or collectively with other public servants. The rules of natural justice require that exercise of discretion must be without bias and not be arbitrary or unreasonable, therefore, fairness in action without any underlying bias is a requirement while considering a request for prior approval for conducting an enquiry, inquiry or investigation by a police officer.

(d) grant or refusal of approval to a police officer to conduct an enquiry, inquiry or investigation is an institutional decision emanating within the institution i.e. the Government department, which is arbitrary in itself.

Hence, my separate opinion.

Facts:

2. The instant writ petition has been preferred by the petitioner - Centre for Public Interest Litigation (for short, "CPIL"), a nongovernmental organization assailing Section 17A of the Act as being unconstitutional, invalid and void. While the writ petition also sought to earlier challenge Section 7 of the Act, the said challenge has since been given up.

2.1 Section 17A was inserted as a new provision in the Act by way of Section 12 of the Prevention of Corruption (Amendment) Act, 2018 and came into effect from 26.07.2018. For ease of reference, the text of the provision has been extracted hereunder:

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.-

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this

Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

2.2 From a perusal of the aforesaid provision, it is evident that Section 17A functions as a mandatory pre-condition that restricts a police officer from conducting any inquiry/enquiry/investigation into an offence alleged to have been committed by a public servant in relation to any recommendation made or decision taken in discharge of their official duties without the prior approval of the concerned authority.

Section 17A of the Act: A Historical Perspective:

3. Learned counsel for the petitioner submitted that Section 17A of the Act is similar to Single Directive 4.7(3) as well as Section 6A of the DSPE Act, 1946 which were struck down by this Court and therefore, the said provision is contrary to the judgments of this Court and hence has to be struck down. It was contended that the provision once again attempts to protect corrupt public servants and therefore, the mandate of granting prior approval by the Government even for a preliminary inquiry to be made by a police officer. If the Government declines to grant prior approval then no police officer can conduct an enquiry/inquiry/investigation within the meaning of Section 17A of the Act.

3.1 According to the submissions of learned Solicitor General, the essence of Section 17A of the Act is the need to protect decisionmakers from harassment through frivolous complaints. Hence a screening mechanism has been devised under the said Section in order to filter out baseless allegations against officers/officials who discharge their duties with integrity so as to ensure effective governance and thereby maintain a balance between accountability and efficiency.

Allegations without any basis or truth made against public servants can cause irreparable harm not only to the public servants concerned but also to the system of governance by the concerned department to which they belong. Hence, before a public servant is charged with a misdemeanour and a First Information Report (FIR) is lodged against a public servant, a suitable preliminary enquiry into the allegations made is necessary. Thus, there is a need to protect honest public servants from frivolous and vexatious complaints while discharging their official duties.

3.2 From a historical perspective, the Santhanam Committee Report, 1964 is relevant. Shri K. Santhanam was appointed as the Chairman of a Committee on Prevention of Corruption. Chapter 10 of the Report deals with the Special Police Establishment which was created by the Government of India in the year 1941 by an executive order and upon the establishment of the Central Bureau of Investigation (for short, "CBI") with effect from 01.04.1963, the Special Police Establishment has been made one of its divisions which exercises its powers under the Delhi Special Police Establishment Act, 1946 (for short, "DSPE Act, 1946"). The aforesaid Committee, inter alia, had recommended that the request for grant of sanction to prosecute should be dealt with expeditiously.

3.3 In the year 1969, the Single Directive No.4.7(3), as a consolidated set of instructions was issued to the CBI by various ministries or departments through an executive order regarding the modalities of initiating an enquiry prior to registering a case against certain categories of civil servants. Directive No.4.7(3) reads as under:

"4.7(3)(i) In regard to any person who is or has been a decision making level officer (Joint Secretary or equivalent of above in the Central government or such officers as are or have been on deputation to a Public Sector Undertaking; officers of the Reserve Bank of India of the level equivalent to Joint Secretary of above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank officers who are one level below the Board of Nationalised Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up any enquiry (PE or RC),

including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.

(ii) All cases referred to the administrative Ministries/Departments by CBI for obtaining necessary prior sanction as aforesaid, except those pertaining to any officer of the rank of Secretary or Principal Secretary, should be disposed of by them preferably within a period of two months of the receipt of such a reference. In respect of the officers of the rank of Secretary or Principal Secretary to Government, such references should be made by the Director, CBI to the Cabinet Secretary for consideration of a Committee consisting of the Cabinet Secretary as its Chairman and the Law Secretary and the Secretary (Personnel) as its members. The Committee should dispose of all such references preferably within two months from the date of receipt of such a reference by the Cabinet Secretary.

(iii) When there is any difference of opinion between the Director, CBI and the Secretary of the Administrative Ministry/Department in respect of an officer up to the rank of Additional Secretary or equivalent, the matters shall be referred by CBI to Secretary (Personnel) for placement before the Committee referred to in Clause (ii) above. Such a matter should be considered and disposed of by the Committee preferably within two months from the date of receipt of such a reference by Secretary (Personnel).

(iv) In regard to any person who is or has been Cabinet Secretary, before SPE takes any step of the kind mentioned in (i) above the case should be submitted to the Prime Minister for orders."

3.4 The validity of Directive No.4.7(3) of the Single Directive was considered by this Court and it was struck down by holding that in the absence of any statutory requirement of prior permission or sanction for investigation, a mere executive order could not be imposed as a condition precedent for institution of an investigation. This was in the case of Vineet Narain. The details of the reasoning in the said judgment shall be dealt with later.

3.5 In the meanwhile, the Central Vigilance Commission (for short, "CVC") was set up by the Government of India by a resolution dated 11.02.1964. This was on the recommendation of the Santhanam Committee. Pursuant to the judgment of this Court in Vineet Narain, the Commission was accorded statutory status with effect from 25.08.1988 through the Central Vigilance Commission Ordinance, 1988 under which Section 8(1)(c) provided for a provision for granting of prior approval or otherwise for the conduct of an investigation into allegations of corruption under the Act against the persons mentioned in Section 6A of the DSPE Act, 1946. The amendment to the aforesaid Ordinance was first promulgated on 27.10.1988.

3.6 Thereafter, the Central Vigilance Commission Bill, 1988 was introduced in the Lok Sabha on 07.12.1988, which was then referred to the Parliamentary Standing Committee on Home Affairs and the Union Government accepted most of the amendments recommended by the said Committee. The Lok Sabha considered this bill and passed it on 15.03.1999 but before the Rajya Sabha could consider the same, the 12th Lok Sabha was dissolved on 26.04.1999 and consequently the Bill lapsed. The Central Vigilance Commission Bill, 1999, on the same lines as the earlier Bill, was introduced in the Lok Sabha and was referred to the Joint Committee of both the Houses of Parliament, namely, the Joint Parliamentary Committee (JPC). The JPC submitted its report and made its observations therein.

3.7 The 13th Lok Sabha as well as the Rajya Sabha extensively debated on the Central Vigilance Commission Bill, 1999 and the same was passed by both Houses of Parliament. The President gave his assent on 11.09.2003 and consequently, the Central Vigilance Commission Act, 2003 came into effect from 11.09.2003.

3.8 Thereafter, the Hota Committee on Civil Services Reforms, 2004 noted that honest civil servants face vigilance/CBI probes under the Act in respect of bona fide commercial or policy decisions which may incidentally benefit private parties, leading to decision-paralysis. The said Committee recommended setting up experts' committees in various departments to scrutinize cases of the officers before initiating departmental action for alleged corrupt practices/launching prosecution against them under the Act, under the aegis of the CVC. According to this report, such a reform would encourage honest officers to take bold commercial decisions in public interest without any lurking fear of a vigilance/CBI enquiry.

3.9 Subsequently, the Second Administrative Reforms Commission submitted its 4th Report on "Ethics in Governance" in 2007, wherein in paragraphs 7.1 and 7.2, it was recorded as under:

"7.1 The raison d'etre of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. Risk-taking should form part of government functioning. Every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. One possible test for determining the bona-fides could be whether a person of common prudence working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organisation.

7.2 Even more than in government, managerial decisionmaking in public sector undertakings and day-to-day commercial decisions in public sector banks offers considerable scope for genuine mistakes being committed which could possibly raise questions about the bona fides of the decision-maker. The Central Vigilance Commission has recognized this possibility of genuine commercial decisions going wrong without any motive whatsoever being attached to such decisions."

Consequently, in paragraph 7.9, the recommendations read as under:

"7.9 Recommendations:

a. Every allegation of corruption received through complaints or from sources cultivated by the investigating agency against a public servant must be examined in depth at the initial stage itself before initiating any enquiry. Every such allegation must be analyzed to assess whether the allegation is specific, whether it is credible and whether it is verifiable. Only when an allegation meets the requirements of these criteria, should it be recommended for verification, and the verification must be taken up after obtaining approval of the competent authority. The levels of competent authorities for authorizing verifications/ enquiries must be fixed in the anti-corruption agencies for different levels of suspect officers.

b. In matters relating to allegations of corruption, open enquiries should not be taken up straightaway on the basis of complaints/source information. When verification/secret enquiries are approved, it should be ensured that secrecy of such verifications is maintained and the verifications are done in such a manner that neither the suspect officer nor anybody else comes to know about it. Such secrecy is essential not only to protect the reputation of innocent and honest officials but also to ensure the effectiveness of an open criminal investigation. Such secrecy of verification/enquiry will ensure that in case the allegations are found to be incorrect, the matter can be closed without anyone having come to know of it. The Inquiry/Verification Officers should be in a position to appreciate the sensitivities involved in handling allegations of corruption.

c. The evaluation of the results of verification/enquiries should be done in a competent and just manner. Much injustice can occur due to faulty evaluation of the facts and the evidence collected in support of such facts. Personnel handling this task should not only be competent and honest but also impartial and imbued with a sense of justice."

3.10 In the year 2013, an amendment to Section 6A of the DSPE Act, 1946 was sought to be made and a Bill was introduced in that regard. In

Subramanian Swamy, this Court struck down Section 6A of the DSPE Act, 1946 by, inter alia, holding that the provision created an impermissible classification based solely on the status of the public servant in Government service (Joint Secretary and above in the Union and certain Public Sector Undertakings (PSUs) Executives), in the matter of initiation of an enquiry/investigation under the provisions of the Act.

3.11 As a result, the Law Commission of India considered the Prevention of Corruption (Amendment) Bill, 2013 along with the proposed amendments in its 254th Report and gave its recommendations thereon. The Rajya Sabha Select Committee, 2016 sought opinions from stakeholders by holding certain consultations and thereafter made its recommendations and suggested amendments to the proposed Section 17A of the Act. On 26.07.2018, both the Houses of Parliament after debating the same, passed the Bill which received the assent of the President and was brought into force from that date. In this case, the vires of Section 17A of the Act is under challenge.

Submissions on behalf of the Petitioner:

4. Sri Prashant Bhushan, learned counsel for the petitioner at the outset submitted that the impugned amendment to the Act in the form of Section 17A renders the entire scheme of the said Act, ineffective, as it protects corrupt officials and would lead to an exponential rise of corruption in the country.

4.1 It was contended that the introduction of Section 17A functions as the third attempt by the Union of India to bring in a provision that requires prior approval for the purpose of initiating a bare investigation, despite similar attempts having been thwarted earlier by this Court in the case of Vineet Narain and Subramanian Swamy. That this Court in the aforesaid two judgments has found that provisions protecting public servants in a manner that would prevent the investigating agencies from even being able to collect material relating to an allegation is a form of curtailing their power and preventing their independence of functioning.

4.2 That in Vineet Narain, Directive 4.7(3) of the Single Directive issued by the Union Government in the form of a consolidated set of instructions to the CBI requiring prior sanction to initiate investigation into certain classes of public servants, namely, "decision-making level officers" was struck down by this Court on the basis of the said Directive being violative of Article 14 as a form of unreasonable classification. That the said Directive was also struck down on the basis of creating an impermissibility governing the power for investigation by the CBI that had been endowed by way of statutory provisions enacted by Parliament, through executive action.

4.3 It was submitted that following the striking down of the said Directive for being unconstitutional and on the ground of executive overreach, the Union Government once again tried to introduce a prior approval requirement for commencement of investigations into allegations levelled against a public servant in the form of Section 6A of the DSPE Act, 1946 which also required prior approval to initiate investigations into the actions of certain classes of public servants, namely those at the level of Joint-Secretary and above as well as officers appointed by the Central Government in corporations, Government companies, societies and local authorities owned or controlled by the Government. That, this Court, in Subramanian Swamy held Section 6A of the DSPE Act, 1946 to be violative of Article 14 of the Constitution on the basis of it making an unreasonable classification between senior officers and junior officers in terms of the protection they would receive from being inquired/enquired/investigated into.

4.4 It was further submitted that this Court also held in Subramanian Swamy, that it would be impermissible for investigating agencies to be prevented from being able to even collect material with respect to a certain allegation because of the requirement of prior approval. That this would result in the officer in question being put to notice as to the existence of a possible inquiry/enquiry/investigation into their actions. That only the investigating agencies would have the requisite expertise so as to decide, whether, to proceed with the investigation or not and, hence, the final decision to proceed with an investigation must be taken by the investigating agencies and not the Central Government.

4.5 It was vehemently contended that the aforementioned two judgments of this Court in Vineet Narain and Subramanian Swamy were not merely decided on the question of the validity of the classification between classes of officers but also took note of the overarching problem of corruption in India as a source of grave danger to our constitutional republic.

That this Bench would be bound by the decisions in Vineet Narain and Subramanian Swamy as they were a three-Judge Bench and five-Judge Constitution Bench decision of this Court respectively. That the introduction of Section 17A was for the sole purpose of rendering ineffective the judgments of this Court in Vineet Narain and Subramanian Swamy. That this Court is required to interpret anti-corruption provisions in a manner that would enhance and not subdue their efficiency and functioning.

4.6 It was further submitted that the introduction of Section 17A is contrary to the position of law laid down by this Court in Lalita Kumari vs. Government of Uttar Pradesh, (2014) 2 SCC 1 ("Lalita Kumari"), which held that

registration of an F.I.R was mandatory upon the investigating officer receiving information of the commission of a cognizable offence.

4.7 It was contended that the effect of Section 17A would be an interference with the confidentiality and insulated nature of the investigations conducted by the investigating agencies, wherein there is a high likelihood of leaks and disclosures of information within a department of the Government, as the concerned authority granting the approval would have to be kept abreast of the particularities of the case.

4.8 That the requirement for prior approval to conduct an inquiry/enquiry/investigation is in violation of Articles 6(2) and 36 of the United Nations Convention Against Corruption, which India has ratified.

4.9 Further, under Section 17A of the Act, in linking the offence committed to any recommendation made or decision taken in discharge of official functions or duties places a burden on the investigating agency to establish such a linkage prima facie before being able to conduct any form of investigation, when on the other hand, investigation itself may be required to establish such a linkage to begin with.

4.10 It was submitted that the effect of Section 17A would be that when the public servants sought to be investigated are themselves of a higher level, an incongruous situation would arise where they would be in-charge of deciding on grant of approval in relation to their own case. That even otherwise, a high-ranking member of the same department could not be relied upon to be sufficiently impartial in relation to the case of a subordinate officer.

4.11 That it is erroneous to suggest that Section 17A has been introduced in compliance with the recommendation made by the 254th Law Commission report, which had recommended the inclusion of a provision regarding grant of prior approval for inquiry/enquiry/investigation into alleged offences committed by a public servant with the approval required to be granted by the concerned Lokpal/Lokayukta and not by the Union/State Government.

That if the goal was to protect honest officers from frivolous investigations, two safeguards in the form of Sections 17 and 19 of the Act already exist. That under Section 17, only certain, high-ranking police officers can investigate the actions of a public servant and under Section 19, prior sanction of the concerned authority would be required before taking cognizance in a matter involving allegations of corruption leveled against a public servant. That the conduct of a preliminary enquiry/inquiry/investigation on its own could not be claimed to cause prejudice or impede the functioning of a public servant.

4.12 It was further submitted that in the affidavit dated 07.05.2025 filed by the Union of India, which only contained data with respect to requests made by the CBI seeking grant of prior approval to commence inquiry/enquiry/investigation into allegations made against a public servant, such approval was denied in a worrying 41.3% of cases.

4.13 Hence, it was contended by learned counsel for the petitioner that for all of the aforesaid reasons, it would be necessary to strike down Section 17A as being violative of Articles 14 and 21 of the Constitution.

Submissions on behalf of the Respondents:

5. Per contra, learned Solicitor General of India Sri Tushar Mehta, vehemently opposed the aforesaid submissions and defended the vires of Section 17A.

5.1 At the outset, it was submitted that Section 17A of the Act is a salutary provision, containing sufficient in-built safeguards and modes to address grievances. That the provision was introduced with the goal of preventing harassment of honest public servants by subjecting even bona fide recommendations made or decisions taken by them to the process of investigation.

5.2 That the animating impetus from the time of the Single Directive, 1969 to Section 6A of the DSPE Act, 1946 and now to Section 17A has been to ensure that every decision taken or recommendation made by a public servant, merely by virtue of someone being disgruntled with the same or seeking to settle other scores, is not frivolously challenged.

That such frivolous challenges do not merely waste the time of the concerned public servant and cause them prejudice and harassment but further have a larger disadvantageous effect on the ability of government departments to function, as public servants would refrain from acting entirely so as to involve being dragged into an investigation. That this would contribute to "policy paralysis" and decision-making being shuffled from one officer to the other as nobody would wish to take responsibility for any decision of the department of the Government.

5.3 That pursuant to the Law Commission making its recommendation in its 254th Report, the Rajya Sabha Select Committee conducted extensive stakeholders' consultations and further engaged in an in-depth debate and held discussions before enacting Section 17A in its current form. That this is reflective of the deliberate and intentional framing of the provision in its current form as many of the concerns raised by the petitioner were raised in these debates and have been sufficiently addressed.

5.4 It was further contended that material differences exist between Section 6A of the DSPE Act, 1946 and Section 17A of the Act and the fact of the former having been struck down as being unconstitutional does not have a bearing on the vires of the latter provision. That Section 6A of the DSPE Act, 1946 concerned the requirement of prior approval of the Central Government for the commencement of investigations by the CBI alone, protected only those Central Government officers who were at the rank of Joint Secretary and above and equivalent officers in certain Public Sector Undertakings (PSUs), had only a narrow exception where approval would not be required in trap cases and did not prescribe any timelines.

That Section 17A, on the contrary, applies to the commencement of investigation by any agency, be it the CBI or the State police, protects all public servants and not any particular class, is narrowly tailored to cover only offences relating to any recommendation made or decision taken and prescribes a timeline of three months, with a possible one additional month of extension within which the concerned authority is required to either grant or deny approval.

5.5 It was submitted that Section 17A of the Act is not contrary to the precedents set by this Court either in the case of Vineet Narain or in the case of Subramanian Swamy. That, in Vineet Narain, the striking down of parts of the Single Directive was not on the basis of any general impermissibility of a prior approval regime but instead hinged on the fact that a classification was being made between ranks of officers, leading to different regimes of investigation being applicable to different classes of officers.

That such a classification did not have any rational nexus to the object of preventing frivolous allegations and harassment of public servants and was thus held to be violative of Article 14. Further, that the Single Directive functioned as a consolidated set of instructions issued to the CBI as to how it should go about prosecuting cases of corruption.

That the Executive doing such an act through a directive as opposed to the Parliament through the enactment of statutory provisions was further held to be impermissible. Similarly, in Subramanian Swamy, the main issue was as regards the classification made between officers holding the rank of Joint Secretary and above and all other officers and not the existence of a system of prior approval for conducting an investigation into alleged acts of corruption by a public servant itself.

5.6 It was submitted that as Section 17A of the Act does not engage in any such classificatory exercise and it is a validly enacted statutory provision, it cannot be said to be a different avatar of either the Single Directive or Section

6A of the DSPE Act, 1946. Hence, there is no contravention of the principles laid down in either Vineet Narain or Subramanian Swamy in enacting Section 17A of the said Act.

5.7 It was contended that there is no merit to the claim that under Section 17A, there would be a situation where an officer accused of an offence under the Act would himself be in charge of granting approval to conduct an investigation in his own case. That a clear chain of command exists that would determine who the competent authority is in each case to grant the said approval.

5.8 It was submitted that some form of pre-investigation scrutiny has been upheld by this Court as being valid on various occasions and it is not anathema to the rule of law.

5.9 It was also submitted that in the case of K Veeraswami vs. Union of India, (1991) 3 SCC 655 ("Veeraswami"), this Court recognized the purpose of prior sanction required to take cognizance of an offence under Section 6 of the Prevention of Corruption Act, 1947 as being for the purpose of preventing "frivolous and vexatious prosecution". That the said case also upheld the duty of the competent authority to accord such sanction when the material on record discloses a prima facie commission of an offence.

5.10 That the vires of Section 197 of the Code of Criminal Procedure, 1898 (corresponding to Section 197 of the Code of Criminal Procedure, 1973), which mandates prior sanction to take cognizance of offences committed by public servants while acting in discharge of their official duty was upheld by this Court in the case of Matajog Dobey vs. H.C. Bhari, (1955) 2 SCC 388 on similar grounds as Veeraswami, namely that a classification between public servants and ordinary citizens was justified on the basis of the need for public servants to be protected against frivolous complaints and harassment as they attempt to carry out their duties.

5.11 It was submitted that a consideration of the aforesaid dicta of this Court would reveal that this Court has endorsed the need for a prior sanction regime so as to prevent vexation and harassment being caused to the public servant. That Section 17A is merely one other form of such a protective measure.

5.12 It was further contended by learned Solicitor General that the protection accorded under Section 17A is very narrowly tailored as prior approval would only be required if the offence alleged to have been committed satisfied the requirements that- a) it was in discharge of official duties and b) it related to any recommendation made or decision taken. Any offence under the Act that is alleged to have been committed by a public servant that can neither be said

to be in discharge of his official duties nor relates to a recommendation made or decision taken would not require any form of prior approval. That this is exemplified by the fact that on the spot arrests do not require any prior approval to be proceeded with.

5.13 It was submitted that in a catena of High Court decisions in which the applicability of and adherence to Section 17A was in issue, the High Courts have abided by the aforementioned narrow scope of application of the provision. That no corrupt public servant has thus been shielded by the provision.

5.14 It was further contended by learned Solicitor General that Section 17A in no way violates the law laid down by this Court in Lalita Kumari as even in the said decision, the Court recognized that there may exist instances where some form of prior investigation to determine if any offence is made out at all, based on the facts and circumstances of the case would be necessary before the registration of an FIR.

5.15 That the existence of Section 17A does not, in any way, impede the functioning of the Lokpal as Section 56 of the Lokpal and Lokayuktas Act, 2013 (for short, "the 2013 Act") clearly states that the 2013 Act would have an overriding effect over any other enactment. That if an investigation or the registration of an F.I.R was ordered by the Lokpal, there would be no scope for Section 17A to apply.

5.16 It was then submitted that the nature of review before the grant or denial of approval under Section 17A of the Act is not intended to be vetting or particularly detailed. That as the competent authority would likely not have much material before it, all that would have to be examined is a prima facie evaluation of whether an offence under the Act is, in fact, made out at all. That, as also observed by the Karnataka High Court in Shree Roopa vs. State of Karnataka, 2023 SCC OnLine Kar 68 ("Shree Roopa"), all that is required is sufficient material to justify the need for an investigation, which is drastically different from the nature of evaluation and material produced to determine if sanction should be awarded to take cognizance of an offence. That this further limits the possibility of abuse.

5.17 That the potential for abuse is also mitigated by way of the formulation of a detailed Standard Operating Procedure (SOP) that ought to be complied with. Therefore, there is no merit to the claim that there is no guidance in existence as to how the concerned authority must decide as to, whether, to grant or not grant approval under Section 17A.

5.18 It was further submitted that various Directive Principles of State Policy enshrined in the Constitution recognize the need for fearless governance as a mandate. That Section 17A merely assists in ensuring that officers do not shirk their responsibilities, thus ensuring that the government machinery is continually operational and serving the people of the country.

5.19 It was urged that the writ petition may be dismissed as being without any merits.

Reply Arguments:

6. By way of reply, learned counsel for the petitioner, Sri Prashant Bhushan contended that the fact that Section 17A was enacted after extensive research and deliberation by Parliament cannot supersede the fact that it is in violation of a three-Judge and five-Judge Bench decision of this Court. That the requirement for a sufficiently specialized body to decide as to whether a case must be investigated into or not was recognized in both Vineet Narain and Subramanian Swamy, and Section 17A directly derogates this requirement by placing the decision-making in the hands of an unspecialized competent authority.

6.1 That the distinction between Section 6A of the DSPE Act, 1946 and Section 17A of the Act is immaterial as what was recognized in Subramanian Swamy was how a prior approval regime to even conduct any form of preliminary inquiry strikes at the heart of the rule of law and was entirely arbitrary. That when this Court in Subramanian Swamy did not find the reasoning that high-level officers were uniquely in need of protection to be convincing, despite the likely consequence of the decisions that they make needing them to be able to work unobstructedly, it is not logically consistent to argue that a provision such as Section 17A which grants such a protection to all public servants would pass muster.

6.2 It was finally submitted that one possible way in which the independence of the investigating agency could be preserved while allowing for a regime of prior approval is by having the investigating officer conduct the preliminary enquiry and then submit a report on the same to either the jurisdictional Court or Magistrate or the Lokpal, to proceed with registration of an F.I.R.

Corruption in India:

7. The controversy in this case surrounds the interpretation of Section 17A of the Act, which is meant to prevent corruption in administration and governance of the country through the Union and State Governments and their instrumentalities. This Court has on a multitude of occasions taken note of the existence and persistence of corruption in the country and the manner

in which it can be tackled by also bearing in mind other concomitant and competing considerations such as procedural fairness, the potential for abuse of anti-corruption provisions of law and the requirement of a well-functioning and largely unimpeded system of public administration.

7.1 In the case of Sheonandan Paswan vs. State of Bihar (1987) 1 SCC 288 ("Sheonandan Paswan"), E.S. Venkataramiah, J. (as the learned Chief Justice of India then was) in the majority opinion, deciding on the correctness of an order of the Magistrate Court allowing for the withdrawal of prosecution in a case relating to allegations of corruption, noted the need to balance probity in public life by convicting corrupt public servants on one hand with a measured approach that ensures only genuine cases lead to a conviction on the other, by observing that:

"37. Corruption, particularly at high places should be put down with a heavy hand. But our passion to do so should not overtake reason. The court always acts on the material before it and if it finds that the material is not sufficient to connect the accused with the crime, it has to discharge or acquit him, as the case may be, notwithstanding the fact that the crime complained of is a grave one."

7.2 In the case of State of Haryana vs. Bhajan Lal, 1992 Supp 1 SCC 335 ("Bhajan Lal"), which laid down the nowfamiliar seven-prong indicative test as to when the powers under Article 226 of the Constitution or Section 482 of the Code of Criminal Procedure, 1973 ("CrPC") could be exercised to quash a criminal proceeding, Ratnavel Pandian, J. rightly observed that:

"4. Everyone whether individually or collectively is unquestionably under the supremacy of the law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is, or how rich he may be.

9. Mere rhetorical preaching of apostolic sermons listing out the evils of corruption and raising slogans with catch words are of no use in the absence of practical and effective steps to eradicate them; because evil tolerated is evil propagated.

10. At the same time, one should also be alive to cases where false and frivolous accusations of corruption are maliciously made against an adversary exposing him to social ridicule and obloquy with an ulterior motive of wreaking vengeance due to past animosity or personal pique or merely out of spite regardless of the fact whether the proceedings will ultimately culminate into conviction or not.

7.3 In Vineet Narain, this Court held that:

"56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R v Secretary of State for Foreign and Commonwealth Affairs.

57. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian polity."

(underlining by me)

7.4 In the case of J. Jayalalitha vs. Union of India, (1999) 5 SCC 138 ("Jayalalitha"), Nanavati, J. when discussing the purpose behind the enactment of the Act held as under:

"15. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country."

7.5 Further, Sethi, J. in State of M.P vs. Ram Singh, (2000) 5 SCC 88 ("Ram Singh"), observed as under:

"8. Corruption in a civilised society is a disease like cancer, which if not detected in time is sure to malignise the polity of country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery.

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

7.6 In the case of K.C. Sareen vs. CBI, (2001) 6 SCC 584, this Court speaking through K.T Thomas, J. remarked on the possibility of a public servant who has been convicted of corruption continuing to hold office during the pendency of an appeal against the conviction, by stating that:

"12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions.

When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably.

When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself.

Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction."

7.7 In the case of State of M.P. vs. Shambhu Dayal Nagar, (2006) 8 SCC 693 ("Shambhu Dayal Nagar"), Dalveer Bhandari, J. noted that:

"32. It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large scale corruption retards the national building activities and everyone has to suffer on that count.

As has been aptly observed in Swatantar Singh v. State of Haryana, corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

7.8 This Court, speaking through Dr. B.S. Chauhan, J. in State of Maharashtra vs. Balakrishna Dattatrya Kumbhar, (2012) 12 SCC 384 ("Kumbhar"), wherein the suspension of the conviction of the respondent therein for offences under the Act was challenged, observed that:

"17. The aforesaid order is therefore, certainly not sustainable in law if examined in light of the aforementioned judgments of this Court. Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. Thus, In the aforesaid backdrop, the High Court should not have passed the said order of suspension of sentence in a case involving corruption."

7.9 In Manohar Lal Sharma vs. Principal Secretary, (2014) 2 SCC 532 ("Manohar Lal Sharma"), Lodha, J. (as the learned Chief Justice then was) observed that:

"34. The abuse of public office for private gain has grown in scope and scale and hit the nation badly. Corruption reduces revenue; it slows down economic activity and holds back economic growth. The biggest loss that may occur to the nation due to corruption is loss of confidence in the democracy and weakening of rule of law.

35 In recent times, there has been concern over the need to ensure that the corridors of power remain untainted by corruption or nepotism and that there is optimum utilization of resources and funds for their intended purposes.

36. In 350 B.C.E., Aristotle suggested in the "Politics" that to protect the treasury from being defrauded, let all money be issued openly in front of the whole city, and let copies of the accounts be deposited in various wards. What Aristotle said centuries back may not be practicable today but for successful working of the democracy it is essential that public revenues are not defrauded and public servants do not indulge in bribery and corruption and if they do, the allegations of corruption are inquired into fairly, properly and promptly and those who are guilty are brought to book."

7.10 Further, in Subramanian Swamy, R.M Lodha, C.J. held that:

"72. Corruption is an enemy of nation and tracking down a corrupt public servant, however high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoes and have to be tracked down by the same process of inquiry and investigation."

7.11 The irresistible conclusion that can be drawn from a survey of the aforementioned dicta is the unequivocal assertion by this Court that corruption is a scourge that must be rooted out in its entirety. Corruption is anathema to rule of law and to the spirit of the Constitution and to good governance. There is a fundamental incongruence between the existence of corruption in the country and the transformative vision of our Constitution, the rights it protects and the Preambular values it espouses. The existence and persistence of corruption in the country functions as a dire threat to the country's democracy, potential for development, economic stability and the very fabric of mutual trust and cooperation that keeps our polity functioning.

It is trite to acknowledge that even a single act of corruption may have a deleterious and cascading impact on a multitude of stakeholders and certainly, on every single citizen whose faith in the Government and its institutions comes to be whittled away and who could be consequently deprived of good

governance in accordance with rule of law. Corruption facilitates the widening of existing schisms of inequality in the country, in its ability to impact the delivery of critical services to those who are most vulnerable and deserving.

It further contributes to the breeding of cultures of complacency, inefficiency and lethargy and the ever-looming shadow of even the sincerest and most well-intentioned efforts being belied by institutional corruption, especially amongst the higher-rungs of decisionmaking in an institution. It is indubitable that corruption must be smitten out, and no form of clemency may be shown to those who indulge in corruption, regardless of its perceived magnitude. However, this Court has also amply cautioned against an approach driven by zeal alone, in a manner that doesn't consider the substance of the allegations in question.

United Nations Convention Against Corruption:

8. Learned counsel for the petitioner submitted that Section 17A is violative of Articles 6(2) and 36 of the United Nations Convention Against Corruption (for short, "UNCAC"). That, the UNCAC is an international instrument that seeks to combat corruption through the adoption of strategies and measures that seek to prevent, punish and mitigate negative consequences arising out of corruption, especially through bolstered international cooperation and appropriate measures for financial recovery. It specifies what forms of activities must be criminalized and common best practices that may be followed to increase transparency and institutional integrity. The UNCAC was adopted by the United Nations General Assembly in the year 2003 and entered into force in the year 2005.

8.1 In May 2011, India ratified the UNCAC thereby indicating a steadfast, global commitment to combating corruption. For ease of reference, the aforesaid Articles are extracted hereunder:

"Article 6: Preventive anti-corruption body or bodies:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 11 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.

Article 36: Specialized authorities:

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks."

8.2 It was submitted by learned counsel for the petitioner that the requirement to seek prior approval of the concerned government before the commencement of an inquiry/enquiry/ investigation, as the case may be, into an offence alleged to have been committed by a public servant is violative of the requirement under Article 6(2) that bodies tasked with preventing corruption are sufficiently independent. That it further violates the requirement for specialists in the field of combating corruption to function independently in deciding whether to conduct any inquiry/enquiry/investigation into the actions of any public servant, as the approval-granting authority is the concerned government, usually in the form of the department to which the public servant belongs to and not a specialised, independent body.

8.3 It was further submitted that as a consequence of this lack of independence and specialisation, this Court ought to interpret Section 17A in such a manner that would render it in conformity with India's international obligations under the UNCAC.

8.4 Learned counsel for the petitioner placed reliance on the judgments of this Court in *Gramophone Company of India vs. Birendra Bahadur Pandey*, (1984) 2 SCC 534 ("*Gramophone Company of India*"), *Vishaka vs. State of Rajasthan*, (1997) 6 SCC 241 ("*Vishaka*"), *Nilabati Behera vs. State of Orissa*, (1993) 2 SCC 746 ("*Nilabati Behera*"), *People's Union for Civil Liberties vs. Union of India*, (1997) 3 SCC 433 ("*People's Union for Civil Liberties*") and *Justice K.S. Puttaswamy (Retd.) vs. Union of India*, (2017) 10 SCC 1 ("*K.S. Puttaswamy*").

8.5 There are three courses of action that an Indian Court may take as regards an international legal obligation. In the event of a lacuna in the municipal law, international legal obligations may be used to "paper over the cracks", so to speak, in the form of using them as the basis to issue guidelines or directions until Parliament enacts a suitable legislation. In the event of a direct conflict between the international legal obligation and municipal law, the municipal law would prevail. However, in instances where there is no direct contradiction between the municipal law and the international legal obligation, the provisions of municipal law should be interpreted by the Court in such a manner that ensures compliance with the international legal obligation particularly in the case of Constitutional provisions.

8.6 In the instant case, the existence of a requirement for prior approval to commence an inquiry/enquiry/investigation into the alleged offences committed by a public servant under Section 17A belies the requirement for corruption to be investigated into by an independent agency, free of any form of undue influence and equipped with the necessary specialisation and resources. It is the duty of this Court to examine whether the existence of such a provision is justified in light of our domestic and international commitments to combating corruption.

This aspect of the matter calls for consideration.

9. Further, the contention of the learned counsel for the petitioner is regarding the transgression of the dicta of this Court in enacting Section 17A of the Act. Hence, it is necessary to discuss those two judgments cited at the Bar in Vineet Narain and Subramanian Swamy before proceeding to answer the contentions raised by the respective parties. Vineet Narain:

9.1 In Vineet Narain, the allegation in the writ petition filed under Article 32 of the Constitution of India as a Public Interest Litigation was that Government Agencies, such as the CBI and the Revenue Authorities had failed to perform their duties and legal obligations inasmuch as they had failed to properly investigate the matters arising out of the seizure of the so called "Jain Diaries" in certain raids conducted by the CBI. In the above context, the Single Directive issued by the Government which required prior sanction of the designated authority to initiate an investigation against officers of the Government, Public Sector Undertakings (PSUs) and Nationalised Banks above a certain level was considered.

The Single Directive was a consolidated set of instructions issued to the CBI by various ministries or departments. It was first issued in the year 1969 and thereafter amended on several occasions. The Single Directive contained certain directions to the CBI regarding the modalities of initiating an enquiry

for registering a case against certain categories of civil servants. The Directive in its application was limited to officials at decisionmaking levels of the Government and certain other public institutions like the RBI, SEBI, Nationalised Banks etc. and the scope was limited to official acts. The object of the Directive was to protect decision making level officers from threat and ignominy of malicious and vexatious enquiries/ investigations.

It was stated that the protection of the officers was required to save them from harassment for taking honest decisions; and that in the absence of such a protection it would adversely affect their efficiency and efficacy, leading to them avoiding taking any decisions which could later lead to harassment by any malicious and vexatious enquiry or investigation. The Directive was not to extend to any non-official acts of the Government servants and a time frame was provided for grant of sanction in order to avoid any delay. Two questions arose with regard to Directive No.4.7 (3) of the Single Directive), namely, its propriety or legality and the extent of its coverage, if it be valid.

9.2 In the meanwhile, a Committee called "Independent Review Committee" (IRC) was constituted by the Union Government which in its report had accepted the legality of the Single Directive by placing reliance on the decision of this Court in Veeraswami. It had made certain recommendations after considering the functions of the CBI and the Directorate of Enforcement (ED) with regard to measures, inter alia, for speedy investigations and trials.

9.3 Considering the report of the IRC, this Court felt the need for its intervention in the matter in order to examine whether the Single Directive was valid in law. Taking into consideration Sections 3 and 4 of the DSPE Act, 1946, this Court observed that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question with regard to the cases other than those of bribery, including trap cases and possession of disproportionate assets being covered by the Single Directive was considered. In paragraph 46, it was observed:

"46. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision-maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision-making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made.

In view of the fact that the CBI or the police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation.

In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the CBI with the aid of that advice and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself."

(underlining by me)

9.4 Consequently, it was held that the Single Directive would not be upheld on the ground of it being an impermissible exercise of power of superintendence of the Central Government under Section 4(1) of the Act. The matter came to be considered de hors the Single Directive and consequently, certain directions were issued by this Court keeping in mind the salutary principles of public life and standards in public life. Directions were issued on the following aspects:

- a) CBI and CVC, the latter to be given a statutory status;
- b) Enforcement Directorate;
- c) Nodal Agency; and
- d) Prosecution Agency

9.5 Directive No.4.7(3) of the Single Directive was struck down. However, the Report of the IRC and its recommendations that were similar to the extent of the directions issued by this Court were to be read along with the directions issued for a better appreciation of the matter. Consequently, the writ petitions were disposed of.

9.6 As noted above, the Single Directive was quashed by this Court in Vineet Narain by judgment dated 18.12.1997. Within a few months thereafter, on 25.08.1998, Section 6A was sought to be inserted to the DSPE Act, 1946 providing for previous approval of the CVC before investigation of the officers of the level of Joint Secretary and above. But this provision was deleted by issuance of another Ordinance on 27.10.1998. Thus, from the date

of the decision in Vineet Narain till the insertion of Section 6A with effect from 12.09.2003, there was no requirement of seeking previous approval except for a period of two months from 25.08.1998 to 27.10.1998.

Subramanian Swamy:

9.7 Section 6A of the DSPE Act, 1946 reads as under:

"6A. Approval of Central Government to conduct inquiry or investigation.-

(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to-

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)."

9.8 A five-Judge Constitution Bench of this Court in Subramanian Swamy considered the validity of Section 6A of the DSPE Act, 1946 in a writ petition which was filed by Sri Swamy under Article 32 of the Constitution. The validity of Section 6A was questioned on the touchstone of Article 14 of the Constitution.

9.9 It was contended that Section 6A of the DSPE Act, 1946 was wholly irrational and arbitrary as it protected highly placed public servants from enquiry or investigation into allegations of corruption and was hence liable to be struck down for being violative of Article 14 of the Constitution of India. In paragraph 6, this Court noted the moot question to be considered in the case in the following words:

"6. In short, the moot question is whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness, being facets of Article 14 of the Constitution are available or not as grounds to invalidate a legislation.

Both the counsel have placed reliance on observations made in decisions rendered by a Bench of three learned Judges."

9.10 After referring extensively to the judgment of this Court in Vineet Narain, the background to the introduction of Section 6A of the DSPE Act, 1946 was considered in light of the Central Vigilance Commission Act, 2003 (Act 45 of 2003). Section 26 of Act 45 of 2003 provided for the amendment of the DSPE Act, 1946 and clause (c) stated that after Section 6, Section 6A shall be inserted in the DSPE Act, 1946. Section 6A(1) of the Act required approval of the Central Government to conduct enquiry or investigation where there were allegations of commission of an offence under the Act relating to an employee of the Central Government of the level of Joint Secretary and above.

9.11 The above writ petition challenging the said provision initially came up for admission before a three-Judge Bench and thereafter the matter was listed before the Constitution Bench of five-Judges. After considering the arguments made at the bar at length, this Court took note of the fact that Section 6A came to be enacted after the decision of this Court in Vineet Narain which was concerned with the constitutional validity of Single Directive No.4.7(3) and discussed several portions of the judgment in Vineet Narain which had declared Single Directive 4.7(3)(i) to be invalid.

In paragraph 56 of Subramanian Swamy, this Court noted that Section 6A replicates Single Directive 4.7(3)(i) which was struck down in Vineet Narain. It was further observed that "the only change is that the executive instruction is replaced by the legislation". Now, insofar as the vice that was pointed out by this Court that powers of investigation which are governed by the statutory provisions under the DSPE Act, 1946 cannot be estopped or curtailed by any executive instruction issued under Section 4(1) of that Act is concerned, it had been remedied.

9.12 But the question remained, whether Section 6A met the touchstone of Article 14 of the Constitution? This Court considered the question whether a classification can be made by creating a class of officers of the level of Joint Secretary and above, and certain officials in the Public Sector Undertakings for the purpose of enquiry/investigation into an offence alleged to have been committed under the Act. Whether sub-classification can be made on the basis of status and position of a public servant for the purpose of inquiry or enquiry or investigation into allegations of graft which amounts to an offence under the Act.

This Court adopted an approach of taking into consideration the legislative policy relating to prevention of corruption enacted in the Act and the powers

of enquiry/investigation under the DSPE Act, 1946. While discussing the nature of the classification in paragraph 59, this Court held that under Section 6A of the DSPE Act, 1946, the classification was on the basis of status in Government services which was not permissible under Article 14 of the Constitution, as it defeated the purpose of finding prima facie truth into the allegations of graft which amounted to an offence under the Act. This Court questioned whether there could be sound differentiation between the corrupt public servants on the basis of status and held that there can be no distinction made between the public servants against whom there are allegations made amounting to an offence under the Act.

9.13 This Court observed that the classification sought to be made under Section 6A was not based on sound differentia inasmuch as the bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6A while the same level officers who are working in the States do not get protection though both classes of these officers are accused of an offence under the Act and an enquiry/investigation into such allegations is to be carried out.

9.14 It was observed by this Court that the provision of Section 6A impedes tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI would not even hold a preliminary enquiry much less an enquiry into the allegations and therefore the discrimination cannot be justified on the ground that there is a reasonable classification or that it has a rational nexus to the objects sought to be achieved.

9.15 Discussing the provisions of the Act and the wide ramification that corruption in the governance has on the polity and people of the country, reference was made to another judgment of this Court in Manohar Lal Sharma where the question of the constitutional validity of Section 6A of the DSPE Act, 1946 was left open. It was also noticed that in Manohar Lal Sharma, the learned Attorney General had made a concession to the effect that in the event of the CBI conducting an enquiry, as opposed to an investigation into the conduct of a senior Government officer, no previous approval of the Central Government is required since the enquiry does not have the same adverse connotation that an investigation has.

Insofar as an investigation is concerned, the Court observed that it may have some adverse impact but where the allegations of an offence are under the Act against a public servant, whether high or low, whether decision-maker or not, an independent investigation into such allegation is of utmost importance and unearthing the truth is the goal.

9.16 Ultimately, in paragraphs 98 and 99, this Court observed as under:

"98. Having considered the impugned provision contained in Section 6-A and for the reasons indicated above, we do not think that it is necessary to consider the other objections challenging the impugned provision in the context of Article 14.

99. In view of our foregoing discussion, we hold that Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to: (a) the employees of the Central Government of the level of Joint Secretary and above, and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26(c) of Act 45 of 2003 to that extent is also declared invalid."

9.17 What is of significance in the judgment of this Court in Subramanian Swamy is what has been observed in paragraphs 61 and 62 which are extracted for ease of reference, as under:

"61. The essence of police investigation is skilful inquiry and collection of material and evidence in a manner by which the potential culpable individuals are not forewarned. The previous approval from the Government necessarily required under Section 6-A would result in indirectly putting to notice the officers to be investigated before the commencement of investigation.

Moreover, if CBI is not even allowed to verify complaints by preliminary enquiry, how can the case move forward? A preliminary enquiry is intended to ascertain whether a prima facie case for investigation is made out or not. If CBI is prevented from holding a preliminary enquiry, at the very threshold, a fetter is put to enable CBI to gather relevant material. As a matter of fact, CBI is not able to collect the material even to move the Government for the purpose of obtaining previous approval from the Central Government.

62. It is important to bear in mind that as per the CBI Manual, (Para 9.10) a preliminary enquiry relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which being necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not.

Even this exercise of scrutiny of records and gathering relevant information to find out whether the case is worth pursuing further or not is not possible. In the criminal justice system, the inquiry and investigation into an offence is the

domain of the police. The very power of CBI to enquire and investigate into the allegations of bribery and corruption against a certain class of public servants and officials in public undertakings is subverted and impinged by Section 6-A."

(underlining by me)

9.18 It is noted that Single Directive 4.7(3)(i) was struck down by this Court in Vineet Narain while issuing certain directions in paragraph 58 of the said judgment in the context of (i) CBI and CVC, (ii) Enforcement Directorate, (iii) Nodal Agency, and (iv) Prosecution Agency. In Subramanian Swamy, a Constitution Bench of this Court struck down Section 6A(1) of DSPE Act, 1946 as the basis of the classification of the public servants under the said Section was held to be violative of Article 14 of the Constitution and hence discriminatory without going into other contentions raised. Consequently, Section 26(c) of the Act 45 of 2003 (CVC Act) was held to be invalid to that extent. It is thereafter that Section 17A has been inserted to the Act.

Analysis of Section 17A of the Act:

10. The approach that this Court must have while resolving the controversy in the instant case, can be envisaged through the following observations of Ganguly, J. in the case of Subramanian Swamy vs. Manmohan Singh, (2012) 3 SCC 64 which are extracted as under:

"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."

(underlining by me)

11. The Prevention of Corruption Act, 1947 was amended in the year 1964 based on the recommendations of the Santhanam Committee. However, it was felt that the same was inadequate to deal with the offence of corruption effectively. In order to make the anti-corruption law more effective by widening its coverage and strengthening the provisions, the Prevention of

Corruption Bill was introduced and both Houses of Parliament passed the Bill which received the assent of the President on 09.09.1988 and came into force on the said date itself.

11.1 The Act is a special statute and its Preamble shows that it has been enacted to consolidate and amend the law relating to the prevention of corruption and for the matters connected therewith. It is intended to make the corruption laws more effective by widening their coverage and by strengthening the provisions. It came to be enacted because the Prevention of Corruption Act, 1947 as amended from time to time was inadequate to deal with the offences of corruption effectively.

The new Act now seeks to provide for speedy trial of offences punishable under the Act in public interest as the legislature had become aware of corruption amongst the public servants. The Act enacts the legislative policy to meet corruption cases with a very strong hand. All public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. [State of A.P. vs. V. Vasudeva Rao, (2004) 9 SCC 319 : 2004 SCC (Cri) 968].

11.2 The offences that can be committed by any public servant as defined under Section 2(c) of the said Act are enumerated in Chapter III thereof. The same can be listed as under:

"Section 7 - Offence relating to public servant being bribed (Substituted by Act 16 of 2018, Section 4 with effect from 26.7.2018) - Section 7, before substitution dealt with "Public Servant taking gratification other than legal remuneration in respect of an official act".

Section 8 - Offence relating to bribing of a public servant (Substituted by Act 16 of 2018, Section 4 with effect from 26.7.2018) - Section 8, before substitution dealt with "Taking gratification, in order, by corrupt or illegal means to influence public servant".

Section 9 - Offence relating to bribing a public servant by a commercial organization (Substituted by Act 16 of 2018, Section 4 with effect from 26.7.2018) - Section 9, before substitution dealt with "Taking gratification, for exercise of personal influence with public servant".

Section 10 - Person incharge of commercial organization to be guilty of offence (Substituted by Act 16 of 2018, Section 4 with effect from 26.7.2018) - Section 10, before substitution dealt with "Punishment for abetment by public servant of offences defined in Sections 8 or 9".

Section 11 - Public servant taking undue advantage without consideration from the person concerned in proceeding or business transacted by such public servant.

Section 12 - Punishment for abetment of offences. - (Substituted by Act 16 of 2018, Section 4 with effect from 26.7.2018) - Section 12, before substitution dealt with "Punishment for abetment of offences defined in Sections 7 or 11".

Section 13 - Criminal misconduct by a public servant (Substituted by Act 16 of 2018, Section 7 with effect from 26.7.2018)

Section 14 - Punishment for habitual offender (Substituted by Act 16 of 2018, Section 8 with effect from 26.7.2018) - Section 14 before substitution dealt with "habitual committing of offences under Sections 8, 9 and 12".

Section 15 - Punishment for attempt

Section 16 - Matters to be taken into consideration for fixing fine."

11.3 Chapter IV of the Act deals with investigation into cases under the said Act. Section 17 speaks of persons authorised to investigate. It begins with a non-obstante clause inasmuch as the said provision states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under the Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant.

11.4 However, the first proviso states that if a police officer not below the rank of Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant. The second proviso states that an offence referred to in clause (b) of sub-section

(1) of Section 13 shall not be investigated without the order of a police officer not below the rank of Superintendent of Police.

11.5 Section 17 of the Act is in the nature of a safeguard in the matter of investigation to be conducted against a public servant, by requiring that the same be conducted by an authorized police officer, namely, Inspector of Police, Assistant Commissioner of Police or Deputy Superintendent of Police or a police officer of equivalent rank, as the case may be.

11.6 Section 17A was added pursuant to an amendment made by Act 16 of 2018 by virtue of Section 12 thereof. The said Section was enforced with effect from 26.07.2018. Section 17A deals with enquiry or inquiry or investigation of offences relatable to a recommendation made or a decision taken by a public servant in discharge of official functions or duties.

This Section speaks about previous approval being a condition precedent before a police officer can conduct an enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under the Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. This Section apparently operates in a narrow compass inasmuch as the prior approval is sought only with regard to any enquiry or inquiry or investigation to be carried out:

(i) into any offence alleged to be committed by a public servant under the Act,

(ii) when the alleged offence is relatable to any recommendation made or decision taken by a public servant; and

(iii) when the recommendation or decision taken is in discharge of the public servant's functions or duties. The previous approval has to be given -

(i) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, by that Government;

(ii) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, by that Government; and

(iii) in the case of any other person, by the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

Thus, the Union or State Government under which the public servant is or was working at the relevant point of time has to grant the previous approval within the meaning of clauses (i) and (ii) of Section 17A of the Act.

11.7 The first proviso to Section 17A of the Act states that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person. These relate to cases called "trap cases". The second proviso to Section 17A states that the concerned authority shall convey its decision under this Section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

12. Recalling the contentions advanced at the Bar, the sum and substance of the arguments of Sri Prashant Bhushan, learned counsel for the petitioner was that the mandate of previous approval by the Government envisaged under Section 17A of the Act is only a method to frustrate any enquiry or investigation to be made by a police officer into the offences committed by a public servant under the Act and secondly, to protect corrupt public servants so as to not expose them to any investigation.

12.1 It was contended by Sri Bhushan that corruption is so rampant and widespread in the governance of this country that by the insertion of Section 17A to the Act and through the mechanism of previous approval to be taken before an enquiry or investigation can be made against a public servant by a police officer, there would virtually be no enquiry or inquiry or investigation at all inasmuch as the Government would inevitably refuse approval for conducting any such enquiry or investigation. Consequently, Section 17A is contrary to the sacrosanct and salient objectives of the Act itself inasmuch as the said Act seeks to prevent corruption and to deal with cases of corruption with a strong hand and not to protect corrupt public servants by the mechanism of declining grant of approval to an enquiry or inquiry or investigation by a police officer.

12.2 It was further contended that Section 17A runs contrary to the salient dicta of this Court in the case of Vineet Narain as well as Subramanian Swamy, which are of larger Benches and therefore this Bench is bound by the observations made in the aforesaid two cases. He contended that unless Section 17A is struck down, the scourge of corruption would be on the rise in the country and there would be no good governance.

12.3 It was therefore emphasised that taking note of the strong observations made by this Court in the aforesaid matters speaking respectively through J.S. Verma, C.J. and Lodha, C.J., Section 17A may be struck down. It was

emphasised by Sri Bhushan that Section 17A is nothing but another form of Section 6A of the DSPE Act, 1946 which has already been struck down by this Court and therefore, Section 17A also ought to be struck down.

12.4 In response to the aforesaid contentions, learned Solicitor General submitted the following points of distinction between Section 6A of the DSPE Act, 1946, which was struck down and Section 17A of the Act which is under challenge in the present case. For the sake of convenience, paragraphs 6 and 7 of the written arguments submitted on behalf of the Union of India are extracted as under:

"6. At this juncture, it is necessary to note the difference between Section 6A and Section 17A. The table is as under:

SECTION 6A	SECTION 17A
6A. Approval of Central Government to conduct, inquiry or investigation.- (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to- (a) the employees of the Central Government of the level of Joint Secretary and above; and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government. (2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases	17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.- (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government; (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the

involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)]. 7. [Repeal of Ordinance 22 of 1946	affairs of a State, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed: Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person: Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

7. The following are the important points of distinctions:

a. Section 6A [Delhi Special Establishment Act, 1946 ("DSPE Act")] required prior Central Government approval only for the CBI to even begin inquiry/investigation;

Section 17A (PC Act) instead requires prior approval for enquiry/inquiry/investigation by any police officer - CBI or State police.

This makes it agency neutral.

b. Section 6A protected only the Central Government officers of Joint Secretary rank and above and equivalents in Central PSUs;

Section 17A of the PC Act instead protects all public servants without any arbitrary status-based classification. This makes it status neutral.

c. Section 6A only had a narrow trap-case exception;

Section 17A is a narrow protection and a wide exclusionary clause ensuring that only offence relatable to a recommendation/decision taken in the

discharge of official duties are protected [including the exclusion of trap cases]

This makes rule of law compliant.

d. Section 6A had no timeline; Section 17A adds a timeline (3 months + 1 month extension) to decide. This makes it reasonable."

12.5 Section 17A of the Act is applicable to every police officer who intends to make an enquiry, inquiry or investigation with regard to any public servant in respect of an offence said to have been committed under the provisions of the said Act relating to a recommendation made or decision taken in the discharge of official duties.

12.6 According to learned Solicitor General, the scheme of Section 17A of the said Act is to protect those honest public servants who have not committed any offence under the Act, relating to any recommendation made or decision taken by them as a public servant in discharge of their official functions or duties. The object of the previous approval is to shield honest officers from frivolous and vexatious complaints being made against them for making a recommendation or taking a decision during the course of discharge of their official functions or duties.

12.7 Apparently, Section 17A is not to protect the persons who have committed an offence under the Act or corrupt public servants inasmuch as on an approval being given, an enquiry or inquiry or investigation can be conducted by a police officer whether belonging to the CBI or State Police. However, the contention of Sri Bhushan is that the object and purpose of inserting Section 17A to the Act is, in fact, to protect dishonest officers who have committed an offence under the provisions of the Act during the course of discharging their official functions or duties and while making a recommendation or taking a decision.

In other words, the contention of learned counsel for the petitioner was that by not granting an approval, the Government can easily protect the officers who are guilty of corruption and who may be complicit with the higher-ups or even the political executives by committing offences under the Act during the course of discharge of their official functions or duties while making a recommendation or taking a decision in the matter.

12.8 Whether, such an approval is required to be given, is the first question. This aspect pertains to the constitutional validity of Section 17A of the Act. Secondly, whether the approval should be given by the Government itself is another point of controversy. This question is considered independent of the first question regarding constitutional validity and relates to the working of

Section 17A of the Act. The discussion to follow shall focus on these two aspects.

Meaning of "Government" under Section 17A of the Act:

13. Taking the second aspect first, the expression "Government" in Section 17A of the Act which is not defined therein can be considered. Under the General Clauses Act, 1897, the expression "Government" is defined as under:

"3. Definitions.- In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

(23) "Government" or "the Government" shall include both the Central Government and any State Government;"

13.1 The expressions used in clauses (a) and (b) of Section 17A is "Government" with reference to the affairs of the Union and affairs of the State respectively, and "the authority competent to remove him from his office, at the time when the offence was alleged to have been committed" vide clause (c) of the said Section. These are the three authorities which have been conferred with the power to grant a prior approval before a police officer can conduct any inquiry or enquiry or investigation into any offence alleged to have been committed by a public servant under the Act where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties.

13.2 Although the expression "Government" has not been defined under the Act, the expression "authority competent to remove him from his office" is well indicated in the Constitution and in service jurisprudence.

13.3 What should be the meaning to be assigned to the expression "Government", when it relates to either the Union Government or State Government, is the crux of the matter in the instant case. This is because one of the contentions of the learned counsel for the petitioner is that a public servant who works either in the Union Government or the State Government would not be dealt with in an impartial manner if that very Union Government or the State Government, as the case may be, is to grant prior approval before a police officer can make an inquiry or investigation into any of the offences alleged to have been committed by a public servant under the Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions and duties. Hence, it is necessary to unravel the connotation of the expression "Government" whether Union Government or State Government, as the case may be, in the context of Section 17A of the Act.

13.4 In *Pashupati Nath Sukul vs. Nem Chandra Jain*, (1984) 2 SCC 404, a three-Judge Bench of this Court observed that the expression "Government" generally connotes the three estates under the Constitution of India, namely, the Legislature, the Executive and the Judiciary, but in a narrow sense it is used to connote the Executive only. The meaning to be assigned to the expression "Government", therefore, depends upon the context in which it is used. In Section 17A of the Act the word "Government" means the Executive.

13.5 In *National Textile Corporation Limited vs. Naresh Kumar Badrikumar Jagad*, (2011) 12 SCC 695, it was observed that the expression "Government" means a group of people responsible for governing the country. It consists of the activities, methods and principles involved in governing a country or other political unit such as the State. It is a political concept formulated to rule the nation. Also, "Government Department" means something purely fundamental i.e., related to a particular Government or to the practice of governing a country.

Thus, the expression denotes essentially the Executive. Further, to perform the functions, the Government has its various departments and to facilitate its working, the government itself may be divided into various sections, such as, corporations of the Government which are in substance agencies of the Government. However, a government company is not a department of the Government as it has its own juristic identity and is distinct from the Government.

13.6 In *Mohammed Ajmal Mohammad Amir Kasab vs. State of Maharashtra*, (2012) 9 SCC 1, while considering the definition of "Government" under Section 3(23) of the General Clauses Act, 1987, this Court observed that in a narrower sense, "Government of India" is only the executive limb of the State. It comprises of a group of people that constitute the administrative bureaucracy that controls the executive functions and powers of the State at a given time. That in certain contexts, the expression "Government of India" implies the Indian State, the juristic embodiment of the sovereignty of the country that derives its legitimacy from the collective will and consent of its people.

Relevant Provisions of the Constitution:

14. Since the word "Government" essentially refers to the Executive, the relevant provisions of the Constitution under which it functions could be discussed. According to Article 53(1) of the Constitution, the executive power of the Union is vested in the President. However, this does not envisage that the President should personally approve all administrative orders passed by the Union Government. There is a mechanism by which the responsibility for

decision-making would pass from the President to others even though power is formally vested in the President.

In fact, Article 53(1) of the Constitution itself states that the President may exercise his executive powers "either directly or through officers subordinate to him in accordance with this Constitution". Therefore, the President can act through Ministers and civil servants under Article 53(1). The power to make rules of business under Article 77(3) of the Constitution may be traced from Article 53(1) of the Constitution. The rules of business enable the powers to be exercised by a Minister or any official subordinate to him subject to the political responsibility of the Council of Ministers to the Legislature.

The rules of business are administrative in nature for governance of its business of the Government of India framed under Article 77 of the Constitution. Article 77(1) states that all executive actions of the Central Government are to be expressed to be taken in the name of the President. In this context, Article 77(3) provides that the President shall make rules for the more convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business.

This Article provides for framing of rules for transaction of business as well as rules for allocation of business. Any decision made by a Minister or officer under the rules of business as per Article 77(3) is the decision of the President. Similarly, Article 154 of the Constitution states that the Executive power of the State is vested in the Governor and the Article corresponding to Article 77 is Article 166 of the Constitution.

14.1 Article 77 of the Constitution speaks that all executive action of the Government of India shall be expressed to be taken in the name of the President. Distinction was drawn between executive power of the Union and the executive functions vested in the President by various Articles of the Constitution in *Samsher Singh vs. State of Punjab*, AIR 1974 SC 2192 ("Samsher Singh"). Whenever any executive function is to be exercised by the President, whether such function is vested in the Union or in him as President, it is to be exercised on the advice of the Council of Ministers, the President being the constitutional head of the executive and as per allocation under Article 77(3), subject to certain exceptions, such as, the choice of the Prime Minister, dismissal of a State Government which has lost its majority in the House of People, dissolution of the House, etc.

Thus, even those functions which are required by the Constitution to be performed on the subjective satisfaction of the President could be delegated by rules of business made under Article 77(3) of the Constitution, to a Minister or to a Secretary to the Government of India, because satisfaction of

the President does not indicate personal satisfaction but in the constitutional sense, the satisfaction of the Council of Ministers who advise the President.

This may further be delegated to a particular Minister or official under the rules of business framed under Article 77(3) of the Constitution. Similarly, in Article 166(3) of the Constitution, the principle would apply mutatis mutandis in the case of Governor of a State. However, in fact, the order passed by the Minister, though expressed in the name of the President, remains that of the Minister and it cannot be treated to have been issued by the President personally and such an order is subject to judicial review.

Article 77(3) of the Constitution does not speak about delegation of functions but allocation of functions and therefore, the order passed by a Minister who has been allocated that function is the order of the Minister. Thus, all orders which are expressed in the name of the President are authenticated in the manner laid down in Article 77(2) of the Constitution. Although, they do not require any personal signature of the President, the author of the order would sign it.

14.2 Thus, vesting of powers of the Union Government or the State Government does not envisage that each matter must be disposed of by the President or the Governor, as the case may be, or for that matter, by the Cabinet or personally by the Minister. When powers are entrusted to the Minister by law, it is not envisaged that the department in his charge would be run personally by the Minister to reach a decision in each case. It is therefore necessary for the Minister's power to be exercised by officers (civil servants) in the concerned department and as a result, a large number of decisions are taken continuously by civil servants which are also taken collectively at times.

14.3 Article 77(3) of the Constitution enables the President to make rules for the more convenient transaction of the business of the Government of India and for the allocation of Ministers to the said business by the rules of business framed under Article 77(3) of the Constitution. A particular official of a Ministry may be authorised to take any particular decision or to discharge any particular functions, but when such authorised official does any act so authorised, he does so not as a delegate of the Minister but on behalf of the Government vide *A Sanjeevi Naidu vs. State of Madras*, AIR 1970 SC 1102 ("*Sanjeevi Naidu*"). Thus, the act of the Minister or officer who is authorised by the rules of business is the act of the President (or the Governor) or of the Government of India (or the State Government) in whom the function or power is vested by the Constitution or by any statute.

14.4 The business allocated to a Ministry is normally disposed of by or under the direction of the Minister except when it is necessary or desirable to submit

a case to the Prime Minister or Chief Minister, as the case may be or the Cabinet or any of its Committees. Except the aforesaid matters, all other matters are disposed of by the civil servants in accordance with the Minister's directions and rules of business vide *Ishwarlal Girdharilal Joshi vs. State of Gujarat*, AIR 1968 SC 870 ("*Ishwarlal Girdharilal Joshi*").

14.5 In *Carltona Ltd. vs. Commissioner of Works*, (1943) 2 All ER 560, the position in England has been explained by holding that the whole system of departmental organization and administration is based on the view that Ministers, being responsible to Parliament will ensure that important duties are committed to experienced officials. Sometimes, however, owing to political necessity and not because of legal necessity, a Minister must exercise power personally rather than delegating it to the officers in his department. For ease of reference, the pertinent passage from the aforesaid judgment is extracted as under:

"In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministers. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter.

The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible.

It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against them."

(underlining by me)

14.6 The Government of India (Allocation of Business) Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961 made by the

President are for the more convenient transaction of the business of the Government of India and for allocation among the Ministers of the said business. Similarly, under Article 166(3) of the Constitution, the Governor may make rules for the business of the State.

These rules determine the official hierarchy which will act and take a decision in a particular matter. The decision of any Minister or officer under the Rules of Business made under Article 77(3) or 166(3) is regarded as the decision of the President or Governor, as the case may be as they are taken in their names. However, such powers and functions are exercised by civil servants according to the rules of business.

14.7 In *Sanjeevi Naidu*, in the context of Section 68(C) of the Motor Vehicles Act, 1939, when the validity of the draft scheme was challenged, the question was whether the opinion requisite under the aforesaid provision was not formed by the State Government but instead by the Secretary to the Government in the Industries, Labour and Housing Department, acting in pursuance of power conferred on him under Rule 23-A of the Madras Government Business Rules. In paragraph 10, this Court observed as under:

"10. The cabinet is responsible to the Legislature for every action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Council of Ministers to discharge all or any of the Governmental functions. Similarly an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility.

Even the most hard working Minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government.

When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the "Rules" or the standing orders, can

take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates."

(underlining by me)

14.8 Reference could also be made to Emperor vs. Sibnath Banerji, LR 72 IA 241, wherein it was observed by the Judicial Committee of the Privy Council that it was within the competence of the Governor to empower a civil servant to transact any particular business of the Government by making appropriate rules. That the Ministers, like civil servants, are subordinate to the Governor.

14.9 Additionally, reliance could be placed on Ishwarlal Girdharlal Joshi, wherein it was observed that the opinion formed by the Deputy Secretary under Section 17(1) of the Land Acquisition Act, 1894 is the opinion of the State Government. It was observed that in view of the Rules of Business and Instructions, a determination made by the Secretary became the determination of the Government. In other words, where an official performs the functions of a department, the said functions are the functions of the Minister and there is no delegation as such.

14.10 In Samsher Singh, this Court observed that the decision of any Minister or officer under the Rules of Business made under Article 77(3) is the decision of the President and similar is the position under Article 166(3) of the Constitution vis-à-vis the Governor.

14.11 Thus, the fact is that most of the decisions within the Ministry are taken by the officers authorised by the Rules of Business and the Minister exercises overall control over the working of the department. In practice, certain matters are referred to the Minister such as a matter involving policy; the rest are disposed of by the civil servants authorised to deal with them. Sometimes, Standing Orders are given and directions are issued by a Minister with regard to the classes of matters which have to be brought to the personal notice of the Minister. The Rules of Business and Standing Orders issued thereunder have statutory force and are binding in nature.

14.12 While the aforesaid discussion was about the structure of governance in the country, it is necessary to recapitulate the same while applying Section 17A of the Act when a request is made by a police officer under the said provision while seeking prior approval. The need for prior approval under Section 17A of the Act is in order to inquire/enquire/investigate into the conduct of a public servant when an offence under the provisions of the said Act is alleged. The precursors to the said provision may be discussed at this stage.

Functioning of Government Departments:

15. It is also relevant to note that public servants or officers/officials being part and parcel of an administrative department are interested in implementing the policies that they have envisaged. Therefore, inevitably, they would consciously or unconsciously have what can be termed as a "policy bias" and this could potentially lead to there being an absence of neutrality or objectivity while considering a request for approval for carrying out an inquiry or enquiry or investigation into a complaint vis-à-vis a recommendation made or a decision taken by a public servant during the course of discharge of official duties.

If a public servant has been involved in making a recommendation or taking a decision in the context of implementation of a policy or if the majority of the public servants in the department are involved in the formulation and implementation of a policy, then a person from that very department may not possess the objectivity and neutrality to also consider such a request for prior approval for an inquiry/enquiry/investigation. The apprehension expressed by the petitioner can be understood as a predisposition which may not lead to an impartial exercise of power under Section 17A of the Act.

The maxim *nemo iudex in re sua* literally means that a man should not be a judge in his own cause, meaning the deciding authority must be impartial which is exemplified as the rule against bias. Though, this maxim is essentially with regard to judicial or quasijudicial adjudication and is applicable to courts of law and quasijudicial authorities, in my view, the same would also apply in a matter such as where prior approval has to be given within the meaning of Section 17A of the Act.

A consideration of a request for grant of prior approval under Section 17A of the Act is not purely an administrative act but would call for impartiality or neutrality in the exercise of discretion in that regard. A likelihood of bias on the part of an officer in the department while considering a request for prior approval would frustrate the object of the provision and no prior approval would be given.

15.1 Another difficulty which one should also envisage in the operation of Section 17A of the Act is that no single public servant may be responsible for making a recommendation or taking a decision during the course of discharge of his official duties. As discussed above, as per the Rules of Business, a number of public servants may be involved in making and approving of a recommendation or taking a decision. Therefore, it becomes difficult for the public servant of that very department to grant approval for conducting an inquiry/enquiry/investigation into such a matter in respect of another public servant.

Hence, there is need for an independent and autonomous person or body, who have nothing to do with the formulation and implementation of departmental policies or in the making of a recommendation or taking of a decision, to consider a request under Section 17A of the Act. Such a body within the Government as per the said provision is conspicuous by its absence inasmuch as the same is not spelt out in the provision. The provision is thus vague and any hierarchy of officers entrusted with the power to consider a request to give a prior approval is otherwise fraught with deficiencies.

In my view, there ought to have been an independent body which is not controlled by the Government to consider a case for grant of prior approval to conduct an inquiry/enquiry/ investigation by a police officer. In the absence of such an independent and autonomous body which can make an impartial consideration with objectivity, Section 17A of the Act would be effectively frustrated for being vague and lacking in any guidance.

15.2 This is because there should not be any fetter while exercising powers under Section 17A of the Act. In fact, there should be a sense of detachment and impartiality while granting prior approval by a concerned department of the Government. On the other hand, if the Secretary of the department or any other officer of the same department or for that matter the Minister of the concerned department is vested with the power to grant such prior approval under Section 17A of the Act, in respect of a public servant of the very same department who is to be enquired into, there would be lack of neutrality in considering a request for grant of prior approval.

15.3 There would many a times also arise conflict of interest inasmuch as the higher officers of a department may have had a vital role in the making of a recommendation or taking a decision either individually or collectively by a meeting of minds. There are also practical difficulties which may arise. Then, who in the very same department should be entrusted to exercise power under Section 17A of the Act?

Thus, in my view, the power to grant or refuse prior approval under Section 17A of the Act therefore has to be vested in an authority which is not involved in the formulation of any policy of the Government or department and which is also not involved with the implementation of a policy in the context of making any recommendation or taking a decision which is sought to be enquired into or investigated by a police officer if the provision is to be sustained.

15.4 In fact, in Gullappalli Nageswara Rao vs. State of A.P., AIR 1959 SC 1376, this Court observed in a different context that the Secretary "is a part of the department" while the Minister "is only primarily responsible for the

disposal of the business pertaining to that department". However, the view with regard to a Minister not being a part of a department may not be correct. Therefore, a public servant who has played a vital role in the making of a recommendation or taking of a decision which is sought to be inquired into or investigated on the basis of a complaint would not at all be the proper person to grant prior approval in the context of Section 17A of the Act in respect of another public servant who is to be inquired into within the meaning of Section 17A of the Act.

Further, the prior approval may be sought from the very officer within the department who is to be enquired into, who had discharged his duties within the meaning of Section 17A of the Act. Can such an officer grant an approval to a police officer to carry out an enquiry against himself? It is too far-fetched to expect a public servant granting an approval to enquire as against himself. Moreover, a Minister is also as integral a part of the department as any other civil servant. The civil servants carry out orders and functions under the direction of the Minister.

The Minister is, in fact, an active policy-maker and interested in its implementation and therefore, there would be a much stronger "policy bias" than the officers or officials in his/her department who merely implement or execute the Minister's policy. This is because Section 17A is regarding making a recommendation or taking a decision while discharging official duties which would be essentially in the context of implementation of a policy of the department of the Government.

15.5 In this regard, reference could be made to the Administrative Procedure Act, 1946 ("APA", for short) in the United States, which sought to bring about a separation within the department between the functions of hearing objections or representations against some proposed policy and the making of the policy. The body which hears such objections or complaints consists of "Administrative Law Judges", and is an independent body.

In England, such inquiries were to be held by Inspectors. The Franks Committee recommended that the Inspectors who hold inquiries on behalf of the departments, "be placed under the control of a Minister not directly concerned with the subject matter of their work". However, this recommendation has not been implemented. (Source: M P Jain & S N Jain, Principles of Administrative Law, Ninth Edition, K Kannan, Volume 2, LexisNexis).

15.6 Therefore, there is a need to address inherent deficiencies in the working of Section 17A of the Act which makes the provision arbitrary as it does not serve the object of the Act. In this regard, judgments of this Court are

instructive. In *A.K. Kraipak vs. Union of India*, AIR 1970 SC 150 ("Kraipak"), a Constitution Bench of this Court speaking through Hegde, J. stated in paragraphs 13, 17 and 20 as under:

13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration.

Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner.

The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

17. The horizon of natural justice is constantly expanding. The question how far the principles of natural justice govern administrative enquiries came up for consideration before the Queen's Bench Division in *re H.K. (An Infant)*. [(1967) 2 QB 617 at p. 630] Therein the validity of the action taken by an Immigration Officer came up for consideration. In the course of his judgment Lord Parker C.J. observed thus:

"But at the same time, I myself think that even if an immigration officer is not in a judicial or quasijudicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly.

Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances

of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it may be said that one is going further than is permitted on the decided cases because heretofore at any rate the decisions of the courts do seem to have drawn a strict line in these matters according to whether there is or is not a duty to act judicially or quasi-judicially."

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*).

Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.

Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* [1968 SCC OnLine SC 9] the rules of natural justice are not embodied rules.

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a

complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

(underlining by me)

15.7 Thus, this Court sought to demolish the distinction between quasi-judicial and purely administrative functions and also brought in the concept of duty to act fairly, whether as an administrative or quasi-judicial authority. The principles of natural justice exemplified as "fair play in action" which is important in both an administrative proceeding and a quasi-judicial proceeding, were emphasised. In *Kraipak*, it was emphasised that there was no distinction between a quasi-judicial and administrative function for this purpose.

Thus, if fair play in action was necessary while taking an administrative decision to prevent miscarriage of justice, it cannot be said to be restricted to only a quasi-judicial inquiry. In other words, even in an administrative proceeding, there must be fair play when procedural fairness is embodied as a principle of natural justice, not restricted only to the rule of *audi alteram partem* but also includes taking a decision without any bias, such as while exercising power under Section 17A of the Act in the matter of granting prior approval to a police officer to conduct an inquiry/enquiry/investigation.

15.8 Fairness in action would imply to act in a fair, just and reasonable manner and not merely as a formality, with underlying bias. Since the holders of a public office hold the trust of the public, all their actions must be above board. Thus, when an inquiry/ enquiry/investigation is to be conducted by a police officer within the meaning of Section 17A of the Act, would the question of prior approval be considered in a fair manner without there being any bias and with complete neutrality by a department of the Government within which the officer enquired into is also functioning?

15.9 In *Mohinder Singh Gill vs. Chief Election Commissioner*, AIR 1978 SC 851, this Court observed that administrative power in a democratic setup is not allergic to fairness in action and discretionary executive justice cannot denigrate into unilateral injustice. It was further observed that "for fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction".

15.10 Further, under Section 17A of the Act, when the Union Government or the State Government, as the case may be, must grant prior approval to a police officer to conduct an inquiry/enquiry/investigation, it is a case of an institutional decision-making i.e. made within the institution of the

Government itself. A Government is no doubt an impersonal entity but it functions through its Ministers and civil servants who are all public servants within the meaning of the Act. Further, it may be that a recommendation made or a decision taken would be jointly taken in the sense that expert opinions and perspectives of several officers of the department would have been involved.

The authorship of a decision taken, or a recommendation made may not always be attributable to a single person. It cannot be individualised as the recommendation made or a decision taken is by a concerned department. Sometimes, it can be related to a single public servant but that is not always the case. Ultimately, it is a constitutional and administrative process resulting in a recommendation made or a decision taken in a department of the Government. Notings on the files made by various officers would be seen before the final decision is arrived at.

Much of the notings and views expressed on the files by various officers in the hierarchy before the file moves up to the higher reaches, when a final decision is formally taken, would involve many officers of a department. Therefore, even if a recommendation or formal decision is initiated on the file by one officer of the department, it is ultimately a collective decision. However, if the role played by an officer in making a recommendation or taking a decision is known and if the very same department has to consider a request of the police officer to give prior approval for conducting an inquiry/enquiry/ investigation against the officer making a recommendation or taking a decision in a matter, there would be a likelihood of bias.

Therefore, it may not be appropriate for the very same department of the Government, as an institution, to consider a request for prior approval before an inquiry/enquiry/investigation is to be commenced by a police officer. Who in the department of the Government can be entrusted with that responsibility? Would that responsibility be diluted by intra-departmental consultation? Will the power to be exercised by a designated officer in the department be abused by such officer being overpowered by his colleagues and/or subordinates in the department? Therefore, any responsibility given to an officer within a department of the Government to give prior approval within the meaning of Section 17A of the Act is fraught with many risks.

15.11 Moreover, this provision can be abused by a threat of an inquiry or investigation so as to make civil servants succumb to certain vested interests both within and outside the Government. What this means is that Section 17A of the Act would really be a handle for misuse within the Government in the absence of necessary safeguards at least in the following three scenarios:

Firstly, the badgering of officers/officials to remain silent on issues on which even the political executive requires a tight-lipped attitude on any matter;

Secondly, civil servants being overpowered by holding a Damocles' Sword of an enquiry/investigation over their heads so as to seek their support on certain issues and

Thirdly, when certain officers/officials seek to align themselves with the political executive by suppressing their independent opinions under a threat of approval for an inquiry or investigation which suppression may not be in the interest of good governance at all.

In all the above circumstances, prior approval under Section 17A of the Act may not be granted by the department even when public servants have to ideally be inquired/enquired/investigated within the meaning of Section 17A of the Act. This means the mechanism of a prior approval would be used to protect public servants who would align and against those who do not fall in line by a threat of commencing an inquiry/investigation against them.

15.12 No doubt, there is also a need to protect honest officers from being proceeded against frivolously and vexatiously for a recommendation made or a decision taken by them during the course of discharge of their official duties in accordance with the requisite norms and rule of law. But in order to ascertain whether complaints against such officers need not be proceeded with and if such officers have to be protected, there has to be a preliminary enquiry in the first place. But, if prior approval is not granted, then there would be no method of ascertaining the truth.

15.13 In recent times, there may have been allegations made against public servants, some of which may not be true at all. Such allegations are against honest and sincere civil servants. If such frivolous and vexatious allegations have to be prosecuted merely because they have been made, possibly by certain vested interests or other bodies, then the reputation of a public servant would be unnecessarily tarnished. For that purpose also, a preliminary enquiry has to be held. But if it is not permitted to be held, such officers cannot come unscathed. Thus, any denial of prior approval would raise a doubt as to their credibility which would not be in the interest of the said officers.

15.14 In this regard, it would be useful to recall the observations of Hota Committee which are in the following words:

"2.30 In the banking sector, in consultation with the Central Vigilance Commissioner, committees/advisory boards have been set up with experts drawn from different disciplines, who scrutinize cases in which decisions for disbursement of loans have been taken by officials in the banks, to decide

whether they were decisions taken in good faith. It is suggested that similar advisory boards be constituted in all government Departments for scrutiny of decisions taken by officers before investigation/launching prosecution against them under the Prevention of Corruption Act 1988.

We are conscious that in our anxiety to protect honest officers, who take bona fide decisions on purchases and contracts, we are recommending constitution of Committees of Experts in different Ministries/Departments to scrutinize a decision taken by a civil servant before the CBI or any Vigilance Agency is permitted to submit charge sheet in a court of law under the Prevention of Corruption Act 1988 or before an officer faces a disciplinary proceeding. The Prevention of Corruption Act 1988 does not contain any such provision."

(underlining by me)

15.15 Thus, the consideration of the request of a police officer for prior approval under Section 17A of the Act is an instance of institutional decision-making within the Government which has its own inherent defects, some of which are highlighted above. Therefore, Section 17A is per se on a shaky foundation in the context of its operation and therefore not at all a viable piece of amendment considering the inherent deficiencies in its operation. Before moving on to the first question, it is necessary to discuss about the existing institutions engaged in the prevention of corruption in the country.

Institutions to Check Corruption:

Establishment of CVC, CBI and Lokpal & Lokayukta:

16. It is said that the problem of corruption has become endemic in the country. The decision-making process and administrative actions become distorted and motivated when surrounded by corruption. By leaving out relevant considerations and on the basis of irrelevant considerations, decisions are taken de hors the merits of a case. Hence, the need of the hour is for corruption to be checked and eliminated from governance and polity.

16.1 In this regard, the CVC was created by a resolution of the Government of India in February 1964 on the basis of the recommendation of the Santhanam Committee, which was appointed in the year 1962. Several States also had Vigilance Commissions to control corruption. In Vineet Narain, the Supreme Court directed that the CVC be given a statutory status and the CVC be made responsible for the efficient working of the CBI.

16.2 In fact, in the year 1963 by an executive resolution, the Government established the CBI and prior to that, there existed the Special Police Establishment (SPE) under the DSPE Act, 1946 to investigate offences

committed by Central Government servants while discharging their official duties. With the creation of the CBI, the SPE was made a wing of the CBI for the purposes of investigation. The CBI derives its powers from the DSPE Act, 1946. The CBI functions under the administrative control of the Prime Minister. The CBI is a central police agency that investigates cases, inter alia, of bribery and corruption. In the year 1987, the Anti- Corruption Division was created in the CBI.

16.3 In Vineet Narain, the Supreme Court undertook a review of the functioning of the CBI and subsequently, a few directions were issued with the view to make the CBI an autonomous and effective investigation agency. The said directions were incorporated in the Delhi Special Police Establishment Act, 2003.

16.4 Pursuant to the observations of the Supreme Court in Vineet Narain, the CVC Act, 2003 was enacted comprising of a Central Vigilance Commissioner and two Vigilance Commissioners - a three-member body. The superintendence of the DSPE Act, 1946 insofar as it relates to investigation of offences under the Act vested in the CVC and in all other matters, the superintendence of the DSPE Act, 1946 vested in the Central Government.

The Indian Ombudsman System: Lokpal and Lokayukta:

17. Apart from the CVC, there have been many attempts to have an Ombudsman system as it functions in common law countries to operate in India also. The Administrative Reforms Commission in its Report dated 20.10.1966 proposed an Ombudsman type institution for redressal of citizens' grievances. According to the Commission, there was a need for an institution for the removal of prevailing criticism of administrative acts.

Taking note of the public feeling against the prevalence of corruption, inefficiency and non-responsiveness to the needs of the people on the one hand and the necessity to render protection to the administration for its bona fide acts on the other hand, the Commission recommended an Ombudsman system to be instituted in India. The institution of an Ombudsman was to give access to a citizen to seek quick and inexpensive justice vis-à-vis the administrative system and governance. It was felt that the presence of an Ombudsman would make the administration more cautious in taking decisions.

The aforesaid Commission suggested that there could be two special institutions for the redressal of citizens' grievances, one at the Central level to be designated as Lokpal and the other, at the State level to be designated as Lokayukta. The Lokpal was to have the power to investigate an administrative

act done by or with the approval of the Minister or Secretary to the Government at the Centre or at the State, if the complaint was made against such an act by a person who was affected by it and thereby, had suffered injustice. A citizen could directly make a complaint to the Lokpal. The Lokayukta also was to have powers similar to that of the Lokpal at the State level.

The whole object of the institution of the Lokpal as well as the Lokayukta was to have jurisdiction to give relief to a person who had suffered injustice from maladministration. According to the Commission, the Lokpal was to be authorised to investigate any action taken in exercise of administrative functions but to exclude matters of "policy" from its purview. Another significant recommendation of the Commission was to give a constitutional status rather than a statutory status to the Lokpal and Lokayukta so as to make them independent of political interference.

17.1 There were several unsuccessful attempts to pass the Lokpal and the Lokayuktas Bill right from the year 1968 onwards. Ultimately, the 2013 Act called the Lokpal and Lokayuktas Act, 2013 was passed by both Houses of Parliament, received the assent of the President on 01.01.2014 and came into effect from 16.01.2014 as statutory bodies.

This Act is to provide for the establishment of a body of Lokpal for the Union and Lokayukta for the States, wherever not yet established, inter alia, to inquire into allegations of corruption against certain functionaries and for the matters connected therewith and incidental thereto. The object of this Act is to provide clean and responsive governance through effective bodies and to contain acts of corruption. India, having ratified the United Nations Convention against Corruption has passed this Act to provide for prompt and fair investigation and prosecution into cases of corruption.

Scheme of the 2013 Act:

18. The salient provisions of the 2013 Act could be referred to by extracting the relevant Sections. Section 2(1)(d), (e), (f), (g), (m), (o), (s) and sub-section (2) read as under:

"2. Definitions.- (1) In this Act, unless the context otherwise requires,-

d) "Central Vigilance Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003);

(e) "complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988);

(f) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under subsection (1) of section 2 of the Delhi Special Police Establishment Act, 1946 (25 of 1946);

(g) "investigation" means an investigation as defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974);

(m) "preliminary inquiry" means an inquiry conducted under this Act;

(o) "public servant" means a person referred to in clauses (a) to (h) of subsection (1) of section 14 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Coast Guard Act, 1978 (30 of 1978) or the procedure is applicable to such public servant under those Acts;

(s) "Special Court" means the court of a Special Judge appointed under subsection (1) of section 3 of the Prevention of Corruption Act, 1988 (49 of 1988).

(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988 (49 of 1988), shall have the meanings respectively assigned to them in that Act."

18.1 Chapter II of the 2013 Act deals with establishment of the Lokpal. Chapter III deals with the Inquiry Wing while Chapter IV deals with the Prosecution Wing. The jurisdiction in respect of inquiry is in Chapter VI of the 2013 Act. Section 14 states that jurisdiction of Lokpal shall include the Prime Minister, Ministers, Members of Parliament, Group A, B, C, D officers and officials of the Central Government. Sections 11 and 14 read as under:

"11. Inquiry Wing.- (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988 (49 of 1988): Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27.

14. Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.-

(1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:-

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,-

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in subclauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served, in connection with the affairs of the Union;

(e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;

(f) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

Explanation.-For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) and the provisions of that Act shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with,

any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 (49 of 1988) against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

(4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952).

Explanation.-For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity."

18.2 Chapter VII deals with the procedure in respect of preliminary inquiry and investigation. Section 20 deals with provisions relating to complaints and preliminary inquiry. Section 21 states that persons likely to be prejudicially affected shall be heard while Section 22 states that the Lokpal may require any public servant or any other person to furnish any other information, etc. Section 24 speaks of action or investigation against a public servant being the Prime Minister, Ministers or Members of Parliament. The powers of the Lokpal are delineated in Chapter VIII of the Act. The constitution of the special courts by the Central Government is in Section 35 of the Act (Chapter IX). Section 46 deals with prosecution for a false complaint and payment of compensation, etc., while Section 47 deals with a false complaint made by a society or association of persons or trust (Chapter XIV).

18.3 Section 56 states that the provisions of the 2013 Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or in any instrument having effect by virtue of any enactment other than the Act. Section 57 states that the provisions of the 2013 Act are in addition to, and not in derogation of, any other law for the time being in force.

18.4 Section 58 of the 2013 Act states that as a result of the enforcement of the said Act, the enactments specified in the Schedule to the Act thereto shall

be amended in the manner specified therein. The schedules specify the amendments to certain enactments namely, Amendments to the Commissions of Inquiry Act, 1952; Amendments to the DSPE Act, 1946; Amendments to the Act; Amendment to the Code of Criminal Procedure, 1973; and Amendments to the Central Vigilance Commission Act, 2003.

18.5 Section 63 of the 2013 Act states that every State shall establish a body to be known as Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of the Act.

18.6 It is significant to note that subsequent to the enactment of the 2013 Act, Section 17A has been inserted to the Act. On a combined reading of the provisions of the 2013 Act, in light of the provisions of the Act and with particular reference to Section 17A, it is noted that the inquiry to be conducted under Section 14 of the 2013 Act into any of the offences alleged to have been committed by a public servant punishable under the Act can also include an offence relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties as envisaged under Section 17A of the Act. The inquiry envisaged under Section 14 of the 2013 Act is a preliminary inquiry under the said Act by an officer of the Inquiry Wing not below the rank of the Under Secretary to the Government of India.

Even an inquiry, enquiry or investigation to be conducted under Section 17A of the Act is also a preliminary enquiry by a police officer but he has to obtain a previous approval from the Union Government or the State Government or from the authority competent to remove a public servant from office at the time when the offence was alleged to have been committed, depending upon under which Government or authority the public servant was working at the time when the offence was alleged to have been committed before commencing it. The crucial import of Section 17A is to obtain the previous approval to conduct a preliminary enquiry from the Government when an offence within the meaning of the Act is said to have been committed by a public servant.

18.7 The expression "public servant" as defined under Section 2(c) of the Act may be compared with Section 2(o) of the 2013 Act. On a comparison of the two, what emerges is that the expression "public servant" under both the enactments has a similar meaning. Having regard to what has been stated above, in regard to an offence said to have been committed within the meaning of Section 17A of the Act, there could also be a complaint made to the Lokpal or Lokayukta under the 2013 Act or the State Enactment

(Lokayukta Act), as the case may be, wherein an enquiry can be made under Section 14 of the 2013 Act.

18.8 When a citizen as a complainant can approach the Lokayukta or the Lokpal (which are independent bodies) for an inquiry to be conducted by the said bodies into any offence committed under the Act, why should a police officer who intends to conduct an inquiry or enquiry or investigation within the meaning of Section 17A of the Act seek the previous approval from the very Government of which the public servant is a part? The question is not as to who should give the prior approval. The question is whether, the prior approval should be given at all? This is the crux of the matter. Therefore, there is a challenge to Section 17A of the Act.

The Overarching Object of the Act and Section 17A: At Odds ?

19. I have considered the issues raised in this Writ Petition from the point of view of the earlier judgments in the cases of Vineet Narain and Subramanian Swamy and also in light of the contentions raised before this Court by learned counsel for the petitioner as well as learned Solicitor General appearing for the respondent - Union of India and in light of the object of the Act.

19.1 One of the concerns raised by the petitioner is that having regard to the structure of the Government and the nature of the functions discharged by public servants, which have been discussed above, approval would inevitably not be granted by the department of a Government and as a result, the object and purpose of the Act would be frustrated by the insertion of Section 17A to the Act.

In this regard, much emphasis was directed towards paragraphs 61 and 62 of the judgment of this Court in Subramanian Swamy by the Constitution Bench, wherein it was observed in the context of Section 6A of the DSPE Act, 1946 (which also necessitated the previous approval from the Government before commencement of any investigation) to the effect that if a preliminary inquiry is prevented at the very threshold by a fetter, then the allegations against bribery and corruption would remain dormant and not acted upon. Therefore, it was submitted that Section 17A of the Act has to be struck down as it is not in consonance with the object of the enactment and does not advance the object and purpose of the Act.

19.2 In Manohar Lal Sharma, this Court observed that in the criminal justice system the investigation of an offence is the domain of the police. The power to investigate cognizable offences by the police officer is ordinarily not impinged by any fetters. Such powers have to be exercised consistent with the statutory provisions and for a legitimate purpose. A proper investigation into a

crime is one of the essentials of the criminal justice system and an integral facet of rule of law. It was further observed that while interpreting anti-corruption laws the aim should be to help in minimising the abuse of public office for private gain.

19.3 In *Lalita Kumari*, the question for consideration was whether "a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (for short, "the CrPC") or, the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same". The scope of preliminary inquiry is not to verify the veracity, or otherwise, of the information received but only to ascertain whether the information reveals any cognizable offence. That, in corruption cases there is a need for such preliminary inquiry.

19.4 In *Vineet Narain*, this Court observed that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law is vindicated. It is the duty of the judiciary to enforce the rule of law and therefore, to guard against erosion of the rule of law.

20. The undisputed object of the Act is to effectively address the menace of corruption that is stated to be rampant and pervasive in India. The legislation under consideration has been enacted with the critical social and public purpose of curbing corruption. Thus, it must be interpreted and implemented in such a manner that bolsters its ability to fulfil this purpose and any possibility of this purpose being rendered otiose must be guarded against. The Statement of Objects and Reasons for the Act states that the Bill was intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.

20.1 With this being the object and purpose of the Act, the stated object of Section 17A being protection of honest public servants cannot have an overriding effect, or rather, cannot be privileged over the larger purpose of effectively "preventing corruption". No doubt an appropriate balance must be struck between protecting honest officers and enabling the effective investigation of allegations of corruption.

Under Section 17A an inquiry/enquiry/ investigation is merely a preliminary step undertaken to ascertain if there is sufficient material to warrant setting the machinery of the criminal justice into motion. But the preservation of Section 17A in its present form would lead to an incongruent scenario where, under a framework seeking to effectively combat corruption, even a bare enquiry which may be required to even substantiate a complaint or allegation, to begin with, is entirely precluded without a prior approval.

20.2 It is needless to observe that even in the absence of a provision granting such prior approval, a balance continues to be struck and honest officers receive protection under Section 19 of the Act, wherein at the stage of taking cognizance, there is a requirement for prior sanction by the Union Government, State Government or competent authority, as the case may be.

At that advanced stage, after the culmination of the inquiry/enquiry/ investigation, the discretion of the Union or State Government or competent authority is guided by the material placed before it to arrive at an informed decision as to whether, a case of corruption is made out against the public servant. Any prejudice that could be caused by a false or frivolous complaint could be prevented, at the stage of taking of cognizance, by the denial of sanction under Section 19 of the Act, if the case appears to be motivated, spurious, malicious or baseless.

20.3 However, fears of prejudice being caused by even an inquiry/enquiry/investigation and thus needing to be prevented cannot pass muster when the concomitant outcome is that even credible allegations of corruption may go entirely unexamined if prior approval is denied. It must be borne in mind that while every complaint or information received as regards a decision made or recommendation taken by a public servant may not be genuine, the corollary is also that every such complaint or information may not be false or frivolous.

Under Section 17A, there appears to be an underlying, unstated presumption that the complaints made, or information received by a police officer would necessarily be false and frivolous unless proven otherwise. Bearing in mind the broader purpose and object of the Act, there is no basis for such an underlying presumption to subsist. A determination as to the salience of the complaint made or information received can only be made after some form of inquiry/enquiry/investigation takes place.

20.4 It is important to note that Section 17A has been inserted to the Act subsequent to the enforcement of the 2013 Act. The 2013 Act has an overriding effect over all other enactments. Section 14 of the 2013 Act empowers the Lokpal to inquire or cause an inquiry to be conducted into any

matter involved in, or arising from, or connected with any allegation of corruption made in a complaint in respect of, inter alia, any Group A or Group B officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of Section 2 of the Act when serving or who has served, in connection with the affairs of the Union or State Government. Similarly, a provision is made with regard to Group C or Group D officers or equivalent.

Section 20 of the 2013 Act deals with complaints and preliminary inquiry and investigation. As already noted, an inquiry to be conducted under Section 14 of the 2013 Act into any of the offences alleged to have been committed by a public servant punishable under the Act could also include an alleged offence relating to any recommendation made or decision taken by such public servant in discharge of his official functions or duties as envisaged under Section 17A of the Act. However, when a complaint is made before the Lokpal or Lokayukta, as the case may be, no prior approval by the Government for conducting an investigation or enquiry is envisaged.

It is because the said authorities are independent statutory bodies. A department of the Government cannot, however, be considered to be independent of its officers/officials. They in fact are the constituents of the department. Hence, the lack of neutrality and objectivity while considering a request by a police officer to conduct an enquiry/investigation within the meaning of Section 17A of the Act makes the said provision contrary to the objects of the Act and hence has to be struck down on that ground.

20.5 Next, in *Subramanian Swamy*, this Court observed that Section 6A replicates Single Directive 4.7(3)(i), which was struck down in *Vineet Narain* with the only change being that the executive instruction was replaced by the legislation. It further observed that corruption is the enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the Act. In paragraph 64 reference was made to *Vineet Narain* wherein it was observed as under:

"Where there are allegations against a public servant which amount to an offence under the PC Act, 1988, no factor pertaining to expertise of decision making is involved. Yet, Section 6-A makes a distinction. It is this vice which renders Section 6-A violative of Article 14. Moreover, the result of the impugned legislation is that the very group of persons, namely, high-ranking bureaucrats whose misdeeds and illegalities may have to be inquired into, would decide whether CBI should even start an inquiry or investigation against them or not. There will be no confidentiality and insulation of the investigating agency from political and bureaucratic control and influence

because the approval is to be taken from the Central Government which would involve leaks and disclosures at every stage."

(Underlining by me)

Further, referring to Vohra Committee Report (Central Government had constituted a Committee under the Chairmanship of the former Home Secretary Sri N.N. Vohra) it was observed that the report paints a frightening picture of criminalbureaucratic- political nexus - a network of high-level corruption. The impugned provision puts this nexus in a position to block inquiry and investigation by CBI by conferring the power of previous approval on the Central Government.

20.6 In Subramanian Swamy, Section 6A of the DSPE Act, 1946 was held to be violative of Article 14 of the Constitution, inter alia, on the basis of the unreasonableness of the classification made therein between decision-making officials at the highest levels and all other categories of public servants.

20.7 It was submitted by the learned Solicitor-General that the drawbacks identified by this Court in Vineet Narain and Subramanian Swamy have been rectified by the introduction of Section 17A, as the said provision was validly enacted by Parliament and does not engage in any classificatory exercise by being applicable to all classes of public servants. However, this contention is based on a myopic view of the earlier two dicta of this Court, where this Court took active notice of the prevalence of corruption in this country and also the various challenges in the operation of a prior approval regime.

20.8 That when in Subramanian Swamy, prior approval was held to be unjustified for even senior officers engaged in high-level decision-making of great consequence, it cannot follow that such prior approval is now made available to all classes of public servants if the submission of learned Solicitor General is to be accepted and thereby, the concerns raised in Subramanian Swamy have been sufficiently addressed. 20.9 Under Section 6A of the DSPE Act, 1946 protection from inquiry was extended to only employees of the Central Government of the level of Joint Secretary and above and such officers as are appointed by the Central Government in corporations, companies etc. owned or controlled by the Central Government.

Similarly, under Section 17A the protection is extended only to those public servants who have the responsibility to make any recommendation or take any decision while discharging their official duties in connection with the affairs of the Union or State. It is observed that normally it is only public servants of a particular level and above who are responsible for making a recommendation or taking a decision in the discharge of their duties. Public

servants who had been expressly protected under Section 6A of the DSPE Act, 1946 are the very class of public servants who now have the protection under Section 17A of the Act.

This is because public servants who are below a certain level would not be recommending a course of action or taking a decision as such in discharge of their duties. The officers below a certain level would be mainly engaged in scrutinising the files and preparing notes for the higher officers to peruse and to make further recommendations or take decisions on a matter as discussed above. The expression "recommendation made" in Section 17A has to be read in juxtaposition with the expression "decision taken" and the word "or" has been used in between the said expressions which make them inter changeable or synonymous.

Therefore, the expression "recommendation made" takes colour from the expression "decision taken". They are actions taken by higher-level officers after scrutinising the notings made by the lower-level officers in respect of a subject matter. It is only such class of public servants who are once again protected under the impugned provision.

20.10 This can be illustrated by an example. For instance, with regard to procurement of goods or services through a tender process, the scrutiny of the bids, whether technical or financial is made by the lower or the mid-level officers but the decision taken to award a tender to a particular bidder is on the basis of a recommendation which is made either collectively or individually and the same is at a higher level of the hierarchy or officers in a department. It is not expected that a lower-level official or officer would make a recommendation or take a decision to award a tender to a particular party.

The object of Section 17A is to inquire or investigate into the actions of public servants relating to any recommendation made or decision taken and the same cannot be related to public servants who function at the level merely scrutinising the papers and making file notings for the consideration of the public servants who are at a higher level in the hierarchy. Though apparently, the protection of prior approval is extended to all classes of public servants in substance, it extends only to those public servants who take decisions and make recommendations in the discharge of their official duties. Such protection is, therefore, extended to the higher officers only.

Hence, the provision is once again "narrowly tailored" in order to protect a select class of public servants in respect of whom prior approval has to be taken before a police officer seeks to make an inquiry, enquiry or investigation. This in my view, is in violation of Article 14 of the Constitution

as it creates a classification having no nexus to the object sought to be achieved and is therefore not permissible. In other words, those public servants who are not entrusted with the task of making a recommendation or take a decision taken in a matter can be proceeded without any prior approval. Thus, there is in-substance a classification within the class of public servants which does not satisfy the twin test under Article 14 of the Constitution of India.

20.11 Therefore, the reasons for striking down Section 6A of the DSPE Act, 1946 by this Court in Subramanian Swamy squarely apply to Section 17A of the Act. The insertion of Section 17A to the Act subsequent to the 2013 Act is one more attempt to protect public servants above a particular level in the hierarchy. Further, the amendment does not remove the basis of the striking down of Section 6A of the DSPE Act, 1946 by this Court. Section 17A is in fact a resurrection of Section 6A of the DSPE Act, 1946 though in a different avatar, in other words, it is old wine in a new bottle. Hence, Section 17A also has to be struck down for being contrary to the judgments of the larger Bench and Constitution Bench of this Court.

20.12 Concerns surrounding how allegations of corruption require to be investigated into by a specialised and sufficiently independent agency and the need to prevent any leaks of information that might put the public servant to notice about a potential complaint against his conduct, which had been raised in Subramanian Swamy continue to subsist in Section 17A. This haunting feature of why should any prior approval be mandated and thereby shutting the door to a preliminary enquiry is contrary to the judgments of this Court.

20.13 In my view, Section 17A of the Act is, in fact, to grant protection to corrupt public servants. If an enquiry or investigation is to be made against a public servant lacking integrity, then the requirement of seeking a prior approval would, in fact, be a hurdle for carrying out any such investigation and consequently, any act which is an offence within the meaning of the Act would be covered up and would remain under wraps. Consequently, Section 17A, in a way, protects the public servants who are in fact offenders under the provisions of the Act.

An analysis of the Single Directive No.4.7(3) and Section 6A of the DSPE Act, 1946 read with Section 17A brings out the substantive common aspects, while learned Solicitor General has attempted to highlight the differences which I have extracted above. While considering the substance and the true intent of Section 17A of the Act, in my view, it is nothing but another manifestation of the Single Directive No.4.7(3) and Section 6A of the DSPE Act, 1946 which have been quashed by larger Benches of this Court. Hence, having regard to the reasoning of this Court in Vineet Narain and

Subramanian Swamy which are of larger Benches, Section 17A is liable to be struck down.

20.14 It was submitted by learned Solicitor General that in today's world, it is sometimes difficult to identify false narratives and complaints from the truth. Then, should every false and frivolous complaint be enquired into straightaway by a police officer without there being scrutiny of the same? According to learned Solicitor General, Section 17A of the Act has been inserted precisely to scrutinize a request made by a police officer for enquiry, inquiry or investigation in order to ascertain whether it is a genuine complaint or a frivolous one.

This, in my view, is like putting the cart before a horse. If a complaint is enquired into, the truth will unravel. If approval is not granted to even make a preliminary enquiry, the truth and genuineness of the complaint would not be known and the matter would be hanging in suspense. In the absence of there being any threshold enquiry on the genuineness of the complaint, greater damage and harm would be caused to the reputation of a public servant who is sincere and honest.

If there are bona fide recommendations made and decisions taken, there would be no "policy paralysis" at all. Further, the absence of Section 17A from the statute book does not make any difference to an honest public servant and he would not at all be affected by any "policy paralysis" syndrome. On the other hand, Section 17A would embolden public servants to make vitiated recommendations or take mala fide decisions which would be offences under the provisions of the Act, simply because prior to any inquiry or investigation being made by a police officer, approval has to be taken.

It is only when a recommendation made or decision taken is relatable to an offence under the provisions of the Act, will a preliminary inquiry be made by a police officer. But in the absence of any offence having been committed under the Act, a decision taken or recommendation made would not be a subject matter of inquiry at all.

20.15 While the patent purpose of the provision is for the purpose of protecting honest public servants and preventing them from being subject to unjustified, frivolous and vexatious investigations, the latent object is that Section 17A should function as a shield that, in fact, protects the dishonest public servants. Blockading any form of enquiry or investigation at the very outset by making the same conditional on grant of approval results in corrupt officers receiving undue protection and finding ways to scuttle the investigation and the criminal justice process.

It is also necessary to emphasise that the police officer would also in the first instance scrutinise the veracity of the complaint before initiating the process of inquiry or investigation and thereafter, venture to commence the inquiry or the investigation, as the case may be. Frivolous complaints could be weeded out at the preliminary stage itself if an inquiry is held on the genuineness of the complaint by a police officer and not to mechanically proceed as and when a complaint is made to the police officer. The preliminary scrutiny of a complaint has to be made by the police officer before any inquiry or investigation is commenced. This is so in respect of criminal offences as has been highlighted by this Court in the Constitution Bench judgment of Lalita Kumari.

Impermissibility of Substitution of Plain Meaning of Words in Section 17A:

21. There is another reason as to why the mechanism suggested by my learned Brother Viswanathan, J. for the operation of Section 17A as a constitutionally valid provision which is by involving the Lokpal and the Lokayukta, as the case may be, is also not acceptable to me.

This is for two reasons: firstly, because the words Lokpal or the Lokayukta cannot be read into the word "Government". Therefore, the expression "Government" used in the said provision cannot be substituted by the words "the Lokpal" as well as "the Lokayukta" by reading the same into Section 17A of the Act. Secondly, what would be the position if the 2013 Act is to be repealed? Then in such a situation, Section 17A cannot be operated as suggested by my learned Brother Viswanathan, J.

21.1 In the context of interpretation of statutes, the intention of the legislature has to be gathered from the express as well as implied words of the statute. Therefore, any addition or rejection of words has to be avoided by the court. Further, substituting some words of a provision with other words has to be refrained from. Therefore, the Court cannot reframe the provision of a statute as it has no power to legislate as such.

21.2 This Court has also held that the court must avoid rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of the Act or to give a purposeful meaning to the Section. For instance, in construing the expression "establishment under the Central Government", this Court refused to substitute "of" for "under" and held that an establishment not owned by the Central Government could fall within the said expression, if there is deep and pervasive control of the Central Government over the establishment vide C.V. Raman vs. Management of Bank of India, AIR 1988 SC 1369.

21.3 Just as one cannot add words to fill in a gap or lacuna in a statute, efforts must be made to give meaning to each and every word used by the legislature. Correspondingly, it must be presumed that the legislature inserted every part of a provision for a purpose and the legislative intention is that every part of the statute should have effect. Thus, the legislature is deemed not to waste its words or to say anything in vain and a construction which would result in certain words of a provision being rendered redundant should not be attempted.

The legislature enacts a particular phrase in a statute presuming that it says something specific, to which meaning should be given. For instance, the words "relationship in the nature of marriage" as used in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 was interpreted to mean a relationship akin to a common law marriage and not every live-in relationship. This Court noted that by reading "relationship in the nature of marriage" to simply mean "live-in relationship", the Court would be legislating in the garb of interpretation, which is not permissible vide *D Velusamy vs. D Patachiaimal*, AIR 2011 SC 479.

21.4 In this context, it is also relevant to note that the words of a statute must be first understood in their natural, ordinary or popular sense and phrases and sentences must be construed in their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. This form of interpretation is called literal interpretation and the natural meaning of the words cannot be departed from unless, reading the statute as a whole, the context directs the Court to do so.

Thus, the golden rule of interpretation is that the words of a statute must prima facie be given their ordinary meaning. Natural and ordinary meaning of words should not be departed from unless it can be shown that the legal context in which the words are used requires a different meaning. Therefore, a statute must be read in accordance with the golden rule of construction which is grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition.

If this cardinal rule of how a statute must be construed literally results in absurdity or the words are susceptible to contain another meaning, the Court may not adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. Thus, there must be a compelling reason for departing from the golden rule of construction by substitution of words. (Source: G.P. Singh on Principles of Statutory Interpretation 15th Edition).

Summary of Conclusions:

22. In view of the discussion above, the following are my conclusions:

(i) Section 17A of the Act is struck down as it is in violation of Article 14 of the Constitution inasmuch as it seeks to protect only those public servants who have the responsibility of making a recommendation or taking a decision in the discharge of their official duties which are limited to the officers above a particular level whether in the Union or State Governments or any other Authority. Hence, it protects only a class of public servants inasmuch prior approval is mandated under the said provision for the aforesaid class of public servants, whereas for all other public servants, it does not do so. Thus, in substance, the classification based on the nature of duties is illegal and therefore violates Article 14 of the Constitution of India for reasons analogous to those in Subramanian Swamy and Vineet Narain.

(ii) Section 17A is merely an attempt to reintroduce in a different form Single Directive 4.7(3) as well Section 6A of the DSPE Act, 1946, which have been struck down as being unconstitutional in Vineet Narain and Subramanian Swamy, which are three-Judge and five-Judge Bench decisions of this Court respectively and are binding on this Bench. Hence, Section 17A is liable to be struck down for attempting to obviate the earlier decisions of this Court.

(iii) Section 17A is invalidated by the arbitrariness in its manner of operation, by foreclosing the possibility of even a bare inquiry/enquiry/investigation without prior approval, under the garb of being prejudicial, leading to the likelihood of corrupt public servants of a particular level and higher being shielded, which is impermissible and contrary to the objects of the Act as well as rule of law.

(iv) In my view, prior approval being required for the purpose of protecting honest officers is not a valid reason for saving the provision from being declared unconstitutional as a regime of prior approval at the stage of inquiry/enquiry/investigation is fundamentally opposed to the objects and purpose of the Act and hence has to be struck down on that ground also.

(v) The expressions "Government" and "of the authority competent to remove him from his office" in Section 17A of the Act cannot be substituted, in light of no persisting ambiguity, absurdity or alternative meanings ascribable by any other expression as this would be an instance of judicial legislation. In fact, intentionally, the aforesaid expressions are used in order to ensure that no other independent body would have any say in the matter. Therefore, the said expressions cannot be substituted by the words "Lokpal" or "Lokayukta". Further, by merely shifting the authority which is to grant prior approval i.e.

from Government to the Lokpal or Lokayukta, unconstitutionality does not vanish.

(vi) Irrespective of the aforesaid conclusions, the nature and functioning of government departments as discussed hereinabove make the process of grant of approval under Section 17A marred by lack of objectivity, neutrality and fairness, which are key facets of the rule of law vide Subramanian Swamy and hence, cannot be sustained. The following are some specific drawbacks thus identified:

(a) the possibility of existence of "policy bias";

(b) the lack of safeguards to prevent intra-departmental pressures and undue influences from playing a role in the grant of prior approval;

(c) the nature of decision-making in a department in implementing a policy and the associated difficulties in appropriate exercise of discretion; and

(d) the possibility of conflict of interest. In the result, the Writ Petition is allowed in the above terms. No costs.

Post Script:

23. This Court in *Shobha Suresh Jumaní vs. Appellate Tribunal, Forfeited Property*, (2001) 5 SCC 755, took judicial notice of the fact that because of the mad race of becoming rich and acquiring properties overnight or because of the ostentatious or vulgar show of wealth by a few or because of change of environment in the society by adoption of materialistic approach, there is cancerous growth of corruption which has affected the moral standards of the people and all forms of governmental administration.

23.1 Corruption is a result of greed and envy which give rise to an unhealthy competition to be acquisitive of material assets beyond known sources of income. A person may compete with another so as to portray materialistic superiority. This may result in acquiring wealth illegally.

One's attitude of greed and envy ought to be curbed and erased from one's mind, otherwise corruption and bribery resulting in acquisition of wealth beyond the known sources of income cannot be reduced nor removed from our governance. One of the ways in which such tendencies could be curbed is to develop and enhance a spiritual bent of mind resulting in detachment from materialistic possessions and thereby, inter alia, focusing on service to the Nation.

23.2 The youth and the children of this country ought to shun anything acquired beyond the known sources of income by their parents and guardians rather than being beneficiaries of the same. This would be of a seminal service rendered by them not only towards good governance but also to the Nation.

.....J. (B.V. Nagarathna)

New Delhi;

January 13, 2026

1 Body or bodies tasked with implementing anti-corruption policies and spreading awareness about corruption.

Centre for Public Interest Litigation

Vs.

Union of India

[Writ Petition (C) No. 1373 of 2018]

Order of The Court

Having regard to the divergent opinions expressed by us, we direct the Registry to place this matter before Hon'ble the Chief Justice of India for constituting an appropriate Bench to consider the issues which arise in this matter afresh.

.....J. (B.V. Nagarathna)

.....J. (K.V. Viswanathan)

New Delhi;

January 13, 2026

IN THE SUPREME COURT OF INDIA

Kanchana Rai
Vs.
Geeta Sharma & Ors.

[Civil Appeal Nos. _____ of 2026
arising out of SLP (C) Nos. 1544-1545 of 2026]

Uma Devi
Vs.
Geeta Sharma & Ors.

[Civil Appeal No. _____ of 2026
arising out of SLP (C) No. 1737 of 2026]

Head Note - A daughter-in-law who becomes a widow after the death of her father-in-law is entitled to claim maintenance from his estate under the Hindu Adoptions and Maintenance Act, 1956.

Section 21 defined "dependents" and its sub-section (viii) stated - "any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate. or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father- in-law's estate;"

Section 21(vii) of the Act clearly recognises "any widow of his son" as a dependant, subject to her inability to maintain herself from her husband's estate or that of her children.

A plain reading of the above definition of the dependants makes it crystal clear that the relatives of the deceased, namely, "any widow of his son" would be a dependant provided she is unable to maintain herself from her husband's estate or from her son or her daughter's estate and in the case of grandson's widow, from her father-in-law's estate.

In simpler words, all the heirs of the deceased Hindu are obliged to maintain the dependants of the deceased from the funds inherited out of the estate of the deceased. Sub-section (2) of Section 22 provides that where a dependant of the deceased Hindu has not obtained share in the estate of the Hindu either by testamentary or intestate- succession, such a dependant shall be entitled to maintenance from those who take the estate. "Therefore, anyone succeeding to the estate of the deceased Hindu is under an obligation to maintain the dependant of the deceased.

The legislature in its wisdom has deliberately avoided to use the word “predeceased” before the “son” so as to include any widow of the son. The time of her becoming a widow or the death of the son is immaterial.

Excluding widowed daughters-in-law based solely on whether their husbands died before or after the father-in-law would be arbitrary and violative of Article 14 of the Constitution. Such a distinction, it held, has no rational nexus with the object of the Act, which is to provide maintenance to dependants who are unable to maintain themselves.

Denying maintenance on such a technical interpretation would offend Article 21, as it could expose widowed women to destitution and undermine their right to live with dignity.

The classification sought to be made between widowed daughters-in-law based solely on the timing of the husband's death, namely,
(a) those whose husbands died during the lifetime of the father-in-law, and
(b) those whose husbands died after him; is manifestly unreasonable and arbitrary.

Such a classification bears no rational nexus with the object and purpose of the Act, which is to secure maintenance to dependants who are unable to maintain themselves. In both situations, the women are similarly situated in so far as the object of the Act is concerned, having suffered widowhood, being without spousal support, and facing comparable financial vulnerability.

Denial of maintenance to one category based on a fortuitous circumstance beyond their control is manifestly arbitrary and violative of the guarantee of equality before law under Article 14. Any interpretation contrary to one opined above, would also infringe upon Article 21, which guarantees the right to life with dignity. The right to life has been judicially expanded to include the right to livelihood and basic sustenance.

Denying maintenance to a widowed daughter-in-law from the estate of her deceased father-in-law on a narrow or technical construction of the statute would expose her to destitution and social marginalization, thereby offending her fundamental right to live with dignity. The provisions of the Act must, therefore, be read purposively and in conformity with constitutional values, so as to advance social justice and protect the dignity of vulnerable dependants rather than defeat it.

JUDGMENT

Pankaj Mithal, J.

1. Leave granted.

2. Heard Dr. Abhishek Manu Singhvi and Shri V. Giri, senior counsel appearing for the respective appellants in the two appeals and Shri Vikas Singh, senior counsel for the contesting respondents, in both the appeals.

3. The controversy is inter se the heirs/family members of late Dr. Mahendra Prasad who died on 27.12.2021. He had three sons, namely, Ranjit Sharma, who passed away on 02.03.2023, Devinder Rai, husband of the appellant-Kanchana Rai and Rajeev Sharma. It is alleged that late Dr. Mahendra Prasad executed a registered Will on 18.07.2011, appointing the appellant, the wife of his pre-deceased son Devinder Rai, as the executor while bequeathing his properties in favour of her two sons, completely ignoring his own two sons namely Ranjit Sharma and Rajeev Sharma.

4. Smt. Geeta Sharma, Respondent No. 1, wife of one of the sons, Ranjit Sharma, who died after the death of Dr. Mahendra Prasad, applied for maintenance from the estate of her father-in-law, before the Family Court under the Hindu Adoptions and Maintenance Act, 1956. The petition was dismissed by the Family Court as not maintainable as Respondent no.1 was not a widow on the date of death of Dr. Mahindra Prasad, since her husband, Ranjit Sharma was alive at the time of his father's demise.

The High Court, in appeal, set aside the order of the Family Court recording a categorical finding that the petition was maintainable as Respondent no.1 was the widow of one of the sons of late Dr. Mahindra Prasad and as such was a dependant. Accordingly, the High Court directed the Family Court to consider the matter on merit and to decide about the quantum of maintenance.

5. Aggrieved by the aforesaid judgment and order of the High Court dated 20.08.2025, the appellant-Smt. Kanchana Rai, the wife of late Devinder Rai, the pre-deceased son of late Dr. Mahindra Prasad, has preferred one of these appeals on the issue of maintainability of the maintenance petition filed by the Respondent No.1

6. The other appeal has been preferred by one Smt. Uma Devi, the alleged partner of late Dr. Mahindra Prasad, contending that she was in a live-in relationship with him over the last forty years and that Respondent No. 1 had no legal right for seeking maintenance from the estate of late Dr. Mahendra Prasad.

7. In these facts and circumstances, a short and simple question, which has been made intricate by legal engineering of the legal minds, arising in these

appeals is: whether a daughter-in-law, who becomes a widow after the death of her father-in-law, is a dependant upon the estate of the father-in-law, and entitled to claim maintenance from his estate.

8. Since the issue which is falling for our consideration is purely legal in nature, we intend to proceed and decide it on our own thinking and reasoning on the simple interpretation of the provisions of the Act, independent of the view taken by either of the courts below i.e. the Family Court and the High Court or on the basis of the Hindu Succession Act, 1956, which is completely alien for the purposes of any interpretation of the provisions of the present Act.

9. The law on the grant of maintenance of Hindus has been codified by enacting the Hindu Adoptions & Maintenance Act, 1956. The aforesaid Act provides for the adoption as well for the maintenance. The adoption part is dealt under Chapter II of the Act, whereas Chapter III of the Act provides for maintenance to the dependants of a Hindu under Sections 18 to 28.

10. The "dependants" have been defined under Section 21 of the Act inter alia to include the following relatives of the deceased.

"2 (vii). any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate. or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;"

11. A plain reading of the above definition of the dependants makes it crystal clear that the relatives of the deceased, namely, "any widow of his son" would be a dependant provided she is unable to maintain herself from her husband's estate or from her son or her daughter's estate and in the case of grandson's widow, from her father-in-law's estate.

12. Section 22 of the Act provides for the maintenance of dependants and casts an obligation upon all the heirs of the deceased Hindu to maintain the dependants of the deceased out of the estate inherited by them from the deceased. In simpler words, all the heirs of the deceased Hindu are obliged to maintain the dependants of the deceased from the funds inherited out of the estate of the deceased.

13. Sub-section (2) of Section 22 further provides that where a dependant of the deceased Hindu has not obtained share in the estate of the Hindu either by testamentary or intestate-succession, such a dependant shall be entitled to maintenance from those who take the estate. Therefore, anyone succeeding to

the estate of the deceased Hindu is under an obligation to maintain the dependant of the deceased.

14. Section 23 of the Act provides for the manner and the factors on the basis of which maintenance to a dependant has to be determined.

15. Section 21 of the Act, as stated earlier, is only a defining section which defines the "dependants" of the deceased Hindu. One of the relatives of the deceased Hindu who has been defined as a dependant is clearly "any widow of his son" meaning thereby a widow of the deceased son of the Hindu is a dependant irrespective of the time she becomes a widow.

16. The above definition is quite clear and unambiguous. It is not open for any other meaning except that a "widow of the son" of the deceased is a dependant. In view of such a clear definition, it is not open for anyone to infer and assign any other meaning to the said definition so as to say that only a widow of the predeceased son of a Hindu would be covered by the said definition. The aforesaid definition nowhere uses the word "widow of a predeceased son". It simply uses the words "any widow of a son". The legislature in its wisdom has deliberately avoided to use the word "predeceased" before the "son" so as to include any widow of the son. The time of her becoming a widow or the death of the son is immaterial.

17. It is a cardinal principle of interpretation of law that where the provision is clear and unambiguous, it has to be interpreted literally provided the literal interpretation is not in conflict with the purpose of the Act or is otherwise not impractical.

18. This foundational principle of literal interpretation finds unequivocal support in a consistent line of judicial precedents.

19. In *Crawford v. Spooner*² the Privy Council observed that the construction of an Act must be taken from its bare words, and it is not for the courts "to add, and mend, and, by construction, make up deficiencies" left by the legislature, nor to "fish out what possibly may have been the intention" if not clearly expressed. Judges must take the words as they are and give them their natural meaning, unless controlled or altered by the context or the preamble.

20. In *B. Premanand v. Mohan Koikal*³ this Court emphasized that departure from the literal rule should be an exception in very rare cases, as once courts depart from the literal rule where the language is clear, the result would be destructive of judicial discipline and contrary to the constitutional scheme as the exclusive domain to legislate is upon the legislature. The Court aptly noted that "the literal rule of interpretation simply means that we mean what we say and we say what we mean." The Court further cautioned that even if a

literal interpretation results in hardship or inconvenience, the same cannot be a ground to depart from the plain meaning of the statutory text.

21. More recently, in *Vinod Kumar v. DM, Mau*⁴ this Court reaffirmed that the literal rule is the first and foremost principle of statutory interpretation. Where the words are absolutely clear and unambiguous, recourse cannot be had to any other principle. The Court explicitly held that "the language employed in a statute is the determinative factor of the legislative intent" and that judges cannot correct or make up a perceived deficiency in the words used by the legislature. The Court held that courts cannot correct or supply an assumed omission in the statute, as the legislature is presumed to have intended what it has expressly stated.

22. In view of the language so used in Section 21 (vii) of the Act and guided by the settled principles reiterated above, there is hardly any scope to interpret that the words "any widow of his son" used therein would mean "widow of his predeceased son" only. The courts cannot add or subtract any word from the text of the statute. The provisions of the statute cannot be re-written by the courts by assuming or inferring something which is not implicit from the plain language of the statute.

23. Even otherwise, any such restrictive interpretation would fail the test of constitutional validity under Article 14 of the Constitution. The classification sought to be made between widowed daughters-in-law based solely on the timing of the husband's death, namely, (a) those whose husbands died during the lifetime of the father-in-law, and (b) those whose husbands died after him; is manifestly unreasonable and arbitrary.

Such a classification bears no rational nexus with the object and purpose of the Act, which is to secure maintenance to dependants who are unable to maintain themselves. In both situations, the women are similarly situated in so far as the object of the Act is concerned, having suffered widowhood, being without spousal support, and facing comparable financial vulnerability. Denial of maintenance to one category based on a fortuitous circumstance beyond their control is manifestly arbitrary and violative of the guarantee of equality before law under Article 14 of the Constitution.

24. Any interpretation contrary to one opined above, would also infringe upon Article 21 of the Constitution, which guarantees the right to life with dignity. The right to life has been judicially expanded to include the right to livelihood and basic sustenance. Denying maintenance to a widowed daughter-in-law from the estate of her deceased father-in-law on a narrow or technical construction of the statute would expose her to destitution and social marginalization, thereby offending her fundamental right to live with dignity.

The provisions of the Act must, therefore, be read purposively and in conformity with constitutional values, so as to advance social justice and protect the dignity of vulnerable dependants rather than defeat it.

25. Section 4 of the Act has an overriding effect but it does not erase away fundamental principles of Hindu law particularly where some doubt is raised about the codified provisions. The Hindu law specially Manu Smriti vide Chapter 8, verse 389 says:

**“न माता न पिता न स्त्री न पुत्रस्त्यागमर्हति।
त्यजन्नपतितानेतान राजा दण्ड्यः शतानि षट्”॥**

No mother, no father, no wife, and no son deserves to be forsaken. A person who abandons these blameless (relatives) should be fined six hundred (units) by the king. This verse emphasizes duty of the family head to support female family members.

26. A son or the legal heirs are bound to maintain all the dependant persons out of estate inherited i.e. all persons whom the deceased was legally and morally bound to maintain. Therefore, on the death of son, it is the pious obligation of the father-in-law to maintain widowed daughter-in-law, if she is unable to maintain herself either on her own or through the property left behind by the deceased son. The Act does not envisage to rule out the above obligation of the father-in-law to maintain his widowed daughter-in-law, irrespective of the fact when she became a widow whether prior or after his death.

27. Though, it may not be very much in context to refer to Section 19 of the Act but we consider it proper to refer to it as the Courts below have considered and dealt with it and some arguments on its basis have been advanced before us.

28. Section 19 of the Act provides for the maintenance of "widowed daughter-in-law" of the deceased Hindu. It simply contemplates that a Hindu wife is entitled to be maintained after the death of her husband by her father-in-law. Thus, it casts an obligation upon the father-in-law to maintain his daughter-in-law. The said obligation subsists only during the lifetime of the father-in-law as the aforesaid provision nowhere contemplates that the daughter-in-law would be entitled to maintenance from the estate of the father-in-law.

In other words, Section 19 contemplates for the maintenance of the daughter-in-law during the lifetime of father-in-law, whereas, Section 22 contemplates "maintenance of dependants" including "widowed daughter-in-law" from the

estate of her father-in-law meaning thereby that a claim under Section 22 can be raised only after the death of the father-in-law.

29. In view of the aforesaid facts and circumstances, we are clearly of the opinion that "any widow of the son" of a deceased Hindu is a dependant within the meaning of Section 21 (vii) of the Act and is entitled to claim maintenance under Section 22 of the Act. Therefore, no illegality has been committed by the High Court in passing the impugned order holding the petition of Respondent no.1, who is a widow of the son of the deceased, to be maintainable and in directing the Family Court to consider it on merits in accordance with law.

30. The appeals as such lack merits and are dismissed with no order as to costs.

.....**J. (Pankaj Mithal)**

.....**J. (S.V.N. Bhatti)**

New Delhi;

January 13, 2026

1 Hereinafter referred to as "the Act"

2 (1846) 4 Moo IA 179

3 (2011) 4 SCC 266

4 (2023) 19 SCC 126

IN THE SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs.

Chaman Lal

[Criminal Appeal No. 430 of 2018]

Head Note – Motive assumes significance, primarily in cases based on circumstantial evidence. Where there is direct evidence in the form of a credible and trustworthy dying declaration, the absence of strong proof of motive is not fatal to the prosecution case

JUDGMENT

R. Mahadevan, J.

1. The instant Criminal Appeal has been preferred by the State of Himachal Pradesh assailing the Final Judgment and Order dated 26.08.2014 passed by the High Court of Himachal Pradesh at Shimla¹ in Criminal Appeal No. 295 of 2010, whereby the High Court allowed the appeal preferred by the respondent and set aside the judgment of conviction dated 16.07.2010 and the consequential order of sentence dated 03.08.2010 passed by the Sessions Judge, Chamba Division, Chamba, Himachal Pradesh² in Sessions Trial No. 19 of 2010, thereby acquitting the respondent of the charge under Section 302 of the Indian Penal Code, 1860.

2. The case of the prosecution is that on 07.12.2009, the respondent-husband Chaman Lal allegedly poured kerosene on his wife Saro Devi (deceased) at their residence situated in Village Rampur, Pargana Dhundi, Tehsil and District Chamba, Himachal Pradesh and set her on fire by lighting a matchstick. On seeing her engulfed in flames, some villagers rushed to her rescue and the respondent also attempted to extinguish the fire. Despite these efforts, the deceased sustained severe burn injuries.

The information was conveyed to her brother, Ramesh Kumar, who arrived at the spot and made arrangements to take her to the District Hospital, Chamba where she was provided with medical treatment. After receiving initial treatment at Chamba, her condition did not improve and she was referred to Tanda Medical College and Hospital on 15.12.2009 where she was provided with further treatment. When the doctor opined that there was no chance of improvement, the brother of the deceased took her back to his home on

22.12.2009, after which he continued to look after her. On 15.01.2010, she succumbed to her injuries.

3. Based on the information given by the brother of the deceased, FIR No. 292 of 2009 was registered under Section 302 IPC against the respondent at Police Station Sadar, Chamba on 08.12.2009. During the investigation, it was revealed that the respondent had contracted a love marriage with the deceased and three children were born out of the said wedlock.

However, their relationship had become strained and on the fateful day, i.e. on 07.12.2009, the accused poured kerosene upon the deceased and set her on fire, thereby causing her death. Upon information given by the brother of the deceased, ASI Mukesh Kumar came to the hospital. On his intimation, the Tehsildar of the Chamba region reached the hospital and recorded the statement of the deceased, which was treated as Dying Declaration.

4. After completion of the investigation, a challan under Section 302 IPC was prepared and filed before the Chief Judicial Magistrate, Chamba. The Magistrate upon examining the record and complying with the provisions of Section 207 of the Code of Criminal Procedure, 1973, found that the case was exclusively triable by the Court of Sessions and accordingly, committed it to the Sessions Court.

5. The trial Court, after hearing the respondent and the prosecution and on the basis of the materials available on record, framed a charge under Section 302 IPC. The respondent pleaded not guilty and claimed to be tried.

6. The prosecution led its evidence. Thereafter, the statement of the respondent was recorded under Section 313 Cr.P.C. He was given an opportunity to lead evidence in defence. After trial and upon perusal of the materials brought on record by the parties, the trial Court found the respondent guilty of the offence under Section 302 IPC and accordingly convicted and sentenced him to imprisonment for life and to pay a fine of Rs. 50,000/- and in default thereof, to undergo simple imprisonment for a further period of three years. The period of detention undergone during investigation and trial was directed to be set off against the sentence imposed.

7. Aggrieved by the judgment of conviction and the order of sentence imposed by the trial Court, the respondent preferred Criminal Appeal No. 295 of 2010 before the High Court. By its judgment dated 26.08.2014, the High Court set aside the judgment of conviction and the order of sentence dated 16.07.2010 and 03.08.2010 respectively and acquitted the respondent of the charge under Section 302 IPC by extending to him the benefit of doubt.

8. Challenging the aforesaid judgment of acquittal, the State of Himachal Pradesh has preferred the present Criminal Appeal before this Court.

9. Mr. Vivek Kumar, learned counsel appearing on behalf of the appellant - State submitted that the deceased Saro Devi was married to the respondent in the year 2002. The couple resided in Village Rampur, Tehsil and District Chamba, Himachal Pradesh. It was alleged that there were disputes and frequent quarrels between the husband and wife owing to the respondent's suspicion regarding the character of the deceased. On the evening of 7th December 2009, it was alleged that the respondent poured kerosene oil upon his wife and set her on fire with a matchstick at their residence. The deceased sustained severe burn injuries to the extent of 70% and the respondent also sustained about 3% burn injuries on his hand. Despite treatment, the deceased succumbed to her injuries on 15.01.2010.

9.1. It was further submitted that on 08.12.2009, the Tehsildar-cum-Executive Magistrate, Amar Singh (PW-1) recorded the dying declaration (Ext. PW-1/B) of the deceased at the hospital, after medical certification of her fitness and in the presence of the Deputy Superintendent of Police, K.D. Sharma (PW-10) and the Investigating Officer, ASI Mukesh Kumar (PW-12). In her statement, the deceased categorically stated that her husband had set her on fire after insulting her by calling her a "Kanjri" (woman of bad character). It was contended that the trial Court rightly relied upon the dying declaration and convicted the respondent. However, the High Court erroneously acquitted the respondent by discarding the dying declaration on the sole ground of alleged discrepancies relating to the time of arrival of the Tehsildar at the hospital.

9.2. The learned counsel submitted that the High Court committed a serious error in holding that the time of arrival of the Tehsildar was doubtful relying selectively on one statement of the brother of the deceased (PW-2). The High Court failed to appreciate that PW-2 upon being specifically questioned, corroborated the version of PW-1, PW-10 and PW-12, all of whom consistently stated that the Tehsildar reached the hospital around 11.00-11.15 a.m. The High Court thus erred in isolating one portion of PW-2's testimony and ignoring consistent corroborative evidence.

9.3. It was submitted that the High Court further erred in discarding the testimony of PW-10, who was an independent witness to the recording of the dying declaration. He deposed that the statement of the deceased was dictated by the Tehsildar word by word. The defence did not put any question or suggestion to PW-1 during cross-examination and that the statement was improperly recorded. In the absence of any challenge, the High Court could not have drawn an adverse inference on this aspect.

9.4. The learned counsel submitted that the High Court wrongly relied upon the testimonies of the ward member Om Prakash (PW-4) and Ravindra (PW-5). PW-4, who for the first time before the Court introduced a version that the deceased had poured kerosene upon herself, which he admittedly did not make in his statement before the police thereby rendering his testimony a material improvement and inherently unreliable. Similarly, PW-5 though declared hostile, was nevertheless relied upon by the High Court despite her close relationship with the respondent-she being his paternal aunt (bua). Her testimony being naturally biased, ought to have been discarded and could not have formed the basis of any finding in favour of the respondent.

9.5. It was further submitted that the High Court gravely erred in accepting the testimony of DW-2, the minor son of the respondent who sought to set up a plea of alibi by stating that his father was working in the kitchen garden at the relevant time. The testimony of DW-2 stands in direct contradiction to that of PW-12, the Investigating Officer, who categorically stated in his crossexamination that during the course of inquiry, the children of the deceased had informed him that they were playing outside at the time of the incident. The High Court therefore committed a manifest error in placing reliance on defence evidence which was inconsistent and stood expressly contradicted by the prosecution witnesses.

9.6. The learned counsel submitted that the High Court failed to properly appreciate the credible and independent testimony of the Tehsildar (PW-1) who categorically deposed that the deceased had stated before him that her husband poured kerosene upon her after calling her a "Kanjri". The said statement coming from an independent and disinterested public servant, not only establishes the overt act attributable to the respondent but also furnishes a clear and proximate motive for the commission of the offence. Significantly, nothing adverse was elicited in the cross-examination of PW-1 so as to cast any doubt on his credibility or veracity.

The High Court therefore fell into manifest error in holding that no motive stood established against the respondent. The further observation that the absence of any pending court proceedings between the spouses indicated lack of animosity is wholly misconceived and legally unsustainable. It is well settled that matrimonial discord and animosity between spouses do not necessarily manifest in the form of litigation. The surrounding circumstances, when read conjointly with the testimonies of PW-1 and PW-2 clearly demonstrate strained marital relations and provide sufficient motive for the commission of the offence.

9.7. It was submitted that the High Court has erred in discarding the dying declaration which was duly recorded by the Tehsildar-cum-Executive

Magistrate in the presence of responsible officers and stood fully corroborated by both medical and ocular evidence.

9.8. The learned counsel further drew our attention to the suspicious postincident conduct of the respondent. PW-2 deposed that the respondent did not contact him directly to inform him about the condition of his sister. Instead, as testified by Yashpal (PW-3) the respondent contacted PW-3, who in turn conveyed the information to PW-2. Such conduct is wholly unnatural for a husband and strongly indicative of a guilty mind.

9.9. The learned counsel ultimately submitted that the findings recorded by the High Court are based on a clear misappreciation of evidence and consideration of wholly irrelevant factors while completely ignoring the cogent, reliable and trustworthy testimonies of independent witnesses including PW-1, PW-10 and PW-12. Conversely, undue reliance was placed on hostile witnesses and contradictory defence evidence, leading to a manifest miscarriage of justice.

9.10. It was therefore urged that the judgment and order of acquittal passed by the High Court be set aside and that the conviction and sentence recorded by the trial Court be restored thereby allowing the present criminal appeal.

10. On the other hand, Mr. Krishna Pal Singh, learned counsel appointed as amicus curiae for the respondent refuted the submissions advanced on behalf of the appellant - State. At the outset, he drew our attention to the deposition of Ramesh Kumar (PW-2) who stated that he was informed by Yashpal (PW-3) that his sister Saro Devi had sustained burn injuries. Thereafter, PW-2 went to the house of the respondent and found the deceased in a serious condition with extensive burn injuries. PW-3 corroborated this version and deposed that the respondent had telephonically informed him on 07.12.2009 that Saro Devi had been burnt and that efforts should be made to save her.

The statement of Ramesh Kumar (PW-2) recorded vide Ext. PW-12/A was treated as the FIR in the present case. The High Court found that in the said Rukka (FIR), PW-2 specifically stated that when he asked his sister as to who had set her on fire she did not disclose the name of any person. This, according to the defence, was the earliest version of the incident recorded on 07.12.2009 wherein the deceased merely stated that she had been set on fire. Though the trial Court placed primary reliance on the dying declaration (Ext. PW-1/B) recorded by PW-1 Tehsildar, the High Court found the same to be suspicious and not worthy of reliance.

10.1. The learned counsel further submitted that it is an admitted fact that villagers including the respondent himself, made efforts to extinguish the fire

and rescue the deceased. PW-2 stated that he spoke to his sister on the mobile phone of the respondent during which she only said, "I got burnt, save me". Even in his statement Ext. PW-12/A treated as the FIR, she made no allegation that the respondent had poured kerosene on her or set her on fire with a matchstick. PW-2 admitted that despite repeatedly asking her as to who had set her on fire, she did not name anyone, though he personally suspected the respondent.

10.2. The learned counsel placed reliance on the testimonies of PW-4 Om Prakash, the Ward Member, PW-5 Ravindra (declared hostile), DW-2 Kamal Kishor, the eight-year-old son of the deceased and DW-1 Kamla, a friend of the deceased from the same village to contend that the respondent did not commit the alleged offence and that the deceased caught fire on her own. It was argued that the cumulative effect of the evidence on record creates serious doubt about the prosecution allegation that the respondent poured kerosene on the deceased and set her on fire. To support the plea of self-immolation, emphasis was laid on the fact that the respondent himself sustained burn injuries while attempting to rescue the deceased.

10.3. In this regard, PW-11 Dr. Vishal Thakur examined the respondent on 10.12.2009 and found burn injuries on his left hand to the extent of 3% along with a bruise on the right elbow and issued the MLC (Ext. PW-11/C). It was submitted that the conduct of the respondent in immediately informing the relatives of the deceased further strengthens the defence version that the deceased herself poured kerosene and set herself on fire.

10.4. It was further submitted that although the prosecution relied heavily on the dying declaration allegedly recorded by PW-1 Tehsildar on 08.12.2009, the High Court rightly found the same to be suspicious and untrustworthy. PW-1 stated that he reached the hospital at around 11.00-11.15 a.m. on 08.12.2009 to record the dying declaration and claimed to have informed the police about the same.

However, when confronted with his statement under Section 161 Cr.P.C. no such fact was found recorded therein. PW-2 in his examination-in-chief stated that the Tehsildar came to the hospital in the evening of 08.12.2009, though later stated that the dying declaration was recorded at about 11.30 a.m. PW-1 further stated that the Deputy Superintendent of Police was present at the time of recording of the dying declaration and had appended his signature thereto.

10.5. The learned counsel contended that the very presence of police officers at the time of recording the dying declaration casts a serious doubt on its authenticity as ideally no police official ought to be present at that stage. This circumstance, according to the defence, gives rise to a strong suspicion that

the statement was manipulated in connivance with the police and that PW-1 merely signed a statement that had already been prepared.

This submission was sought to be supported by the testimony of PW-10, the Deputy Superintendent of Police, who stated that the statement was recorded by the Tehsildar and signed by him. However, in cross examination, PW-10 admitted that he could not recall whether the statement had been recorded by ASI Santosh Kumar and stated that it was dictated by the Tehsildar word by word after questioning the deceased.

It was argued that this indicates that the statement was, in fact, written by a police official signed by the Deputy Superintendent of Police and subsequently shown as having been recorded by PW-1. The defence further argued that ASI Santosh Kumar though cited as a prosecution witness, was deliberately withheld to conceal the true manner in which the dying declaration came to be recorded. Consequently, the dying declaration (Ext. PW-1/B), according to the defence, is of doubtful credibility and was rightly discarded by the High Court.

10.6. On the issue of motive, the learned counsel submitted that no motive whatsoever was established for the respondent to set the deceased on fire. The allegation that the respondent called the deceased a "Kanjri" even if accepted, could have caused humiliation to the deceased and may have prompted her to take the extreme step of self-immolation. This possibility, it was contended, is consistent with the evidence on record.

10.7. It was lastly submitted that the prosecution failed to prove beyond reasonable doubt that the respondent set the deceased on fire by pouring kerosene upon her. On the contrary, the evidence supports the defence theory of self-immolation arising out of a sense of humiliation. The dying declaration relied upon by the prosecution being suspicious in nature could not, in the absence of reliable corroboration, form the sole basis for conviction. It was argued that the trial Court discarded the defence evidence without cogent reasons, whereas defence evidence is entitled to the same degree of scrutiny as prosecution evidence and cannot be rejected outright.

10.8. Placing reliance on the judgments of this Court in *State of Haryana v. Ram Singh* 5 and *Sanjiv Kumar v. State of Punjab* 6, the learned counsel submitted that defence witnesses must be subjected to careful and critical evaluation and ought not to be discarded merely on the ground that they were produced by the defence.

10.9. Thus, according to the learned counsel, the impugned judgment of acquittal does not call for any interference by this Court and the present criminal appeal deserves to be dismissed.

11. We have carefully considered the submissions made on both sides and perused the materials available on record.

12. In the present case, the appellant - State has challenged the judgment of the High Court acquitting the respondent of the offence punishable under Section 302 IPC. The trial Court earlier found the respondent guilty of committing the offence under Section 302 IPC, holding that he had caused the death of his wife by setting her on fire. Accordingly, the trial Court convicted the respondent and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 50,000/- and in default thereof, to undergo simple imprisonment for a further period of three years.

13. Before advertent to the facts of the present case, it would be apposite to refer to certain decisions delineating the contours of appellate interference with an order of acquittal. In *Sadhu Saran Singh v. State of Uttar Pradesh and others*⁷, this Court, while considering appeals against a judgment of acquittal rendered by the High Court, categorically observed that there is no absolute restriction in law on the appellate court to review and reappraise the entire evidence upon which the order of acquittal is founded. It was further reiterated that where, upon scrutiny, the appellate court finds that the decision of the court below is based on an erroneous appreciation of evidence or is contrary to settled principles of law, interference with such an order becomes not only permissible but also imperative.

13.1. In *Rajesh Prasad v. State of Bihar and another etc.*⁸ (one of us, B.V. Nagarathna, J., was a member of the Bench) this Court, after undertaking a detailed survey of the case law, summarised the circumstances under which in an appeal against an order of acquittal an order of conviction may be passed. The following paragraphs are relevant:

"31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed upto the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising

jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai, AIR 1981 SC 1442]

Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunachalam v. P.S.R. Sadhanantham, AIR 1979 (SC) 1284] An appeal cannot be entertained against an order of acquittal which, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana v. Lakhbir Singh, (1990) CrLJ 2274 (SC)]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse:

a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning; [State of UP v. Shanker, AIR 1981 SC 879]

b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were 'interested' witnesses; [State of UP v. Hakim Singh, AIR 1980 SC 184]

c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207]

d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam v. P.S.R. Sadhanantham, AIR 1979 SC 1284]

e) Where the High Court applied an unrealistic standard of 'implicit proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner. [State of UP v. Ranjha Ram, AIR 1986 SC 1959]

f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. ChampalalPunjaji Shah, AIR 1981 SC 1675] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan v. Satpal Singh, AIR 1990 SC 209].

g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish 'motive.' [State of AP v. Bogam Chandraiah, AIR 1986 SC 1899]

31.2.2. Where acquittal would result is gross miscarriage of justice:

a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of UP v. Pheru Singh, AIR 1989 SC 1205] or based on extenuating circumstances which were purely based in imagination and fantasy. [State of Uttar Pradesh v. Pussu 1983 AIR 867 (SC)]

b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah, AIR 1981 SC 1675] [Source: Durga Das Basu - "The Criminal Procedure Code, 1973" Sixth Edition Vol.II Chapter XXIX]"

13.2. In State of Madhya Pradesh v. Phoolchand Rathore 9, this Court reiterated that it is ordinarily slow to interfere with orders of acquittal. However, it was clarified that where the High Court has adopted a wholly erroneous process of reasoning, misread material evidence, or ignored vital circumstances resulting in a grave miscarriage of injustice, interference is clearly permissible. The following paragraphs are instructive:

"20. Having considered the submissions and perused the record, before we proceed further, it would be useful for us to notice the law as to when it would be appropriate for this Court, exercising its power under Article 136 of the Constitution of India, to reverse an acquittal into a conviction. Normally, the Court is reluctant to interfere with an order of acquittal. But when it appears that the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, acquitted the respondent and the order of

acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice, extraordinary jurisdiction under Article 136 of the Constitution of India may rightfully be exercised (See: State of U.P. v. Sahai & Others, (1982) 1 SCC 352).

21. In State of M.P. & Others v. Paltan Mallah & Others (2005) 3 SCC 169, reiterating the same view it was observed:

"8. This being an appeal against acquittal, this Court would be slow in interfering with the findings of the High Court, unless there is perverse appreciation of the evidence which resulted in serious miscarriage of justice and if the High Court has taken a plausible view this Court would not be justified in interfering with the acquittal passed in favour of the accused and if two views are possible and the High Court had chosen one view which is just and reasonable, then also this Court would be reluctant to interfere with the judgment of the High Court."

22. In a recent decision rendered by this Court in Basheera Begam v. Mohd. Ibrahim & Others, (2020) 11 SCC 174, it was observed:

"190. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be "not guilty"."

13.3. In State of Uttar Pradesh v. Ajmal Beg Etc. 10 , this Court while considering appeals against an order of acquittal passed by the High Court, undertook a comprehensive examination of the scope and ambit of its power in criminal matters. The following paragraphs are opposite in this context:

"15.1. In Surajdeo Mahto v. State of Bihar, (2022) 11 SCC 800, it was held:

"25. It may be highlighted at the outset that although the powers vested in this Court under Article 136 of the Constitution are wide, this Court in a criminal appeal by special leave will ordinarily loath to enter into a fresh reappraisal of evidence and question the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances. While it is difficult to lay down a rule of universal application, it has been affirmed time and again that except where the assessment of the High Court is vitiated by an error of law or procedure, or is based on misreading of evidence, or is inconsistent with the evidence and thus has led to a perverse finding, this Court will refrain from interfering with the findings of the courts below."

15.2. On a reading of various judgments, viz., Ramaniklal Gokaldas v. State of Gujarat, (1976) 1 SCC 6, Nadodi Jayaraman v. State of T.N., 1992 Supp (3) SCC 161, Banwari Ram v. State of U.P. (1998) 9 SCC 3, the generally accepted standard - which it ought to be stated, is not a rule - is that when the Courts below concurred, this Court does not enter into the reappreciation of the evidence, in a criminal case. In the present case, the Courts below have, in fact, arrived at opposite findings and as such, to set the matter to rest either by conviction or acquittal, this Court must analyse the evidence on record."

13.4. Thus, it is vivid that where a judgment of acquittal is found to be manifestly erroneous, perverse, or founded on a misreading of evidence or incorrect application of law, this Court would be justified to set aside the acquittal and record a conviction, albeit exercising such power with circumspection and in exceptional circumstances.

14. Guided by the above principles, we now proceed to examine the facts of the present case. In order to substantiate its case, the prosecution examined twelve witnesses (PW-1 to PW-12) and marked the relevant documents and material objects. The defence, in turn, examined two witnesses (DW-1 and DW-2). A brief and structured appreciation of the oral evidence is as under:

- PW-1 Amar Singh, the Tehsildar-cum-Executive Magistrate, deposed that pursuant to a written direction (Ext. PW-1/A), he proceeded to the Civil Hospital, Chamba on 08.12.2009 at about 11.00-11.15 a.m. for the purpose of recording the statement of Saro Devi. Before recording the statement, he ascertained from the attending doctor that the patient was in a fit condition to make a statement. Thereafter, he recorded her statement, which is on record as Ext. PW-1/B. According to PW1, the deceased stated in clear and unequivocal terms that her husband had sprinkled kerosene oil upon her and set her on fire with a matchstick. She further stated that the respondent used to abuse her by calling her "Kanjri" and had asked her to leave the house. PW-1 deposed that the deceased remained conscious throughout, affixed her thumb impression on the statement and that he appended the requisite certificate regarding her fitness and consciousness. He further stated that PW-10, K.D. Sharma, Deputy Superintendent of Police, was present at that time and signed the statement as a witness. In his cross examination, PW-1 categorically denied the suggestion that the statement was recorded at the instance of the police or that the deceased had not made such a statement.
- PW-2, Ramesh Kumar, the brother of the deceased, deposed that on 07.12.2009 he was informed by PW-3 Yashpal that his sister had suffered burn injuries. He stated that he contacted his sister telephonically on someone else's phone and she told him that she had

been put on fire and sought help. PW-2 further stated that he immediately went to the house of the respondent and found his sister lying on the bed in a seriously burnt condition without clothes on her body. She was alive at that time and was taken by him to the hospital at Chamba. He reported the matter to the police and his statement Ext. PW-12/A was recorded, on the basis of which the FIR came to be registered. PW-2 further stated that on the next day, i.e. 08.12.2009, the Tehsildar came to the hospital and recorded the statement of his sister in his presence. Although he initially stated that the Tehsildar came in the evening, on a question put by the Court he clarified that the statement was recorded at about 11.30 a.m. He also stated that at the time of recording of the statement, the deceased recognised him, his parents and her mother-in-law. In his cross-examination, he denied the suggestion that the deceased was unconscious or incapable of making a statement.

- PW-3, Yashpal corroborated the version of PW-2. He stated that on 07.12.2009 he received a telephonic call from the respondent informing him that Saro Devi had sustained burn injuries and seeking help to save her. He deposed that he immediately conveyed this information to PW-2, Ramesh Kumar.
- PW-4, Om Prakash, a ward member, stated that upon reaching the house of the respondent, he found the deceased crying and shouting "bachao, bachao". He further stated that upon enquiry, the deceased told him that she had herself poured kerosene oil on her. He also deposed that the police seized a kerosene can and a matchbox from the spot and took photographs. He proved the seizure memos Ext. PW-4/A and Ext. PW-4/B and identified the seized articles including the kerosene can, matchbox and burnt clothes, namely, salwar, shirt, bra, dupatta and scalp hair.
- PW-5, Ravindra, the aunt of the respondent stated that the deceased did not say that the respondent had set her on fire but stated that she had herself caught fire.
- PW-6, Pawan Kumar, Head Constable deposed that on 18.12.2009 ASI Mukesh Kumar deposited three sealed parcels with him in the Malkhana, one containing burnt mat, another containing burnt clothes of the deceased and the third containing a matchstick and a plastic can with kerosene oil. He made the requisite entries in the Malkhana register. He further stated that on 19.12.2009 the said parcels were sent to the RFSL through Constable Rakesh Kumar. He also proved the deposit and dispatch of the viscera of the deceased. His testimony remained unchallenged as no cross examination was conducted.
- PW-7, Nazir Hussain, Patwari, stated that he was associated with the investigation and issued the Jamabandi and Tatima at the request of the

- police, which were proved as Ext. PW-17/A and Ext. PW-17/B respectively. His testimony was not subjected to cross-examination.
- PW-8, Gian Chand deposed that on 07.12.2009 at about 09.10 p.m., he received telephonic information that a woman in a burnt condition had been brought to the hospital and that necessary action be taken. He proved the recording and transmission of this information. There was no cross-examination of this witness.
 - PW-9, Kuldeep Singh, ASI deposed that on 08.12.2009 at about 12.05 a.m. he received a rukka through Home Guard Balbir, on the basis of which FIR Ext. PW-9/A was registered. He proved his endorsement Ext. PW-9/B and stated that thereafter the file was handed over to ASI Mukesh Kumar for investigation.
 - PW-10, Shri K.D. Sharma, Deputy Superintendent of Police, supported the testimony of PW-1 and stated that the dying declaration of the deceased was recorded by the Tehsildar and that he signed the same as a witness. In his cross-examination, he denied the suggestion that the dying declaration was fabricated or that it was not recorded by the Tehsildar.
 - PW-11, Dr. Vishal Thakur, Medical Officer, was declared hostile. He initially stated that he did not remember whether any opinion regarding the fitness of the deceased to make a statement was sought or given. However, in the cross-examination by the prosecution, he admitted having issued a written opinion Ext. PW-11/B on 07.12.2009 declaring the patient unfit to make a statement. Though he vacillated in his deposition thereafter, significantly, no question was put to him regarding the subsequent medical opinion recorded on Ext. PW-12/C dated 08.12.2009 declaring the patient fit to make a statement.
 - PW-12, Mukesh Kumar, ASI and Investigating Officer deposed that on 07.12.2009 he moved an application Ext. PW-11/B seeking medical opinion and the doctor declared the patient unfit to make a statement. Based on the statement of PW-2, Ramesh Kumar (Ext. PW-12/A), the FIR (Ext. PW-9/A) was registered. He further stated that on 08.12.2009 he again sought medical opinion vide Ext. PW-12/C and the doctor declared the deceased fit, pursuant to which the Tehsildar recorded her statement. He proved the site plan Ext. PW-12/D, the seizure memos, arrest of the accused, the post-mortem report Ext. PW-12/F and the FSL reports Ext. PX and PY.
 - DW-1, Kamla deposed that the deceased while in the hospital and later at Tanda, told her that she had herself sprinkled kerosene oil and set herself on fire.
 - DW-2, Kamal Kumar, the minor son of the deceased, stated that his grandmother had gone to attend a marriage; that the respondent was working in the kitchen garden; that on learning that his mother had caught fire, the respondent attempted to extinguish the fire with his

hands and suffered burn injuries; and that thereafter his maternal uncle came and took the deceased to the hospital.

14.1. The evidence on record establishes that on 08.12.2009, PW-1 recorded the statement of the deceased in the hospital, after obtaining medical opinion regarding her fitness, which was treated as her dying declaration. PW-2 supported the prosecution version and affirmed that the deceased was conscious and capable of making a statement. PW-10 corroborated the recording of the dying declaration while PW-12 supported the prosecution case through the investigative narrative. PW-4 and PW-5 turned hostile, whereas PW-3, PW-6, PW-7, PW-8 and PW-9 are largely formal witnesses whose testimonies do not directly bear upon the core issue of culpability.

15. Having noticed the evidence of the witnesses and the rival submissions, it is now necessary to evaluate whether the prosecution has succeeded in establishing the guilt of the respondent beyond reasonable doubt.

15.1. As noticed earlier, the prosecution case is that on 07.12.2009, the respondent poured kerosene oil upon his wife, Saro Devi, at their residence and set her ablaze by lighting a matchstick. On hearing her cries, neighbours rushed to the spot and attempted to rescue her; the respondent also participated in extinguishing the fire and sustained minor burn injuries.

The deceased suffered extensive burn injuries and was admitted to the hospital at Chamba. On 08.12.2009, her statement was recorded in the hospital by PW-1, the Tehsildar cum- Executive Magistrate, after obtaining medical opinion regarding her fitness, in the presence of PW-10, the Deputy Superintendent of Police. The deceased ultimately succumbed to her injuries on 15.01.2010 due to septic shock. The prosecution relies upon the said statement as a dying declaration under Section 32(1) of the Indian Evidence Act, 1872.

16. Before examining the evidentiary value of the dying declaration, it is apposite to note the settled legal principles governing dying declarations. Section 32(1) of the Indian Evidence Act renders admissible statements made by a deceased person as to the cause of death or the circumstances of the transaction resulting in death. It is well settled that a dying declaration need not be made in expectation of immediate death; that a conviction under Section 302 IPC can rest solely on a dying declaration if it is found to be voluntary, truthful and reliable; and that corroboration is not a rule of law but one of prudence.

16.1. In *Khushal Rao v. State of Bombay* 11 , this Court laid down the foundational principles governing appreciation of dying declarations. In that

case, the deceased had made three successive dying declarations within a span of two hours, which were to some extent contradictory. However, one aspect remained consistent in all three declarations namely that he had been attacked by two persons, Kushal Rao and Tukaram with swords and spears.

Relying upon this common thread running through the declarations, which was further corroborated by medical evidence disclosing punctured and incised wounds on various parts of the body, this Court held that the declarations could be safely relied upon to convict the accused who had been named therein. While so holding, this Court expounded the principles governing the circumstances under which a dying declaration may be accepted without corroboration. In this regard, Paragraph 16 of the judgment is apposite:

"16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion,

1. that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;
2. that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;
3. that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;
4. that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;
5. that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and
6. that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart

from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

16.2. The above principles were subsequently summarised by this Court in *Smt. Paniben v. State of Gujarat*¹², as follows:

"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (*Munnu Raja v. State of M.P.* [(1976) 3 SCC 104])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (*State of U.P. v. Ram Sagar Yadav* [(1985) 1 SCC 552])

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (*K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618])

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (*Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (*Kake Singh v. State of M.P.* [1981 Supp SCC 25])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (*Ram Manorath v. State of U.P.* [(1981) 2 SCC 654])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455])

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (*Surajdeo Oza v. State of Bihar* [1980 Supp SCC 769])

(ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (*Nanhau Ram v. State of M.P.* [1988 Supp SCC 152])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [(1989) 3 SCC 390])"

16.3. In *Laxman v. State of Maharashtra*¹³, a Constitution Bench held that medical certification of fitness is not an absolute requirement and that the testimony of the Magistrate recording the dying declaration would suffice if the Court is otherwise satisfied about the mental fitness of the declarant.

16.4. In *State of U.P. v. Veerpal*¹⁴, it was reiterated that a conviction can be sustained solely on the basis of a dying declaration even in the absence of corroboration, provided it inspires confidence. In the said case, the deceased in her dying declaration named the person who had set her on fire. Even in the statement recorded under section 161 Cr.P.C., the deceased stated that her father-in-law had attacked her with a stick with the intention to kill her and that as a result, she locked herself in the room and set herself ablaze. Considering the dying declaration of the deceased, which was found to be voluntary, truthful and reliable, this Court set aside the judgment of acquittal passed by the High Court and restored the conviction of the accused for the offences punishable under Section 302 read with Section 34 IPC recorded by the trial Court.

17. In light of the aforesaid principles, the dying declaration in the present case inspires full confidence. It was recorded on 08.12.2009 by PW-1, the Tehsildar, a neutral and independent public officer. Prior to recording the statement, medical opinion regarding the fitness of the deceased was duly obtained. PW-1 categorically stated that the deceased was conscious, oriented and capable of making a statement.

This version stands corroborated by PW-10, the Deputy Superintendent of Police and PW-2, the brother of the deceased, both of whom deposed that the deceased recognised them and responded appropriately to questions. Although PW-11, the Medical Officer vacillated on certain aspects, the dying declaration cannot be discarded on that ground alone. The declaration clearly and unequivocally attributes the act of pouring kerosene oil and igniting the fire to the respondent. It bears the thumb impression of the deceased and was recorded in the presence of senior officers. There is no material on record suggestive of tutoring, coercion or manipulation.

18. The High Court disbelieved the dying declaration primarily on two grounds: (i) an alleged inconsistency with respect to the time at which the statement was recorded; and (ii) a doubt as to whether PW-1 himself recorded the statement or merely dictated it. In our considered opinion, neither ground is sustainable.

18.1. As regards the first aspect, PW-2 initially made a vague reference to the evening; however, upon a clarification sought by the Court, he categorically stated that the statement was recorded at around 11.30 a.m. This clarification aligns with the testimonies of PW-1 and PW-10. Such a minor discrepancy, which stood satisfactorily explained, does not go to the root of the prosecution case, especially when the factum of recording of the dying declaration on 08.12.2009 stands firmly established.

18.2. With regard to the manner of recording, PW-1 clearly deposed that he recorded the statement of the deceased after putting questions to her. PW-10 clarified that the statement was recorded under the supervision and authority of PW-1, who ensured that the answers given by the deceased were correctly reduced into writing. Recording a dying declaration under the supervision of a Magistrate does not render it invalid. No suggestion was put to PW-1 in cross-examination that he did not record the statement or that he abdicated his responsibility. The High Court thus discarded the dying declaration on conjectures not borne out by the evidence.

18.3. In any event, the law does not prescribe any rigid form for recording a dying declaration. So long as the Court is satisfied that the declaration is voluntary, truthful and reliable, hyper-technical objections cannot form the basis for its rejection.

19. In the present case, it is true that the Rukka (FIR) records that the deceased did not initially name the assailant. However, it is settled law that an FIR is not expected to be an encyclopaedia of the entire prosecution case. At that stage, the immediate concern of the family members was the survival of the victim who had sustained nearly 70% burn injuries. Such an omission in the earliest version, in these circumstances, cannot ipso facto discredit the subsequent dying declaration recorded in accordance with law.

20. PW-4 and PW-5 were declared hostile and attempted to attribute oral statements to the deceased suggesting self-immolation. The trial Court rightly rejected their testimony. Their version is essentially hearsay and was never disclosed at the earliest available opportunity. In *Bhajju v. State of Madhya Pradesh*¹⁵, this Court held that the testimony of a hostile witness can be relied upon only to the extent it is corroborated by other reliable evidence. Recently, in *Gurdeep Singh v. State of Punjab*¹⁶, this principle was reiterated. In the present case, no such corroboration exists in respect of the testimony of PW-4 and PW-5, whose statements are unsupported by any independent or reliable evidence on record.

21. The defence witnesses, DW-1 and DW-2, stand on no better footing. DW-1 admitted in cross-examination that she had reached the spot only after the

deceased had already caught fire and was not present at the time of the incident. Her testimony is thus not based on direct knowledge and lacks corroboration. DW-2, the minor son of the deceased, does not claim to have witnessed the act of pouring kerosene or igniting the fire. At best, his testimony indicates that the respondent attempted to extinguish the fire, a circumstance which does not negate or dilute the evidentiary value of the dying declaration. The High Court without a proper appreciation of the probative value of these testimonies, erred in placing reliance upon them to overturn the conviction recorded by the trial Court.

22. The plea of self-immolation on behalf of the respondent does not inspire the confidence of this Court. The alleged conduct of the respondent in attempting to extinguish the fire and sustaining minor burn injuries does not, by itself, exonerate him from culpability. Such conduct can equally be consistent with an attempt to create an appearance of innocence after the commission of the offence. The defence witnesses are either interested or partisan and fail to rebut the consistent and cogent prosecution evidence.

23. Motive assumes significance, primarily in cases based on circumstantial evidence. Where there is direct evidence in the form of a credible and trustworthy dying declaration, the absence of strong proof of motive is not fatal to the prosecution case. This position has been consistently affirmed by this Court in *State of Andhra Pradesh v. Bogam Chandraiah and another*¹⁷, *Dasin Bai @ Shanti Bai v. State of Chhattisgarh*¹⁸, and *Purshottam Chopra v. State (NCT of Delhi)*¹⁹.

In the present case, the evidence on record discloses that the respondent subjected the deceased to frequent quarrels, humiliation and verbal abuse, including branding her a "Kanjri" and repeatedly asking her to leave the matrimonial home. The dying declaration itself refers to persistent matrimonial discord and ill-treatment thereby furnishing a plausible background for the commission of the offence. In any event, the prosecution is not required to establish motive with mathematical precision and failure to conclusively prove motive does not weaken an otherwise reliable and cogent case.

24. Upon an overall appraisal of the evidence, we are satisfied that the dying declaration of the deceased, Saro Devi, is voluntary, truthful and reliable. It was recorded by a competent authority at a time when the deceased was conscious, oriented and capable of making a statement. The minor discrepancies highlighted by the High Court do not create any dent in the credibility of the dying declaration. Therefore, the prosecution has proved beyond reasonable doubt that the respondent committed the offence punishable under Section 302 IPC.

25. The trial Court correctly relied upon the dying declaration and the surrounding circumstances to record the conviction of the respondent. The High Court erred in discarding this crucial piece of evidence on speculative and hyper-technical grounds and in placing undue reliance on the testimonies of hostile and defence witnesses. The judgments relied upon by the respondent do not lay down any absolute proposition that a dying declaration must invariably be discarded in the absence of corroboration. Each case must necessarily turn on its own facts.

26. We are, therefore, of the considered view that the High Court fell into manifest error in reversing the well-reasoned judgment of conviction recorded by the trial Court by re-appreciating the evidence in a manner contrary to the settled principles governing appellate interference.

27. Accordingly, the criminal appeal filed by the appellant - State is allowed. The impugned judgement of acquittal passed by the High Court is set aside. Consequently, the judgement of conviction and order of sentence passed by the trial Court are restored. The respondent shall surrender forthwith to undergo the remaining sentence, failing which the trial Court shall take appropriate steps in accordance with law.

28. Pending application(s), if any, shall stand disposed of.

.....J. [B.V. Nagarathna]

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

New Delhi;

January 15, 2026.

1 Hereinafter referred to as "the High Court"

2 Hereinafter referred to as "the trial Court"

3 For short, "IPC"

4 For short, "Cr.P.C"

5 (2002) 2 SCC 426

6 (2009) 16 SCC 487

7 AIR 2016 SC 1160 : (2016) 4 SCC 357

8 (2022) 3 SCC 471 - 3 Judge Bench

9 2023 SCC OnLine SC 537

10 2025 SCC OnLine SC 2801

11 1958 SCR 552

12 1992 SCC OnLine SC 355 : AIR 1992 SUPREME COURT 1817

13 (2002) 6 SCC 710

14 (2022) 4 SCC 741

15 (2012) 4 SCC 327

16 2025 SCC OnLine SC 1669

17 (1986) 3 SCC 637

18 2015 SCC OnLine SC 107

19 2020 SCC OnLine SC 6

IN THE SUPREME COURT OF INDIA

**Rajasthan Public Service Commission, Ajmer
Vs.**

**Yati Jain & Ors.
[Civil Appeal No. 273 of 2026
arising out of SLP (Civil) No. 20366/2024]**

**Rajasthan Public Service Commission, Ajmer
Vs.**

**Aakriti Saxena & Ors.
[Civil Appeal No. 274 of 2026
arising out of SLP (Civil) No. 20367/2024]**

**Rajasthan Public Service Commission, Ajmer
Vs.**

**Vivek Kumar Meena & Anr.
[Civil Appeal No. 275 of 2026
arising out of SLP (Civil) No. 22025/2024]**

Head Note - In public employment, wait-listed candidates do not acquire any vested or automatic right to appointment once the statutory validity of the waiting list has expired.

When a candidate included in a select/merit list has no indefeasible right of appointment, it would be too far-fetched to think that a candidate in the waiting/reserve list would have a better right than a candidate in the select/merit list.

Followed the five judge bench judgment of **Shankarsan Dash Vs. Union of India, AIR 1991 SC 1612.**

Law relating to waiting list candidates' right

- (i) a waiting list is normally prepared after the select/merit list is drawn;
- (ii) it would include candidates who have qualified the recruitment examination but are not so meritorious such that they can be immediately appointed on the number of vacancies advertised;
- (iii) such list would operate like a merit-based queue for vacancies that remain unfilled after offers of appointment given to the candidates in the select/merit list are not accepted;
- (iv) a waiting list has a limited validity period;
- (v) validity period of a waiting list depends on the recruitment rules and should no such period be mentioned, it can bona fide be operated till the next

advertisement is issued without, however, violating provisions in such rules, if any, requiring recruitment process to be initiated either semi-annually or annually; and

(vi) an opportunity to a candidate in the waiting list for securing appointment arises only when vacancies remain unfilled after the process of appointing candidates from the select/merit list is over and hence, it is regarded as a procedural outcome which is part of a structured process rather than a fortuitous circumstance.

Situations where wait-listed candidate be appointed on vacant post

Broadly, two situations emerge depending upon the reaction of the selected candidate upon receiving an offer of appointment.

Situation 1: The first situation is, he may not accept the offer within the permitted time and the offer gets cancelled. If the waiting list is alive on the date of cancellation, there is no reason why the candidate figuring at the top of such list should not be offered appointment. An acceptable reason has to be provided in support of non-appointment by the appointing authority, because a public employer has no license to act arbitrarily.

Situation 2: The second situation arises when the selected candidate upon receiving an offer of appointment accepts such offer, joins the post but resigns immediately or some time thereafter. This could again result in emergence of two situations. The first is, when the resignation takes place during the validity period of the waiting list. In such a situation, the candidate next in line can legitimately be offered appointment, provided the waiting list is alive. Again, acceptable reason has to be assigned to justify non-appointment. However, upon resignation happening at a point of time when the waiting list is no longer alive, there is nothing much that the candidate can legitimately expect owing to his/her position in the said list.

JUDGMENT

Dipankar Datta, J.

Index

The Appeals

Brief Facts of Civil Appeal arising out of SLP (C) No. 20366/2024

Brief Facts of Civil Appeal arising out of SLP (C) No. 20367/2024

Brief Facts of Civil Appeal arising out of SLP (C) No. 22025/2024

What weighed with the single judges to allow the writ petitions?

Impugned Judgment in all three Civil Appeals:

Submissions on behalf of the appellant

Submissions on behalf of the writ petitioners

Issues:

Analysis:

Issue A - Maintainability of the Special (Writ) Appeals:

Issues B, C and D - on Merits of the rival claims:

A Waiting List

Decision on the claims of the writ petitioners

Why the ratio of the relied upon decisions do not apply

Conclusion

Epilogue

1. Leave granted.

THE APPEALS

2. The three appeals under consideration, presented by the common appellant¹, arise out of separate but similar judgments rendered by a Division Bench of the High Court for Judicature for Rajasthan at Jaipur²; hence we propose to decide the same by this common judgment and order.

3. The lead appeal, arising out of SLP (C) No. 20366/2024, questions the judgment and order dated 2nd May, 2024 whereby the appellant's writ appeal³ was dismissed and the order of a Single Judge dated 23rd August, 2023 allowing the writ petition⁴ of the respondent (Yati Jain) was affirmed.

4. The other two appeals, arising out of SLP (C) No. 20367/2024 and SLP (C) No. 22025/2024, also take exception to the judgments and orders dated 2nd May, 2024 of the Division Bench of the High Court which dismissed the appellant's writ appeals⁵ carried from the judgments and orders dated 2nd May, 2023 and dated 20th October, 2023 allowing the writ petitions⁶ of the respondent (Aakriti Saxena) and the respondent (Vivek Kumar Meena), respectively, and thereby upheld the same.

BRIEF FACTS OF CIVIL APPEAL ARISING OUT OF SLP (C) NO. 20366/2024

5. The dispute stems from an advertisement dated 19th September, 2019 issued by the appellant for recruitment of Junior Legal Officer (JLO) on one hundred fifty-six (156) posts.
6. The result of selection was declared on 15th April, 2021. A provisional reserve list of even date was also prepared by the appellant.
7. Between 7th June 2021 and 10th August 2021, the appellant recommended one hundred fifty-two (152) successful candidates to the Department of Law and Legal Affairs of the State of Rajasthan⁷ for issuance of offers of appointment.
8. On 27th January, 2022, the Appointing Authority informed the appellant that six (6) out of the one hundred fifty-two (152) candidates, who were recommended, had not joined. A request was made to recommend more names from the reserve list to fill up the vacancies.
9. Between 19th April 2022 and 22nd April, 2022, the appellant recommended the names of six (6) candidates from the reserve list, which included 4 candidates with ranks from R-1 to R-4, 1 candidate from General Category-EWS (R-23) and 1 candidate from General Category - PWD (Blind) (R-69). Yati Jain, who figured as R-5, did not figure in the list of recommended candidates.
10. Crestfallen, Yati Jain invoked the writ jurisdiction of the High Court in June, 2022 seeking a direction to the authorities to cancel the appointment of one Shri Vikas Kumar (appointed from the original list), who had not joined despite receiving an offer of appointment, and to instead requisition her name from the reserve list.
11. Meanwhile, on 14th July, 2022, the Appointing Authority cancelled the appointment offered to Shri Vikas Kumar. However, the appellant did not recommend the name of Yati Jain to fill up the post remaining vacant upon cancellation of appointment of the said Vikas Kumar.
12. While the matter stood thus, a total of one hundred forty (140) vacancies on the post of Junior Legal Officer was advertised on 5th July, 2023 for recruitment.
13. The Single Judge of the High Court, while hearing the writ petition of Yati Jain passed an interim order directing that the post which fell vacant due to cancellation of the offer of appointment of Shri Vikas Kumar shall not be filled up.

14. Vide judgment and order dated 23rd August, 2023, the Single Judge allowed the writ petition of Yati Jain by directing the respondents "to pick up name of petitioner from the reserve list to consider her candidature for appointment on the post of JLO fallen vacant due to non joining of Vikas Kumar pursuant to recruitment initiated vide advertisement dated 19-09-2019".

15. Aggrieved by the aforesaid judgment and order, the appellant preferred a writ appeal but remained unsuccessful. The fate of the writ appeal has been noticed hereinabove.

BRIEF FACTS OF CIVIL APPEAL ARISING OUT OF SLP (C) NO. 20367/2024

16. In this appeal, the genesis of the dispute is an advertisement dated 6th July, 2020 issued by the appellant seeking applications for appointment on eleven (11) vacancies in the post of Assistant Statistical Officer (ASO).

17. On 3rd August, 2021, the appellant declared the final result of selection.

18. Recommendation of ten (10) successful candidates was made by the appellant on 13th August, 2021 to the department concerned, i.e. the Agriculture Department, for appointment. It also intimated that seven (7) candidates were placed in the reserve list.

19. One Mr. Sunil Machhera, a candidate who figured in the original merit list and was offered appointment, submitted an application dated 28th February, 2022 to the effect that he was selected for the Indian Statistical Service, 2021 and that he would not join the post of ASO. Having derived knowledge of such fact, Aakriti Saxena submitted an application to select her from the reserve list where she figured as R-1.

20. Notably, the concerned department had not forwarded any requisition to the appellant for recommending a candidate from the reserve list to fill up the vacancy caused because of non-joining by the said Sunil Machhera.

21. Aggrieved by the inaction to consider her application, Aakriti Saxena approached the High Court with a writ petition on 5th April, 2022.

22. Vide the judgment and order dated 2nd May, 2023, the same Single Judge (who allowed the writ petition of Yati Jain) held in favour of Aakriti Saxena and allowed her writ petition by directing the respondents "to pick up the name of petitioner from the reserve list and to consider her candidature for appointment on the post of ASO against the vacant post, available in the

Department due to not joining of Mr. Sunil Machhera the candidate from the main list and shall offer appointment to the petitioner."

23. As noted above, the aggrieved appellant's writ appeal met the same fate as its earlier appeal.

BRIEF FACTS OF CIVIL APPEAL ARISING OUT OF SLP (C) NO. 22025/2024

24. This appeal has its roots in an advertisement dated 18th September, 2013 issued by the appellant seeking applications for appointment on one hundred fifty (150) vacant posts of Junior Legal Officer - 2013-14.

25. Declaration of result was made by the appellant on 23rd November, 2015.

26. A provisional reserve list dated 3rd December, 2015 was also prepared by the appellant.

27. Between 11th December, 2015 and 30th March, 2016, the appellant recommended one hundred forty-seven (147) candidates from the select list to the Appointing Authority for issuance of offers of appointment.

28. On 9th June, 2016, the Appointing Authority requested for recommendations in respect of twenty-seven (27) candidates from the reserve list for appointment.

29. On 8th August, 2016, twenty-seven (27) candidates from the reserve list were recommended by the appellant.

30. Appointment of one recommended candidate, Mr. Raj Kumar Meena, who did not join was cancelled on 9th December, 2016. No requisition was sent by the Appointing Authority to the appellant to recommend any candidate to fill up the vacancy remaining unfilled because of cancellation of appointment of the said Raj Kumar Meena.

31. Vivek Kumar Meena, in the meanwhile, had applied under Article 226 of the Constitution on 17th October, 2016 before the High Court.

32. Vide the judgment and order dated 20th October, 2023, the Single Judge allowed the writ petition of Vivek Kumar Meena "with direction to the respondents to consider the case of the petitioner for appointment on the post of Junior Legal Officer, if he is otherwise found eligible and suitable".

33. Significantly, the Single Judge did not give a positive direction for appointment as in the cases of Yati Jain and Aakriti Saxena; instead, required

the respondents to consider the case of Vivek Kumar Meena subject to suitability.

34. The writ appeal of the appellant, too, did not find favour of the Division Bench.

WHAT WEIGHED WITH THE SINGLE JUDGES TO ALLOW THE WRIT PETITIONS?

35. We have noted the individual operative directions given by the Single Judges while allowing the three writ petitions. While the writ petitions of Yati Jain and Aakriti Saxena were decided by a common Judge, Vivek Kumar Meena's writ petition came to be decided by another Single Judge.

36. In the process of allowing the writ petitions, the Judges presiding over the respective benches appear to have placed reliance on the decisions of this Court in *Manoj Manu v. Union of India*⁸, *State of Jammu and Kashmir v. Sat Pal*⁹, *State of Uttar Pradesh v. Ram Swarup Saroj*¹⁰ and *Purshottam v. Chairman, M.S.E.B.*¹¹ as well as other Decisions of the High Court. However, though the decision of this Court in *State of Bihar v. Amrendra Kumar Mishra*¹², which relied on *State of U.P. v. Harish Chandra*¹³, as well as the decision in *State of Orissa v. Rajkishore Nanda*¹⁴ were cited, the Single Judges preferred not to apply the law laid down therein for reasons which do not appear on a reading of their decisions.

IMPUGNED JUDGMENT IN ALL THREE CIVIL APPEALS:

37. The impugned judgments and orders of dismissal of all three writ appeals apart from being rendered on the same date are verbatim similar, except the case numbers and the recruitment cycles.

38. The Division Bench, inter alia, held as follows:

"the learned Single Judge had clearly dealt with the dates of nonjoining of the selected candidates and has come to the conclusion that the appellant (sic, writ petitioner) had applied to the Court within a period of six months from the date of non-joining of the candidate from the main select list. State has not preferred any appeal against the order and there is no direction to the appellant in the impugned order. Hence, we do not find any force in the present appeal filed by the RPSC and the same is accordingly, dismissed."

39. Considering that the Division Bench held the writ appeals to be without any force since the State of Rajasthan did not appeal against the decisions of the Single Judges, there is admittedly scant reasoning on the aspect of merits. However, we have noted that the Division Bench approved the directions of

the Single Judges on the ground that Yati Jain, Aakriti Saxena and Vivek Kumar Meena¹⁵ had applied to the Court within a period of six months from the date of non-joining of the candidates recommended for appointment from the select list and, thus, there was no reason to interfere. We have also noted that the Division Bench placed reliance on two previous decisions of the High Court in *State of Rajasthan v. Dr. Shri Kishan Joshi & Ors.*¹⁶ and *RPSC v. Dr. Harish Nagpal & Ors.*¹⁷.

40. Though not expressly dismissed on the ground of lack of locus standi, we do find a hint that the "Special Appeals" were not maintainable at the instance of the appellant since the State of Rajasthan had chosen not to appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

41. Appearing on behalf of the appellant, Mr. Samant, learned counsel contended that the Division Bench was wholly incorrect in returning a finding that since the State of Rajasthan had not appealed against the decisions of the Single Judges, the appellant could not have carried the same in appeal. According to him, the appellant is a constitutional functionary having its independent duties and responsibilities. Without a recommendation of the appellant, no candidate either from the select/merit list or from the waiting/reserve list can be appointed. In these cases, without even such recommendation being made by the appellant, relief has been granted which is per se illegal.

That apart, the Singles Judge of the High Court grossly erred in making the directions in their respective decisions which were impugned in the intra-court appeals and the Division Bench equally erred in not correcting such flawed decisions. Reference was made to several decisions of this Court in support of the point that the appellant's appeals were well-nigh maintainable in law and that the law relating to the duties and responsibilities of a Public Service Commission, like the appellant, as well as the law on waiting/reserve list and its operation were not borne in mind.

SUBMISSIONS ON BEHALF OF THE WRIT PETITIONERS

42. Mr. K. Parameshwar, learned senior counsel for Yati Jain, submitted as follows:

(i) the stand taken by the appellant strikes at the very object and purpose of maintaining a waiting/reserve list. A reserve list is not an independent or parallel source of recruitment but is intended to operate as a contingency mechanism if vacancies arising from the same cycle of recruitment remain unfilled owing to non-joining of candidates offered appointment. Its relevance arises only upon the complete utilization of the original select list. It is only

after appointment orders have been issued to the last candidate in the original list that the reserve list can meaningfully commence operation. Any interpretation to the contrary would render the concept of a reserve list illusory.

(ii) Rule 24 of the Rajasthan Rules, 1981 does not admit of a purely literal or mechanical construction. Computing the six-month validity of the reserve list from the date of forwarding or publication of the original list would frustrate the very purpose for which the rule was enacted. Such an interpretation would allow administrative delay on the part of the State to render the reserve list otiose even before the original list is exhausted, resulting in manifest inequity and prejudice to candidates in the reserve list through no fault of theirs.

(iii) In light of the principle of purposive interpretation, Rule 24 must be construed in a manner that advances the object sought to be achieved. The mischief sought to be remedied is the non-filling of vacancies arising due to non-joining of selected candidates within the same recruitment cycle. Consequently, the six-month period for operation of the reserve list can only commence from the date on which the last appointment from the original list is made or from the date on which a vacancy arises on account of non-joining. Any other construction would lead to anomalous and unjust consequences.

(iv) On facts, the interpretation canvassed by the appellant leads to a manifestly absurd result. The appointment order to the last candidate in the original list was issued on 31st December, 2021, several months after the Commission had forwarded its recommendations. Had the appointment been issued only a few weeks later, the reserve list, as computed by the appellant, would have expired on 09th February, 2022 even before the original list was fully exhausted. Such a construction would render the reserve list inoperative prior to the emergence of a non-joining vacancy. Upon cancellation of the said appointment, a vacancy would have arisen with no valid reserve list to draw from. The interpretation that furthers the legislative intent of timely filling of vacancies must therefore prevail. Accordingly, the six-month validity of the reserve list must commence from the date of appointment of the last candidate in the original list, and upon his non-joining, the respondent became eligible for appointment.

(v) The writ petition under Article 226 was clearly maintainable in view of the arbitrary and discriminatory conduct of the appellant. While it is settled law that a candidate does not acquire an indefeasible right to appointment merely by being placed in a select or waiting list, it is equally well settled that the recruiting authority and the State are bound to act in a non-arbitrary manner and cannot treat similarly situated candidates unequally.

(vi) Appellant's conduct is ex facie arbitrary. On the one hand, the appellant asserted that the reserve list had expired on a particular date; on the other hand, it itself forwarded names from the same reserve list to the State Government even thereafter. Such conduct amounts to blowing hot and cold at the same time and offends the guarantee of equality under Article 14. Appellant cannot selectively operate the reserve list for some candidates while denying its benefit to others who stand on the same footing as Yati Jain.

(vii) The role of the State Government in granting repeated extensions to the selected candidate, followed by belated cancellation of the appointment, has further compounded the arbitrariness. This administrative indulgence directly prejudiced Yati Jain as the nonjoining vacancy, which ought to have been promptly recognised, was allowed to persist until the appellant sought to treat the reserve list as having lapsed.

(viii) Public employment constitutes a material resource of the community. Access to such a scarce public resource is regulated through competitive examinations and merit-based selection. To deny appointment to a meritorious candidate in the reserve list against a non-joining vacancy of the same recruitment cycle, on the basis of arbitrary administrative action, results in substantive inequality. Telling such a candidate to await a future recruitment cycle offers no real redress, particularly when the vacancy has already arisen and remains unfilled.

(ix) Sat Pal (supra) was relied on for the proposition that the relevant date for determining the commencement and operation of a reserve list is not the date of preparation of the original list but the date on which the vacancy arises or the last appointment is made.

(x) Appellant lacks institutional locus standi to assail the impugned judgment. The constitutional role of a Public Service Commission is confined to conducting the selection process and recommending candidates in accordance with the requisition made by the State. The determination of vacancies, their filling up, and the interpretation adopted by the appointing authority fall within the exclusive domain of the State Government as employer. Where the State itself has accepted the judicial directions and has chosen not to contest them, the appellant cannot claim to be an aggrieved party.

43. On behalf of Aakriti Saxena and Vivek Kumar Meena, similar submissions have been advanced by Mr. Ronak Karanpuria, learned counsel.

(i) Appellant's contention that the reserve list had lapsed after six months is belied by the conduct of the authorities themselves. Even after the alleged expiry of the waiting list, appointments were made, cancellations effected,

and vacancies acknowledged by the State Government. Affidavits filed by the State confirmed that several posts continued to remain vacant owing to non-joining of candidates.

(ii) The limitation attached to the operation of a waiting/reserve list cannot be applied mechanically in a situation where vacancies arise due to non-joining and the appointing authority itself continues to treat the recruitment process as subsisting. Respondents - Aakriti Saxena and Vivek Kumar Meena - cannot be made to suffer for administrative delay or indecision. Had the appointments of the candidates who refused to accept the offers were promptly cancelled, the vacancies relatable to the respondents - Aakriti Saxena and Vivek Kumar Meena - would have arisen well within the prescribed period.

(iii) Respondents - Aakriti Saxena and Vivek Kumar Meena - had submitted representations and invoked legal remedies within time and that their claims cannot be defeated by the inaction of the recruiting agency. The waiting/reserve list remained alive both de facto and de jure, as evidenced by continued recruitment-related actions undertaken by the State and the appellant.

(iv) The role of a Public Service Commission is recommendatory in nature. Once the State Government, being the appointing authority, repeatedly directed the appellant by communications dated 28th June, 2024, 25th July, 2024, and 02nd August, 2024 to process the respondent's appointment, the appellant could not sit in appeal over such directions.

(v) On equitable considerations, learned counsel submitted that Respondent - Vivek Kumar Meena - has been litigating continuously since 2016 and has now crossed the upper age threshold, entirely due to the pendency of proceedings and not on account of any fault on his part.

(vi) Respondent - Aakriti Saxena - had approached the writ court with due diligence and at the earliest available opportunity. The selected candidate having declined to join on 28th February, 2022, the respondent - Aakriti Saxena - being next in order of merit in the General Category reserve list, submitted representations seeking appointment on 29th March, 2022. The writ petition was thereafter filed on 05th April, 2022, i.e., within a month of the vacancy having been confirmed.

(vii) The orders of the Single Judges on the writ petitions of the respondents - Aakriti Saxena and Vivek Kumar Meena - are well considered and well written; hence, the same were upheld by the Division Bench; and, there being

no infirmity in the orders passed by the Division Bench, no interference is called for.

ISSUES:

44. Having heard Mr. Samant, Mr. Parameshwar, and Mr. Karanpuria, we are of the considered opinion that the following issues emerge for our decision:

(i) Whether the appellant is a person aggrieved having locus standi to maintain the writ appeals notwithstanding that the State of Rajasthan had not challenged the directions given by the Single Judges by preferring appeals?

(ii) What is a waiting list? When precisely does the right of a wait-listed candidate to be considered for appointment accrue? On facts of these appeals, did the right (if, at all) accrue on and from the date of refusal to accept the offer by the candidate(s) who were offered appointment or from any prior date?

(iii) If no requisition is received by the appellant from the Appointing Authority or the employer, as the case may be, to fill up a vacancy (resulting from non-joining by a candidate offered appointment) by appointing a candidate figuring in the reserve/waiting list, could the High Court have issued a mandamus to "pick up" the name from the waiting/reserve list for appointment or even to direct consideration of the candidature of a candidate from the waiting/reserve list?

(iv) Whether the impugned judgments and orders of the Division Bench of the High Court, as well as those rendered by the Single Judges, sustainable in law?

ANALYSIS:

ISSUE A - MAINTAINABILITY OF THE SPECIAL (WRIT) APPEALS:

45. An appeal is always a creature of statute. We need not burden our judgment with precedents on this point of law.

46. Suffice it to note, the right of appeal is the right of reaching out to a superior court, invoking its authority to have a relook at the facts vis-à-vis the law applicable and to rectify the errors committed by a court inferior in the hierarchy. It is a very valuable right. Therefore, when the statute confers such a right of appeal, it is open to the person aggrieved to seek correction of the errors committed by the inferior court.

47. While writ appeals are creatures of statutes as well, it occupies a distinctive position within the judicial landscape within a high court. It is an intra-court appeal where a division bench of two judges may sit in appeal over the decision of a colleague single judge.

48. We may profitably refer to *Shalini Shyam Shetty v. Rajendra Shankar Patil*¹⁸ where this Court traced the history of writs in the Indian context. It was held:

24. Before the coming of the Constitution on 26-1-1950, no court in India except three High Courts of Calcutta, Bombay and Madras could issue the writs, that too within their original jurisdiction. Prior to Article 226 of the Constitution, under Section 45 of the Specific Relief Act, the power to issue an order in the nature of mandamus was there. This power of the Courts to issue writs was very truncated and the position has been summarised in the Law of Writs by V.G. Ramachandran, Vol. 1 (Eastern Book Company). At p. 12, the learned author observed:

"The power to issue writs was limited to three High Courts. The other High Courts in India, however, were created by the Crown under Section 16 of the High Courts Act, 1861 but they had no such power. It is necessary to mention that under Section 45 of the Specific Relief Act, 1877, even the High Courts of Madras, Calcutta and Bombay could not issue the writs of prohibition and certiorari or an order outside the local limits of their original civil jurisdiction."

25. The power to issue writs underwent a sea change with the coming of the Constitution from 26-1-1950. Now writs can be issued by the High Courts only under Article 226 of the Constitution and by the Supreme Court only under Article 32 of the Constitution.

49. While the exercise of writs is a power expressly conferred on the high courts by the Constitution, writ appellate jurisdiction is not. Such jurisdiction is conferred either by the Letters Patent or by the statutes relating to the high courts concerned. The power exercised by the high courts under Article 226 is plenary, in the sense that the power is wide and expansive; but it is not unlimited, since such power has to be exercised on certain well-established and well-recognised principles. After all, it is a discretionary remedy. It is the responsibility of the high courts as custodians of the Constitution to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good.

50. We may now understand the character as well as the nature of power exercisable by an appellate bench of a high court, comprising of two or more

judges, when it derives authority either from the Letters Patent or the relevant statute to sit in appeal carried from an order passed by a judge of the same high court in exercise of writ jurisdiction, sitting singly, both on facts as well as law.

It is the internal working of the high court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a "Court of Correction", corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. We draw guidance for this settled legal proposition from the decision of this Court in *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple*¹⁹.

51. When and how such an appellate power in the intra-court jurisdiction may be exercised? In our considered opinion, exercise of intra-court appellate jurisdiction could be called for if the judgment/order under challenge is palpably erroneous or suffers from perversity; but, it may not be exercised when two views are possible on a given set of facts and one of two views has been taken which is a plausible view.

52. We may only note that in the context of whether a division bench in an intra-court appeal could have remitted a writ petition to the single judge for moulding the relief, this Court expressed its reservations in *Roma Sonkar v. M.P. State Public Service Commission*²⁰. It was, however, held in such connection as follows:

3. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench.

53. With specific reference to the State of Rajasthan, Section 18 of the Rajasthan High Court Ordinance, 1949 provides for an appeal to the High Court from judgments of Judges of the High Court itself. This, read in conjunction with the Rules of the High Court of Judicature for Rajasthan, 1952, provides for a "Special Appeal" before a Division Bench.

54. However, neither the Statute nor the Rules guide us in determining who may apply for such a "Special Appeal" or a writ appeal.

55. In our considered opinion, the Division Bench has erred in its reasoning. It was of the opinion that since the State has not preferred an appeal and there being no positive direction to the appellant which it was required to comply,

the Division Bench did "not find any force" in the present appeals. This is in the teeth of various decisions of this Court which we propose to discuss below.

56. First, who can appeal is a fundamental question that we must answer to put this lis to rest.

57. A writ appeal is a continuation of the original writ petition. One may make a profitable reference to the decision in Committee of Management, Arya Nagar Inter College v. Sree Kumar Tiwary²¹ in this regard.

58. Drawing inspiration from the aforesaid proposition, we can conclude that anyone who may file a writ petition would have the locus standi to file a writ appeal albeit with some caveats.

59. Any discussion on the topic of a "person aggrieved" would be incomplete without reference to the landmark decision of this Court in Bar Council of Maharashtra v. M.V. Dabholkar²². There, the meaning of "person aggrieved" as appearing in the Advocates Act, 1961 was decided by ruling as follows:

31. The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary proceedings before the Disciplinary Committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a Disciplinary Committee is entrusted with such inquiry.

Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another Disciplinary Committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a Disciplinary Committee can only be corrected by appeals as provided under the Act.

When the Bar Council initiates proceedings by referring cases of misconduct to Disciplinary Committee, the Bar Council in the performance of its functions under the Act is interested in the "task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar

Council is vitally" concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.

60. We may at this stage also seek guidance from the eloquent words of Hon'ble R.S. Sarkaria, J. (as His Lordship then was) while speaking for this Court in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed*²³. The instructive passage reads as follows:

13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.

34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see *State of Orissa v. Madan Gopal Rungta* [1951 SCC 1024 : AIR 1952 SC 12 : 1952 SCR 28] ; *Calcutta Gas Co. v. State of W.B.* [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1] ; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa* [(1967) 1 SCA 413] ; *Gadde Venkateswara Rao v. Government of A.P.* [AIR 1966 SC 828 : (1966) 2 SCR 172] ; *State of Orissa v. Rajasaheb Chandanmall* [(1973) 3 SCC 739] ; *Satyanarayana Sinha Dr v. S. Lal & Co.* [(1973) 2 SCC 696 : (1973) SCC (Cri) 1002]).

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest

in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?"

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to

hang on. Therefore he is not a "person aggrieved" and has no locus standi to challenge the grant of the no-objection certificate.

(emphasis ours)

61. The question as to whether the Andhra Pradesh Public Service Commission had the locus standi to file a special leave petition before this Court, in the given facts, came up for consideration in *A.P. Public Service Commission v. Balaji Badhavath*²⁴. This Court had the occasion to observe thus:

46. So far as the question of locus standi of the appellant to file this special leave petition is concerned, we are of the opinion that it has the locus standi. The High Court not only has set aside GOMs dated 31-12-1997 but it has also set aside Notification dated 27-12-2007. If the High Court's judgment is to be implemented, a fresh selection procedure has to be undertaken by the appellant. Furthermore, in terms of Order 41 Rule 4 of the Code of Civil Procedure, the appellate court, in the event, finds merit in the appeal at the instance of one of the respondents may set aside the entire judgment although another respondent had not appealed thereagainst. The Commission had undertaken the task of holding preliminary examination. It had followed the procedure laid down in its notification issued in this behalf and the GOMs issued by the State. It, therefore, could maintain a writ petition.

62. *Office of the Odisha Lokayukta v. Dr. Pradeep Kumar Panigrahi and Ors.*²⁵ is another decision where this Court was called upon to decide whether the Lokayukta, who was responsible for conducting the preliminary inquiry and which was interfered with by the High Court, had the locus standi to file a special leave petition before this Court. The relevant passage therefrom reads as follows:

39. The further objection raised by the respondents is in reference to the locus standi of the appellant in filing appeal in this Court and in support of his submission, counsel placed reliance on the judgments of this Court in *National Commission for Women v. State of Delhi* [(2010) 12 SCC 599] and *M.S. Kazi v. Muslim Education Society* [(2016) 9 SCC 263].

In our considered view, the submission is wholly bereft of merit for the reason that the action of the appellant initiated pursuant to order dated 11th December, 2020 for conducting a preliminary inquiry in exercise of powers conferred under Section 20(1) of the Act, 2014 was a subject matter of challenge before the High Court at the instance of respondent no. 1 and if that is being interfered with and the action of the appellant is being set aside under the impugned judgment dated 3rd February, 2021, the appellant, indeed, was

a person aggrieved and has a locus standi to question the action interfered with by the Division Bench of the High Court and the only remedy available with the appellant is to question the order of the Division Bench of the High Court by filing an special leave petition in this Court under Article 136 of the Constitution.

63. Moving to a slightly different context, we notice in *Jatan Kumar Golcha v. Golcha Properties (P) Ltd.*²⁶ that this Court held it to be well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.

64. In *State of Punjab v. Amar Singh*²⁷, a three-judge Bench of this Court speaking on the general rule as to who can appeal held as follows:

29. The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellate court "if he would be prejudicially affected by the judgment and if it would be binding on him as res judicata under Explanation 6 to Section 11". (see *Mulla: Civil Procedure Code*, 13th Edn., Vol. 1, p. 421).

65. Taking a cue from the aforesaid precedents, to our mind, it is clear that a person aggrieved having locus standi to prefer an appeal would be one who is directly affected or impacted by a judgment, order or decision even though the same does not directly require him to do something, or, one, who being a party to a suit, is adversely affected by the decree. To file an appeal, such a person typically needs to show affectation of a legal right or interest, or that he is likely to suffer a legal wrong as a result of its impact. A mere interest or concern in the subject matter decided by the original court would not be enough.

66. It is also relevant to consider whether the party seeking to appeal was a party to the proceedings before the original court. If he was and a decision is given jeopardising his interest, he would necessarily have a right of carrying such decision to be tested in an appeal. It is only in exceptional cases that a party-respondent may be told off at the gates by the appellate court on the ground of lack of affectation of right or interest.

67. Premised on the above discussion, as a general proposition, we summarise the conditions that need to be satisfied before a person is entitled to maintain an appeal. These are:

1) that the appealing party has been a party in the proceedings from which the appeal has arisen;

2) that the definitive and conclusive ruling of the High Court on the rights of the parties in dispute is the subject of the appeal; and

3) that he is a 'person aggrieved', that is, a party who has been adversely affected by the determination.

68. Condition (1) *supra* may, however, stand relaxed in given cases as emphasised in *Jatan Kumar Golcha (supra)* and *Amar Singh (supra)*.

69. Applying the aforesaid principles, we now propose to consider whether the appellant had locus standi to appeal notwithstanding that the State of Rajasthan had chosen not to do so.

70. Article 315 of the Constitution lays down that there shall be a Public Service Commission for the Union and one for each State. Appellant, therefore, owes its existence to the Constitution. Under Article 320, it is inter alia the duty of the appellant to conduct examinations for appointments to the services of the State of Rajasthan. Also, the appellant has to be consulted by the State of Rajasthan on all matters referred to in clause (3) of Article 320 and it is the duty of the appellant to advise the State on any matter so referred.

71. The method and manner of conducting the recruitment process and other ancillary matters are generally provided by recruitment rules, which in these appeals are the Rajasthan Legal State and Subordinate Services Rules, 1981²⁸ and the Rajasthan Agriculture Subordinate Service Rules, 1978²⁹. As of necessity, the relevant rule has to be looked into for determining as to when and to what extent any candidate figuring in the waiting/reserve list drawn up by the appellant acquires a right to claim appointment based on his position in such list.

72. Our discussion ought to be taken forward by noticing a passage from the decision of a three-Judge Bench in *Jatinder Kumar v. State of Punjab*³⁰, where this Court held:

12. The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission.

The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so.

Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission.

It cannot disturb the order of merit according to its own sweet will except for other good reasons viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus.

73. What stands out from the above passage is that although the recommendations made by a Public Service Commission are not binding and hence, may or may not be accepted by the Government of the State, one thing is clear: the latter has no authority to appoint anyone not recommended by the former.

74. Regard being had to the nature of duties and functions of the appellant and that the State could only appoint such candidates as are recommended by the appellant, no claim for consideration/appointment could have been possible without the writ petitioners being recommended by the appellant and through a process by which it is waylaid. If a direction to the State violates a certain statutory rule, why should the appellant not be considered an aggrieved person? Concomitantly, in our considered opinion, a direction to the State of Rajasthan to appoint a candidate from the waiting list who has not been recommended for appointment does give the appellant a legal peg for a justiciable claim to hang on.

75. In any event, there is one other feature that we have noticed from the orders of the Single Judges. Ultimately, while disposing of the writ petitions, the Single Judges did not direct the State of Rajasthan and/or its officers only to implement its orders; on the contrary, directions were given to the "respondents" in the writ petition to act in a particular manner. Appellant being one of such "respondents" and if the State of Rajasthan, acting in compliance with the orders had requisitioned the names of the writ petitioners from the appellant and the appellant were to refuse to make any recommendation on the ground that the waiting list has lapsed or on any other valid ground, it would be a clear case of contempt. Thus, the Division Bench fell in error in holding that the directions of the Single Judges were not for the appellant before us to comply.

76. We are, therefore, constrained to hold that the appellant did fit in the category of a person "aggrieved" by the orders of the Single Judges of the High Court and did have the locus standi to approach the Division Bench for the reasons discussed above.

77. The writ petitioners have relied on the decision in *A.P. Public Service Commission v. P. Chandra Mouleesware Reddy*³¹ to contend that the appellant has no locus standi since there has been no direction to conduct a fresh selection process. We find that this decision is not applicable in the present case. In that case, only ten (10) of the nineteen (19) proposed vacancies were filled due to the mistake of the State which it accepted. It did not challenge the order of the competent Tribunal. As the order of the Tribunal was not found to be unjustified, the High Court of Andhra Pradesh refused to interfere therewith. Since the Public Service Commission was not required to carry out any fresh exercise to comply with the direction of the Tribunal and since the State had already accepted its mistake, observations were made in such context that it did not have locus standi.

78. In *P. Chandra Mouleesware Reddy* (supra), it has not been laid down that only when a Public Service Commission is directed to conduct a fresh selection process, it would acquire the locus standi to appeal against such direction. The present appeals do not present a comparable situation and hence, the relied on decision is of no help to the writ petitioners.

79. The question of maintainability of the "Special Appeals" before the Division Bench is, thus, answered in favour of the appellant.

ISSUES B, C AND D - ON MERITS OF THE RIVAL CLAIMS:

80. These issues are addressed together since they are inter-related.

A WAITING LIST

81. What is a waiting list? What is the extent of right that could be claimed by a wait-listed candidate for securing an appointment? For answering this question, one may immediately read the decision of a three-Judge Bench of this Court in Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat³². Relevant extracts from it read as follows:

8. Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared.

For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc.

It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join.

But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the

contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound.

This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.

(emphasis ours)

82. Gujarat State Dy. Executive Engineers' Assn. (supra) was cited with approval in *Surinder Singh v. State of Punjab*³³. This Court observed, and we say rightly, that waiting lists are not perennial sources of recruitment and that candidates on the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected does not join and the waiting list is still operative.

83. In *Rakhi Roy v. High Court of Delhi*³⁴, once again this Court reiterated that a waiting list cannot be used as a reservoir to fill up vacancies which come into existence after issuance of notification / advertisement.

84. The rationale behind preparing fresh select lists and not operating stale lists was considered by this Court in *M.P. Electricity Board v. Virendra Kumar Sharma*³⁵. While allowing the appeal carried by the employer from the decision of the High Court of Madhya Pradesh, this Court had this to say:

5. Any scheme for selection will depend upon the terms on which selections are made. In the present case, there is a scheme as provided in the circular dated 9-12-1968 and that circular also provided for the panel to be valid/current for a particular period namely one year. After that period, the list would lapse and fresh panel has to be prepared. If that is the scheme, none of the decisions relied upon by the learned counsel for the respondent would be of any assistance. The High Court is also not justified in relying upon the

decision in Shivsingh case [(1988) 1 MPWN 24] inasmuch as the scheme of appointment was entirely different.

Moreover the validity/currency of panel was for a particular period; that is a salutary principle, behind that Rule so that after the selections are made and appointments to be made may take long time, it is possible that new candidates may have become available who are better or more qualified than those selected, and if they are appointed it would be in the best interests of the institution. Hence we do not think there was any justification for the High Court to have interfered in the matter and directed appointment of the respondent. The order made by the High Court is set aside and the writ petition filed by the respondent shall stand dismissed.

(emphasis ours)

85. A similar case such as the present is the one decided by this Court in U.P. Public Service Commission v. Surendra Kumar³⁶. It would be useful to reproduce below what was ruled by this Court:

12. Having heard the learned counsel on both sides, we have perused the order dated 18-5-2018 passed by the High Court and other material placed on record. For the purpose of operating wait-list, the Government of Uttar Pradesh has issued instructions from time to time. It is clear from the various government orders that wait-list period is valid only for a period of one year. Though requisition is made for making selection for 178 number of posts, but the appellant Commission, after declaring results of the examination, has made initial recommendation for substantive number of posts i.e. 156 posts vide letter dated 12-8-2010. It appears that the said list is prepared by including candidates who have submitted all the requisite documents within the period prescribed.

Further recommendations were also made, but there is no reason for not computing the period of one year from 12-8-2010. When recommendations were made for substantive number of posts on 12-8-2010, we are of the view that period of one year for operating wait-list is to be computed from 12-8-2010 but not from the last recommendation made for one post, vide letter dated 28-8-2012. The reason for restricting 156 names in the initial recommendation vide letter dated 12-8-2010, is explained in Para 11 of the counter-affidavit filed before the High Court.

(emphasis ours)

86. The key aspects of a waiting list, in relation to service law disputes, that can be deduced from the aforesaid decisions is this:

- (i) a waiting list is normally prepared after the select/merit list is drawn;
- (ii) it would include candidates who have qualified the recruitment examination but are not so meritorious such that they can be immediately appointed on the number of vacancies advertised;
- (iii) such list would operate like a merit-based queue for vacancies that remain unfilled after offers of appointment given to the candidates in the select/merit list are not accepted;
- (iv) a waiting list has a limited validity period;
- (v) validity period of a waiting list depends on the recruitment rules and should no such period be mentioned, it can bona fide be operated till the next advertisement is issued without, however, violating provisions in such rules, if any, requiring recruitment process to be initiated either semi-annually or annually; and
- (vi) an opportunity to a candidate in the waiting list for securing appointment arises only when vacancies remain unfilled after the process of appointing candidates from the select/merit list is over and hence, it is regarded as a procedural outcome which is part of a structured process rather than a fortuitous circumstance.

87. Quite often, appointing authorities have to justify in course of proceedings before a court of law its refusal to appoint candidates figuring in the waiting list. Broadly, two situations emerge depending upon the reaction of the selected candidate upon receiving an offer of appointment. The first situation is, he may not accept the offer within the permitted time and the offer gets cancelled. If the waiting list is alive on the date of cancellation, there is no reason why the candidate figuring at the top of such list should not be offered appointment. An acceptable reason has to be provided in support of non-appointment by the appointing authority, because a public employer has no license to act arbitrarily.

The second situation arises when the selected candidate upon receiving an offer of appointment accepts such offer, joins the post but resigns immediately or some time thereafter. This could again result in emergence of two situations. The first is, when the resignation takes place during the validity period of the waiting list. In such a situation, the candidate next in line can legitimately be offered appointment, provided the waiting list is alive. Again, acceptable reason has to be assigned to justify non-appointment. However, upon resignation happening at a point of time when the waiting list is no longer alive, there is nothing much that the candidate can legitimately expect owing to his/her position in the said list.

88. The canvas would be a bit different when the selection of candidates and drawing up of the select/merit list followed by preparation of the waiting list is by a Public Service Commission. Here, the recommendations have to be preceded by requisitions. Even though cancellation of appointment could have been effected during the period the waiting list is alive, unless a requisition is made by the appointing authority, such a Commission may not be bound to recommend any candidate from the waiting list. Each case, therefore, has to be adjudicated based on the peculiar facts as well as the governing rules.

89. Having noticed what a waiting list means and to what extent a waitlisted candidate has any right, courts have to bear in mind the law laid down by the Constitution Bench of this Court in *Shankarsan Dash v. Union of India*³⁷ that a candidate included in a select/merit list does not have an indefeasible right of appointment even if a vacancy exists.

90. On a conspectus of the decisions of this Court governing the field of a select/merit list as well as waiting list, as understood in service jurisprudence, the law seems to be well-settled that when a candidate included in a select/merit list has no indefeasible right of appointment, it would be too far-fetched to think that a candidate in the waiting/reserve list would have a better right than a candidate in the select/merit list.

We, thus, hold that a wait-listed candidate has no right of appointment, much less an indefeasible right, except when the governing recruitment rules permit a small window authorizing appointments therefrom in the specified exceptional circumstances and the appointing authority, for no good reason, denies or refuses an appointment or the reason assigned therefor is found to be arbitrary and/or discriminatory and that too, when the waiting list has not expired. What should be given primacy, therefore, is the nature and extent of right prescribed by the relevant rules.

DECISION ON THE CLAIMS OF THE WRIT PETITIONERS

91. Whether or not a claim of a candidate, who figures in a waiting/reserve list ought to succeed or not must be tested bearing in mind the facts of each particular case. Much depends on the date when the select/merit list is drawn up together with the date of preparation of the waiting list, the date on which names are requisitioned from a Public Service Commission by the appointing authority of the State and the period of validity of such list, as ordained by the relevant recruitment rules.

92. This segment of our analysis must begin with noticing the relevant rules framed by the State of Rajasthan. Rule 24 of the Rajasthan Rules, 1981 and

Rule 21 of the Rajasthan Agriculture Rules, 1978 are identically worded. We quote Rule 21 below:

21. Recommendations of the Commission.- The commission shall prepare a list of the candidate whom they consider suitable for appointment to the posts concerned and arranged in the order of merit. The Commission shall forward the list to the Appointing Authority:

Provided that the Commission may to the extent of 50% of the advertised vacancies, keep names of suitable candidate on the reserve list. The commission may, on requisition, recommend the names of such candidates in the order of merit to the appointing authority within six months from the date on which the original list is forwarded by the Commission to the Appointing Authority.

(emphasis ours)

93. Although neither Rule 24 nor Rule 21 in so many words stipulate that the life of the reserve list would expire six months after the date the original list is forwarded by the appellant to the appointing authority, it does not confer any power on the appellant to forward the list thereafter either. Meaningfully construed, particularly having regard to user of the modal verb "may" twice in the same provision, we hold that not only is it the discretion of the appellant to prepare a reserve list, it is also in its discretion to forward names of candidates from the reserve list upon receiving a requisition in that behalf. However, exercise of the discretion not to forward names of candidates from the reserve list has to be supported by valid reasons.

94. It is noted that the Department of Personnel, Government of Rajasthan, had issued a series of circulars clarifying the legal position governing the operation of reserve lists in direct recruitment through the Rajasthan Public Service Commission.

(i) By circular dated 19th January 2001, the Department clarified that a reserve list, permissible up to 50% of the advertised vacancies, is not an independent source of recruitment but is confined to the selection for which it is prepared, operable only to meet contingencies of non-joining of selected candidates and strictly within six months from the date on which the original recommendation is forwarded by the Commission to the Government. It was further clarified that vacancies arising after a selected candidate has joined and subsequently resigned are future vacancies and that, upon initiation of a fresh recruitment process, the earlier selection and reserve list lapse.

(ii) By a subsequent circular dated 13th January 2016, the Department clarified that where the original recommendation is forwarded in parts or

upon revision, the six-month period for operating the reserve list shall be reckoned from the date of dispatch of the last part of the original recommendation, provided the recruitment process has not attained finality or the resultant vacancies have not been carried forward into a subsequent recruitment cycle. In such cases, the six-month period would similarly commence from the date of transmission of the final recommendation.

(iii) Finally, the Department of Personnel, by its circular dated 26th April 2018, clarified that for the purposes of determining when a fresh recruitment process commences, the date of holding of the next examination shall be treated as the date of initiation of the fresh process. Consequently, once the examination for the subsequent recruitment is held, the earlier selection process and its reserve list stand lapsed by operation of policy.

95. Law is well settled that executive instructions may supplement, but not supplant, statutory rules and should be subservient to statutory provisions. A profitable reference may be made to the decision of this Court in *Union of India v. Ashok Kumar Aggarwal*³⁸ in this regard.

96. In any event, these are clarificatory circulars which cannot override the statutory rules.

97. It would not be inapt, at this stage, to recapitulate the bare facts leading to invocation of the writ jurisdiction of the High Court by the writ petitioners.

(i) Yati Jain invoked the writ jurisdiction sometime in June, 2022. However, it is noticed that upon declaration of result of selection on 15th April, 2021 and preparation of a provisional reserve list on the same date, names of one hundred fifty-two (152) candidates from the original list was forwarded on 7th June, 2021 to the Appointing Authority. The last recommendation was made by the appellant on 10th August, 2021. In light of a meaningful construction of Rule 24, bearing in mind the decision in *Surendra Kumar (supra)*, the reserve list could remain alive and effective for six months from 7th June, 2021, i.e., till 6th December, 2021.

If an extended life were to be given, at the highest, the reserve list (if six months were counted from 10th August, 2021) could remain alive till 6th February, 2022. Thus, no candidate in the reserve list, in view of Rule 24, could legitimately claim a right to be recommended for appointment beyond the statutorily prescribed limit of six months. However, merely because one candidate did not join service and his offer of appointment was cancelled on 14th July, 2022, such cancellation could not have afforded any ground for any candidate from the waiting/reserve list to claim that he/she ought to be recommended as if such list continued to remain alive on the said date. The

writ petition of Yati Jain was, therefore, presented at a period of time when the reserve list was no longer valid.

Notably, candidates figuring in the reserve list were recommended, between 19th April, 2022 and 22nd April, 2022 pursuant to requisition dated 27th January, 2022. Requisition from the Appointing Authority to recommend names from the reserve list having been received by the appellant within six months from 10th August, 2021, the delay on the part of the appellant to recommend names of candidates from the waiting/reserve list could not have operated to their detriment. Yati Jain, thus, had no right in law to claim that her name should have been recommended by the appellant once the appointment of the said Vikas Kumar was cancelled on 14th July, 2022. The High Court, in our opinion, was, therefore, completely in error in counting the period of six months for validity of the reserve list from 22nd April, 2022.

(ii) Insofar as Aakriti Saxena is concerned, it is observed that result of selection was declared on 3rd August, 2021 and recommendation of candidates figuring in the select/merit list was made by the appellant on 13th August, 2021. She approached the writ court on 5th April, 2022. The six-month validity period of the reserve list, therefore, ought to have been counted from 13th August, 2021 and not from the date of cancellation of appointment offered to the said Sunil Machhera. As noted above, the concerned department did not even requisition any name from the appellant for filling up the vacancy caused by reason of cancellation of appointment of the said Sunil Machhera. Here too, the Single Judge erred in counting the period of six months from the date of cancellation of appointment of the said Sunil Machhera.

(iii) Vivek Kumar Meena also does not stand on substantially firmer ground. Initially, names were recommended by the appellant between 11th December, 2015 and 30th March, 2016. Pursuant to requisition dated 9th June, 2016 received from the Appointing Authority, candidates from the waiting/reserve list were recommended on 8th August, 2016. It is true that in terms of Rule 24 of the Rajasthan Rules, 1981, the reserve list had expired and outlived its utility on 8th August, 2016.

In any event, names from such expired list were recommended which is sought to be made the sheet anchor of the claim of Vivek Kumar Meena for appointment, who presented his writ petition on 17th October, 2016. The Single Judge, while disposing of the writ petition of Vivek Kumar Meena, found himself bound by the decisions of Division Benches of the High Court but was cautious in not directing that the name of Vivek Kumar Meena be "picked up" from the waiting/reserve list realising that the same had expired long back; hence, a direction for consideration of his candidature followed

swayed more by recommendations made from the expired list. This was plainly not permissible.

98. Claim of parity having been urged pointing to the six (6) and twenty seven (27) candidates who were recommended from the reserve list beyond expiry of its life, we need to consider the same now. Such a claim is not sustainable for two reasons: (i) no challenge has been laid to their recommendations and consequent appointments and (ii) no person can claim "negative equality" under the Indian Constitution.

99. The immortal words of B.P. Jeevan Reddy, J. (as His Lordship then was) in the decision in Chandigarh Administration v. Jagjit Singh³⁹ still echoes to answer the claim raised by the writ petitioners. The relevant passage reads as follows:

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner.

If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again.

The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest.

It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief.

Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise.

Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)

(emphasis in original)

100. A profitable reference may also be made to the decision in *State of Odisha v. Anup Kumar Senapati*⁴⁰, wherein it was held as follows:

39. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid have been released under the 1994 Order as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed.

(emphasis ours)

101. Perpetuation of illegality ought to be shunned by any Court of law. This forms the basis for denying the plea of negative equality; a view that has clearly been reiterated very recently in *Tinku v. State of Haryana*⁴¹ as follows:

11. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea.

The court will not compel the authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.

(emphasis ours)

102. Law being too well-settled, the illegality in recommending some of the candidates figuring in the reserve list could not have been made the basis for issuance of a writ of mandamus citing Article 14 of the Constitution.

103. Quite apart, there is one other serious flaw which the Single Judges failed to notice. The writ petitioners did not invoke the writ jurisdiction within the six months' time period during which the reserve list would have been alive and effective. In fact, the writ petitions were presented after expiry of such period. What would be the effect thereof? Can any benefit accrue in their favour even though the writ petitions were presented at a time when, for all intents and purposes, the reserve lists was dead and ineffective?

104. The answers to such questions are not far to seek. In *Harish Chandra* (supra), this Court had the occasion to consider whether candidates figuring in a merit list, which had expired on the date they approached the high court seeking mandamus, could have complained of breach of any legal right arising out of their non-appointment. It was held thus:

9. Coming to the merits of the matter, in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules the conclusion is irresistible that a select list prepared under the Recruitment Rules has its life only for one

year from the date of the preparation of the list and it expires thereafter. Rule 26 is extracted hereinbelow in extenso:

10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the writ petitioners. Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition.

The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4-4- 1987 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist.

In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuant to the direction of the Court some appointments have been made but in some other cases it might have been done by the appointing authority.

Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasions appointments have been made by the appointing authority from a select list even after the expiry of one year from the date of selection but such an illegal action of the appointing authority does not confer a right on an applicant to be enforced by a court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the appointing authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the appointing authority in making such appointments contrary to the Statutory Rules.

But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on 4-4-1987 had expired long since and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not.

(emphasis ours)

105. Plainly, therefore, the writ petitions could not have been entertained having regard to the dates of its presentation. On such dates, the reserve lists had expired and none of the writ petitioners figuring in such lists could claim any right to seek a mandamus of the nature issued by the Single Judges.

106. Much of what Mr. Parameshwar has argued fails to impress us because none of the writ petitioners subjected Rule 24 of the Rajasthan Rules, 1981 or Rule 21 of the Rajasthan Agriculture Rules, 1978 to any challenge. Without challenging Rule 24/Rule 21 and on the face of such rule not generating any absurd result, we are inclined to read the same literally and not in the manner Mr. Parameshwar would like us to read it.

107. We have noted the submissions advanced on behalf of the writ petitioners in substantial detail. Such submissions proceed on a fallacious understanding of the law relating to a waiting/reserve list. We might sound harsh but solely based on the result of selection the reality is that, the candidates who figure in a waiting/reserve list are not the best crop of aspirants applying for selection. If the appointing authority has valid reasons not to appoint candidates from the waiting/reserve list and sets up whatever defence, which is not found to be unreasonable or arbitrary, a writ court having regard to the discretion that must be conceded to the appointing authority to select the best talent for appointment would be loath to interfere with such a decision and not command, by a mandamus, to appoint candidates figuring in the waiting/reserve list.

108. The line of judicial precedents noticed above suggest that even a candidate figuring in the select/merit list has no indefeasible right of appointment. Viewed from that stand point, we repeat, a candidate figuring in the waiting list cannot claim a better right than those who find place in the select/merit list. He/she, therefore, can claim only as much as the governing

rules relating to recruitment enable or permit, more particularly when the life of a waiting/reserve list is limited.

109. Having regard to the facts and circumstances present before us, we are of the firm view that the first of the two Single Judges of the High Court has completely erred in holding that Yati Jain "had subsisting right of consideration for her candidature on merit against the post of JLO fallen vacant due to non-joining of Vikas Kumar on the date of filing petition, and thereafter for six months from 14-7-2022". Similar such findings have been returned in Aakriti Saxena's writ petition where the Single Judge held that her right accrued on 28th February, 2022, i.e., the date when the said Sunil Machhera did not join service. Yet another similar finding was recorded while disposing of the writ petition of Vijay Kumar Meena by the other Single Judge that name from the reserve list should have been requisitioned when the said Raj Kumar Meena did not join service and his appointment was subsequently cancelled on 09th December, 2016.

110. Rule 24 of the Rajasthan Rules, 1981 and Rule 21 of the Rajasthan Agriculture Rules, 1978 admit of no confusion and clearly envisage that a candidate figuring in the reserve list, comprising names of candidates half the number of vacancies advertised may be recommended within six (6) months from the date on which the original list is forwarded by the appellant to the Appointing Authority/concerned department.

Such prescription, in given cases, could reasonably be stretched for counting six months from the date of last requisition made by the appellant provided the select/merit list itself has life on such date and is, therefore, valid and effective; but, in no case can such period be counted from the date a selected candidate expresses disinclination to accept the offer of appointment, which happens to be beyond the six-month statutorily prescribed period. If one were to approve the approach taken by the Single Judges, no selection process would ever attain finality. The sixmonth limitation incorporated in the applicable rule is designed precisely to bring about a quietus to the process of selection.

WHY THE RATIO OF THE RELIED UPON DECISIONS DO NOT APPLY

111. In Manoj Manu (supra) this Court held the action of the Union Public Service Commission not to forward the names of the appellants from the reserve/supplementary list arbitrary and discriminatory. It was also held that non-forwarding of names from the reserve list may not be justified, especially when there is a specific requisition by the appointing authority therefor. The relevant passage from the said decision reads as follows:

9. It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/promoted, etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused again because of some subsequent event, position would have been different. In that eventuality UPSC would be right in not forwarding the names from the list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination.

However, in the instant case, out of 184 persons recommended, six persons did not join at all. In these circumstances when the candidates in reserved list on the basis of examination already held, were available and DoPT had approached UPSC "within a reasonable time" to send the names, we do not see any reason or justification on the part of UPSC not to send the names.

112. What distinguishes Manoj Manu (supra) in the present appeals is this. Appellant recommended names from the reserve lists as and when requisitions were received from the Appointing Authority/department concerned and appointments were also offered to such recommended candidates but insofar as the writ petitioners are concerned, they sought relief because some candidate figuring in the select list did not accept the appointment when offered and the Single Judges proceeded to grant relief under the impression that the validity of the reserve list has to be reckoned from the date the appointed candidate refused to join.

113. Paragraph 11 of the decision in Sat Pal (supra) appears to have been relied on by the Single Judges, wherein it has been observed as follows:

11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the recruitment process has been conducted have been filled up.

In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil), Grade II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for

which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil), Grade II on 22-4-2008. The aforesaid offer was made consequent upon his selection in the said process of recruitment.

The validity of the waiting list, in the facts of this case, has to be determined with reference to 22-4-2008, because the vacancy was offered to Trilok Nath on 22-4-2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23-8-2011 (extracted above), that the waiting list was valid till May 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, insofar as the present controversy is concerned.

Although the above observations seem to aid the writ petitioners, we also find observations in paragraph 16 to the following effect:

16. It is not as if the pleas raised at the hands of the appellants are not fully legitimate. In the facts and circumstances of this case, for reasons which would emerge from our instant order, we would decline to invoke the jurisdiction vested in us under Article 136 of the Constitution of India, for debating and deciding the technical pleas advanced by the appellants. We would rather invoke our jurisdiction under Article 142 of the Constitution of India for doing complete justice in the cause in hand. Entertaining the instant appeals would defeat the ends of justice for which the respondent Sat Pal had approached the High Court. Entertaining the objections filed by the appellants would result in deviating from the merits of the claim raised by the respondent Sat Pal, before the High Court.

114. Reliance placed by the High Court on Sat Pal (supra) seems misplaced. We could be not quite right but the opening two sentences of paragraphs 11 and 16 of Sat Pal (supra), which we have underlined in the excerpts therefrom, do not align with each other. Even otherwise, relief was ultimately granted to the respondent in exercise of power conferred by Article 142 of the Constitution. We, therefore, do not read Sat Pal (supra) as laying down a binding precedent.

115. In Ram Swarup Saroj (supra), the writ jurisdiction of the High Court of Allahabad was invoked when the panel was alive. This Court declined

interference with the order of the said high court because validity of the panel expired during pendency of litigation and more so when vacancies were available for making appointment.

116. Ram Swarup Saroj (supra) was a case where the court was approached when the panel was alive. It requires no emphasis that if a litigant approaches the writ court with a grievance of not being offered appointment from a panel when such panel is alive and if the same (panel) expires during the time the writ petition is pending, that is a situation over which the litigant cannot have any control; and, he cannot be put to a disadvantage.

The right to relief must relate back to the date the litigant entered the portals of the writ court, if the litigant satisfies such court that he has been illegally denied an appointment; and, in such a case, it is open to the court to make such order that the justice of the case demands and to set things right. Here, the writ petitioners did not approach the writ court when the waiting/reserve lists were alive. Hence, Ram Swarup Saroj (supra) does not aid them.

117. Heavy reliance was placed on paragraph 4 of the decision in Purshottam (supra) by the Single Judges. We reproduce the same hereunder:

4. In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality.

The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature.

118. However, the facts on consideration whereof the aforesaid view was taken is relevant. Purshottam, the candidate, undisputably was selected for the post of Assistant Personnel Officer meant for a Scheduled Tribe category. He had produced the certificate of the Magistrate indicating that he belongs to 'Halba' caste, which is undoubtedly a Scheduled Tribe. However, the employer in accordance with the procedure prescribed referred his case to the Caste Scrutiny Committee for verification. The said committee being of the opinion that the appellant does not belong to Halba caste denied him the right to be employed notwithstanding his selection for the post in question.

The said order of the Scrutiny Committee was upheld in appeal but a writ petition being carried, the High Court of Bombay came to the conclusion that the appellant does belong to the Halba caste and therefore he was kept illegally out of employment. The High Court of Bombay, therefore, directed the employer (Maharashtra State Electricity Board) to consider the case of the appellant for appointment to the post of Assistant Personnel Officer for which he had been duly selected.

After the said judgment, the appellant approached the authority but the authority not having given the appointment in question, he again moved the High Court of Bombay. By the impugned judgment, the High Court of Bombay was persuaded to accept the contention of the employer that, in the meantime, somebody else has been appointed to the post and as such there is no vacancy and further, in terms of Regulation 29, the panel of selected persons in which the appellant was included has expired and, therefore, there is no legal right of the appellant to be enforced with by issuance of a mandamus.

119. The facts in Purshottam (supra), as noticed, makes the position clear that it arose from a case where he was illegally denied appointment on account of the so-called decision of the screening committee. Once the High Court of Bombay reversed the decision of the screening committee, his right to be appointed could not have been taken away on the ground either of expiry of the panel under Regulation 29 or that of nonavailability of post, some other person having been appointed.

CONCLUSION

120. We, therefore, reach the irresistible conclusion that the impugned judgments and orders of the Division Bench of the High Court, upholding those of the Single Judges under challenge, are liable to be set aside for the reasons assigned; also, the judgments and orders of the Single Judges being wholly incorrect, the same too cannot sustain. The same are set aside.

121. Our sympathies are with the writ petitioners but the law being what it is, we hold that they may not be appointed on any of the posts for which they competed.

122. The appeals are, accordingly, allowed. No costs.

EPILOGUE

123. From our combined experience on the Bench, we may safely observe that a substantial number of service-related disputes pending across the country are aggravated by protracted and recurring litigation, resulting in a state of perpetual flux for many candidates across the country.

The judiciary would do well to remain circumspect of these practical realities, and interpret service rules in a manner that furthers the very object of a selection process, that is, the selection of the most suitable candidates from suitable candidates for appointment in a timely manner.

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

.....**J. (Augustine George Masih)**

New Delhi;

January 15, 2026.

1 Rajasthan Public Service Commission

2 High Court

3 D.B. Special Appeal Writ No. 34/2024

4 S.B. Civil Writ Petition No. 8926/2022

5 D.B. Special Appeal Writ No. 889/2023 and D.B. Special Appeal Writ No. 52/2024

6 S.B. Civil Writ Petition No. 5652/2022 and S.B. Civil Writ Petition No. 14675/2016

7 Appointing Authority

8 (2013) 12 SCC 171

- 9 (2013) 11 SCC 737
- 10 (2000) 3 SCC 699
- 11 (1996) 6 SCC 49
- 12 (2006) 12 SCC 561
- 13 (1996) 9 SCC 309
- 14 (2010) 6 SCC 777
- 15 the writ petitioners, hereafter, when referred to collectively
- 16 D.B. Civil Special Appeal (Writ) No. 81/2020
- 17 D.B. Special Appeal (Writ) No. 554 / 2017
- 18 (2010) 8 SCC 329
- 19 (1996) 3 SCC 52
- 20 (2018) 17 SCC 106
- 21 (1997) 4 SCC 388
- 22 (1975) 2 SCC 702
- 23 (1976) 1 SCC 671
- 24 (2009) 5 SCC 1
- 25 2023 SCC OnLine SC 17539
- 26 (1970) 3 SCC 573
- 27 (1974) 2 SCC 70
- 28 Rajasthan Rules, 1981
- 29 Rajasthan Agriculture Rules, 1978
- 30 (1985) 1 SCC 182
- 31 (2006) 8 SCC 330
- 32 1994 Supp (2) SCC 591

33 (1997) 8 SCC 488
34 (2010) 2 SCC 637
35 (2002) 9 SCC 650
36 (2019) 2 SCC 195
37 (1991) 3 SCC 47
38 (2013) 16 SCC 147
39 (1995) 1 SCC 745
40 (2019) 19 SCC 626
41 2024 SCC OnLine SC 3292

IN THE SUPREME COURT OF INDIA

Tulasareddi @ Mudakappa and Anr.

Vs.

State of Karnataka and Ors.,

[Criminal Appeal Nos. 2120-2121 of 2024]

Veerupakshagouda

Vs.

State of Karnataka

[Criminal Appeal Nos. 2542-2543 of 2024]

Head Note - A conviction cannot be sustained merely on the basis of “so-called confessional statements” made under Section 27 Evidence Act to the police and an alleged discovery arising from such confessional statements, especially when the chain of circumstantial evidence remains incomplete.

JUDGMENT

Vipul M. Pancholi, J.

1. The appellants have preferred the present appeals challenging the common judgment and order dated 28.11.2023 passed by the High Court of Karnataka, Dharwad Bench, whereby the High Court has quashed and set aside the order

of acquittal passed by the concerned Trial Court and thereby convicted the present appellants for committing the offences punishable under Sections 302, 120-B, 201, 506 read with Section 34 of the Indian Penal Code, 1860 (hereinafter to be referred as the 'IPC'), and sentenced them to:

(a) undergo life imprisonment and to pay fine of Rs.10,000/-, each for an offence punishable under Section 302 read with Section 34 of IPC, in default, shall undergo for further six months imprisonment.

(b) undergo life imprisonment and pay fine of Rs.10,000/- each, for an offence punishable under Section 120-B read with Section 34 of IPC, in default, shall undergo for further six months imprisonment.

(c) undergo sentence for a period of two years and to pay fine of Rs.5,000/- each, for an offence punishable under Section 201 read with Section 34 of IPC, in default, shall undergo for further three months imprisonment.

(d) undergo sentence for a period of six months and to pay fine of Rs.2,500/- each, for an offence punishable under Section 506 read with Section 34 of IPC, in default, shall undergo for further two months imprisonment.

2. Since both sets of appeals arise from the same impugned judgment and order of the High Court and pertain to the same crime, trial, and appellate proceedings, they were heard together and are being disposed of by this common judgment.

3. FACTUAL MATRIX

(i) The prosecution's case originates from a missing complaint and subsequent allegations of conspiracy, abduction, murder, and disappearance of evidence relating to one Martandgouda (deceased), resident of village Hulkoti, District Gadag.

(ii) On 16.12.2011 at about 15:45 hours, the son of the missing person lodged a complaint before Gadag Rural Police Station stating that his father, Martandgouda, had been missing since 11.12.2011. It was stated that the complainant was pursuing engineering studies at Laxmeshwar and had been informed by his mother that his father was not traceable. Upon returning to the village and making enquiries, the complainant was unable to locate his father, leading to registration of FIR in Crime No.277/2011.

(iii) Initially, the FIR was registered as a missing person case. During the course of investigation, the complainant gave a further statement on 03.01.2012 alleging suspicion against his uncle, Veerupakshagouda (accused no.1), on account of prior civil disputes relating to land-property, including

litigation instituted by the sister of accused no.1 against him, allegedly at the instance of the deceased.

(iv) It was further alleged that accused no.1 had developed animosity towards the deceased due to injunction orders obtained in civil proceedings. Suspicion was also cast upon Tulasareddi @ Mudakappa (accused no.2), stated to be a close associate of Accused No.1 and a signatory to certain sale deeds, and Ningappa (accused no.3), a former tenant of the deceased, who had allegedly been evicted from the land and had monetary disputes with the deceased.

(v) The prosecution further alleged that accused no.4 had an illicit relationship with the deceased and that she had absconded from the village around the time, the deceased went missing. On the basis of these allegations, it was asserted that all the accused had entered into a criminal conspiracy, abducted the deceased on 11.12.2011, murdered him, and disposed of his dead body to screen themselves from punishment.

(vi) On completion of investigation, a charge-sheet came to be filed against six accused persons for offences punishable under Sections 143, 147, 120-B, 364, 302, 201 and 506 of the IPC read with Section 149 of the IPC. The case was committed to the Court of Sessions and registered as Sessions Case No.37/2012.

TRIAL COURT PROCEEDINGS AND JUDGMENT

(vii) Charges were framed against all the accused on 20.10.2012. The accused pleaded not guilty and claimed to be tried. During the course of trial, the prosecution examined 22 witnesses out of 32 cited witnesses and produced 41 documentary exhibits along with material objects. The defence examined witnesses and produced documents in support of their case. Statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973.

(viii) The prosecution case mainly rested upon the deposition given by PW-5 so-called eye-witness as well as on the basis of circumstantial evidence. The alleged motive, last seen theory, recovery, and conduct of the accused were sought to be relied upon to establish the chain of circumstances.

(ix) Upon an exhaustive appreciation of the entire evidence on record, the learned Additional District and Sessions Judge, Gadag, by judgment dated 30.03.2019, acquitted all the accused of all charges. The Trial Court recorded findings that the prosecution had failed to establish a complete and unbroken chain of circumstances pointing only towards the guilt of the accused. The alleged motive was held to be weak and speculative; the theory of conspiracy

was found to be unsubstantiated; and crucial links such as last seen together and recovery were not proved beyond reasonable doubt.

(x) The Trial Court specifically held that mere suspicion, however strong, could not take the place of proof, particularly in a case based solely on circumstantial evidence. Consequently, benefit of doubt was extended to all the accused.

HIGH COURT PROCEEDINGS AND IMPUGNED JUDGMENT

(xi) Aggrieved by the acquittal, the complainant and the State of Karnataka preferred Criminal Appeal Nos.100190/2019 and 100284/2019 respectively before the High Court of Karnataka, Dharwad Bench.

(xii) By the common judgment and order dated 28.11.2023, the High Court allowed both the appeals and thereby set aside the judgment and order of acquittal rendered by the Trial Court. The High Court convicted the accused nos. 1 to 4 for committing an offence punishable under Sections 302, 120- B, 201, 506 read with Section 34 of IPC. However, the High Court has confirmed the order of acquittal passed by the Trial Court qua original accused nos. 5 & 6. At this stage, it is relevant to note that during the pendency of the proceedings before the High Court original accused no. 4 died.

4. Against the impugned judgment and order rendered by the High Court, the original accused no. 2 and 3 have preferred Criminal Nos. 2120-2121 of 2024 whereas original accused no.1 has preferred Criminal Appeal Nos. 2542-2543 of 2024 before this Court.

5. Heard learned counsel appearing for the appellants-convicts, learned AAG on behalf of the State of Karnataka (respondent no.1) and learned counsel appearing on behalf of the original informant.

6. Learned counsel for the appellants-convicts would mainly submit that the only allegation against accused no. 1 is that he allegedly conspired with the other accused to commit the offence. There is no allegation of "last seen", no allegation of participation in abduction or committing murder of the deceased. It is further submitted that there is no recovery at the instance of accused no. 1. There are no eye-witnesses who have alleged that accused no. 1 is connected with the incident in question.

7. Learned counsel further submits that conspiracy being a serious criminal charge, cannot be presumed. It requires proof of meeting of minds, a prior agreement, and concerted action towards the commission of an illegal act. Mere suspicion, association, or existence of civil disputes cannot serve as a

substitute for proof. In the present case, the prosecution has failed to establish any of the foundational ingredients of conspiracy. At this stage, it has been pointed out from the record that PW-1 has admitted in cross-examination that the dispute between the deceased and accused no. 1 was purely civil in nature, arising from ancestral property matters and in fact no prior threat, violence, or criminal conduct ever occurred.

It is also pointed out from the record that PW-4 admitted that the disputed land stands in the name of Melagirigouda and not in the name of accused no. 1 and, therefore, the prosecution has failed to establish the motive on the part of accused no. 1 to commit alleged offences. It has been further contended that PW-10 to PW-13 have turned hostile. At this stage, it has been contended that PW-21, the Investigating Officer had admitted that no material was found during investigation to establish any enmity between the deceased and accused no.1 or any agreement or concerted action suggesting conspiracy.

8. Learned counsel further submits that PW-5, the so-called sole eye-witness, did not attribute any active role to accused no. 1. Further the said witness did not speak of any planning or agreement involving the said accused.

9. Learned counsel appearing on behalf of the appellants in Criminal Appeal Nos.2120-2121 of 2024 mainly submits that PW-5 is projected as eye-witness. However, the statement of the said witness came to be recorded after a period of 21 days and that too after the arrest of the accused. In fact, the said witness contradicts his own statements recorded on 05.01.2012 and 28.01.2012. It is also pointed out that the said witness was declared hostile as per the theory of the prosecution, qua accused nos. 5 & 6.

Learned counsel further submits that PW-5 admitted that a rope was in his car and it was not brought by the accused. Learned counsel, therefore, urged that PW-5 is not a reliable witness and simply relying upon deposition given by the said witness, conviction cannot be recorded. Learned counsel for the appellants further submits that PW-14, the doctor who conducted the post-mortem of the dead body of the deceased has specifically stated that the death might have been occurred 10 days ago (prior to the date of post-mortem). However, in fact the dead body was found 21 days after the incident in question. It is, therefore, urged that medical evidence does not support the theory of the prosecution, despite which the High Court has recorded the order of conviction qua the present appellants.

10. Learned counsel for the appellants further submits that the prosecution has failed to prove the motive on the part of the accused to commit the alleged offences. In fact, the recovery and discovery were also not duly proved. It has been pointed out that two persons (CW-22 and CW-23) who have brought the

body from the canal have not been examined. Thus, the prosecution has failed to examine crucial witnesses.

11. It is also contended by the learned counsel for the appellants that the Trial Court has rightly appreciated the entire evidence on record and, thereafter, acquitted all the accused. The said view taken by the Trial Court was a plausible view and, therefore, while considering the acquittal appeal filed by the State or the informant, the High Court ought to have considered the aforesaid plausible view taken by the Trial Court and ought not to have interfered with the order of acquittal recorded by the Trial Court.

12. Per contra, learned AAG appearing on behalf of the respondent- State as well as learned counsel for the informant have vehemently opposed the present appeals. Learned counsel would mainly submit that the prosecution has proved the case against the appellants-accused beyond reasonable doubt by leading cogent evidence. As the Trial Court has committed grave error while acquitting all the accused, the High Court has rightly passed the impugned judgment and order of conviction qua present appellants. Learned counsel for the respondents further submits that the voluntary disclosures made by accused No. 2 to 4 leading to the discovery of the dead body at a site near canal was within their special knowledge and hence admissible under Section 27 of the Indian Evidence Act, 1872.

It is also contended that accused no. 2 to 4 made disclosure statements in which they disclosed that they took Martandagouda (deceased) in the car driven by PW-5, later killed him and then tied the dead body with cement slabs using bedsheet and dumped into the canal water. It is contended that of course the aforesaid disclosure statement falls within the purview of Section 27 of the Indian Evidence Act, 1872, as they led to the discovery of facts. It is also contended that the dead body was recovered on 04.01.2012 and it is not explained by the accused as to how they came to possess the knowledge that the dead body was concealed in the canal.

Learned counsel would mainly place reliance upon the deposition given by the sole eye-witness, PW-5. It is submitted that merely because the statement of the said witness was recorded after 21 days, the said statement cannot be discarded solely on this ground. It is also contended that PW-5 was treated as hostile as he did not disclose further facts in respect of accused Nos. 5 & 6 and, therefore, simply because he has been treated hostile, his evidence cannot be brushed aside in toto.

13. Learned Advocates also submit that PW-14, Doctor who conducted the post-mortem, has categorically opined that the death was due to manual

strangulation. Thus, it is contended that the evidence of PW-14 also corroborates the evidence of PW- 5.

14. Learned counsel for the respondents further contend that there is sufficient evidence on record in the form of evidence of PW-1, PW-4, PW-10 & PW-11 who have proved the motive on the part of accused no. 1 to commit the alleged offences with the help of the other co-accused. It has been contended that the deceased filed a suit for partition and obtained an order of stay on 07.12.2011. Thereafter, the deceased went missing on 11.12.2011. Immediately after the deceased went missing, accused No.1 had executed a sale deed on 16.12.2011 in favour of his mother. The signatory to the sale deed is accused no. 2. The accused no. 3 was tenant of the lands of the deceased and enmity against him because he was removed from cultivation of his lands. Thus, it has been contended that the prosecution has proved the motive on the part of the accused to commit the alleged offences.

15. Learned counsel, therefore, urged that despite the aforesaid evidence on record, the Trial Court has failed to appreciate the same and thereby acquitted the accused and therefore, while the appeals were filed by the present respondents before the High Court, the High Court after reappreciating the entire evidence on record has rightly taken the view which is the only plausible view. Learned Advocate, therefore, urged that the High Court has not committed any error while convicting the present appellants and therefore both these appeals be dismissed.

16. Having heard learned Advocates appearing on behalf of the parties and having gone through the entire material placed on record as well as evidence led by the prosecution before the Trial Court, it would emerge that the occurrence took place on 11.12.2011 at about 6.30 p.m., when the deceased had gone missing. A complaint was lodged with the jurisdictional Police Station, Gadag on 16.12.2011 at 15:45 hours. PW-1, complainant was the son of the deceased whose statement was recorded by PW-18. Thereafter, further statement was given by informant on 03.01.2012 suspecting the involvement of accused nos. 1 to 4 due to land disputes between accused no. 1 and the deceased.

In the said further statement the accused nos. 1 to 4 were named. It is pertinent to note that relying upon further statement alleging involvement of accused, accused nos. 2 to 4 were arrested on 04.01.2012 whereas accused nos. 5 & 6 were arrested on 05.01.2012. It is also relevant to note that after the arrest of accused nos.2 to 4, their confession statements were recorded on the very same day by the Investigating Officer and it is the case of the prosecution that relying upon the said confession statements, the dead body was recovered near the canal.

From the record, it transpires that two persons took out the dead body from the canal. Though said two persons (CW-22 and CW-23) are the important witnesses, they have not been examined by the prosecution. It also transpires from the record that after the arrest of the accused on 04.01.2012 the statement of the so-called eyewitness PW-5 came to be recorded. It is surprising that though PW-5 is projected as eyewitness, he did not inform the police about the incident in question for a period of 21 days. The only explanation given by him for such delay is the threat given by the accused to him.

17. As per the case of the prosecution, PW-5, the driver of the tempo tax vehicle is the sole eye-witness projected by the prosecution. From the statement given by this witness under section 161 of the code, it is revealed that accused nos. 2 to 6 got into his vehicle in different stages. In the first stage, accused nos.4 and 6 along with Martandagouda (deceased) boarded the vehicle, accused no.6 sat next to him in the front seat. The vehicle moved towards Gadag and after covering a distance of around 1½ KMs, accused no.2 and 3 boarded the vehicle.

When the vehicle was moving further, accused no.2 directed him to take the vehicle towards Asundi and when accused nos.2 and 3 boarded the vehicle, accused nos.4 and 6 who were sitting on the either side of Martandagouda (deceased), they sat in the rear portion of the vehicle. It is further stated by PW-5 that during the course of journey accused no.2 told the deceased as to why he is interfering in the sale of land and thereafter, accused no.6 told to Martandagouda (deceased) that he is having an eye on the accused no.6 whereas accused no.4 told to Martandagouda (deceased) that is it not enough that she is available for him and thereafter all of them started beating deceased by hands.

18. PW-5 has given the statement under section 164 of Code of Criminal Procedure,1973, before the FCJM on 28.01.2012, as per the case of prosecution. The said statement is produced vide Exhibit P-18. As per the statement given under Section 164 of the Code, PW-5 has stated that accused nos. 2 to 6 boarded his vehicle on 11.12.2011. We have gone through both the statements given by PW-5 before the police as well as the learned Magistrate.

19. PW-5 has specifically deposed that only accused nos. 2 to 4 boarded his vehicle at different stages. At the first stage, accused no. 4 and Martandagouda (deceased) who boarded the vehicle and after some distance accused nos. 2 and 3 got into the vehicle. During the course of his deposition, PW-5, has given complete go-by to accused nos. 5 & 6. PW-5 has been partially treated as hostile by the prosecution and certain suggestions are also made to him. It is relevant to observe that PW-5 has specifically stated that

statement given under Section 164 given by him before the Court has not been read over to him. During the cross-examination this witness also further admitted that he does not know accused nos. 2 to 4 personally. Similarly, he does not know even accused no. 1 personally.

20. Thus, from the aforesaid deposition of PW-5 it can be stated that the accused nos. 1 to 6 are complete strangers to him. It is also relevant to observe that when the accused got down from the vehicle and dumped the body in the canal during that time PW- 5 could have informed to the police about the incident by making telephone calls. The said witness did not raise an alarm. It has also come on record that PW-5 has accepted that there are criminal antecedents against him. Thus, looking to the aforesaid aspects, it can be said that PW-5 can be said to be a planted witness.

21. Further, in the present case, no cogent reason for the silence on the part of PW-5 is forthcoming except the allegation that there was a threat. However, after 11.12.2011, how the so-called threat continued and persisted has not been brought to light. Further, statement of PW-5 was recorded after the post-mortem of the dead body of the deceased was conducted on 04.01.2012.

22. At this stage, it is also relevant to observe that PW-14, doctor who conducted the post-mortem of the dead body of the deceased, has specifically stated that the death might have been occurred 10 days ago. However, it is the case of the prosecution that the deceased was missing on 11.12.2011 and killed by the accused on the same day. Thus, we are of the view that the medical evidence also does not fully support the case of the prosecution and raises doubt.

23. Learned counsel appearing on behalf of the respondents have mainly placed reliance upon confessional statements of the accused and, thereafter, the discovery of the dead body of the deceased from the canal. We are of the view that simply relying upon the so-called confessional statements of the accused, and discovery of dead body which is also not duly proved, conviction cannot be recorded.

Thus, looking to the overall facts and circumstances of the present case the sole so-called eyewitness, PW-5, cannot be said to be reliable and the other circumstances upon which the prosecution has placed reliance are insufficient to conclude that the accused have committed the alleged offences. The prosecution has failed to complete the entire chain of circumstances from which it can be established that the accused had committed the alleged offences. We are of the further view that the view taken by the Trial Court was a plausible view based upon the evidence led by the prosecution.

24. It is the case of the prosecution that all the accused hatch the conspiracy for killing Martandagouda (deceased). As per the case of prosecution, one civil suit is filed by Martandagouda (deceased) with regard to the land bearing survey nos. 332 and 329 of a particular village. It is the case of the prosecution that injunction was granted in favour of Martandagouda (deceased) and restraining the defendant (accused no.1) from alienating the suit property. As per the case of the prosecution, accused no. 2 is also interested in selling the land belonging to his mother.

Whereas the accused no. 3 was cultivating the land of Martandagouda (deceased) on sharing basis. However, the deceased did not allow accused no. 3 to cultivate the land. So far as accused no. 4 is concerned, it is the case of the prosecution that she had illicit relationship with Martandagouda (deceased). So far as accused no. 6 is concerned, she is the paternal aunt of accused no. 1 whereas accused no. 5 is the paramour of accused no. 6. It is the theory of the prosecution that the deceased had asked accused no.4 to bring along with her accused no.6 for illicit physical relationship and this fact was communicated to accused no. 5 by accused no.4.

Thus, accused no. 4 had become furious and had a grudge on deceased. Similarly, accused no. 6 had a grudge that she was called for illicit physical relationship by Martandagouda (deceased). Further, accused no. 5 had a grudge on deceased as deceased had called accused no. 6 for illicit physical relationship. As a result of the aforesaid grudge of each of the accused, they decided to eliminate Martandagouda (deceased) and thereby hatch conspiracy.

25. It is relevant to note that the prosecution has failed to prove the aforesaid aspect by leading cogent evidence and in fact the High Court has also not believed the story of conspiracy and involvement of accused nos. 5 and 6 with the accused nos. 1 to 4. Thus, the High Court has confirmed the order of acquittal passed by the trial court, qua accused nos. 5 & 6. In view of the above, we are of the view that conviction of the accused nos. 1 to 4 cannot be sustained.

26. At this stage, we would like to refer the decisions rendered by this Court on the aspect of interference of Appellate Court in the appeal filed by the State challenging the acquittal of the accused recorded by the Trial Court.

27. In the case of Babu Sahebagouda Rudragoudar v. State of Karnataka¹ this Court held in paragraphs 39 to 42 as under:

39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar,(2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal

position covering the field after considering various earlier judgments and held as below : (SCC pp.482-83, para 29)

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappacase [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri)325], SCC p. 432, para 42)

'42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC as follows : (SCC p. 584, para 8)

"8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.

28. In the case of *Ramesh v. State of Uttarakhand*², this Court has observed and held in para 19 & 20 as under:

"19. In a case like this when the trial court acquitted the accused persons of their charges, the High Court could not have reversed the finding merely on the basis that other view, as recorded by the High Court, appeared to it to be a plausible view. Such an approach by the High Court, against the judgment of the acquittal, is impermissible. In this context, we may usefully refer to

Kalyan v. State of U.P. [Kalyan v. State of U.P., (2001) 9 SCC 632 : 2002 SCC (Cri) 780] wherein it was held : (SCC pp. 640-41, paras 15, 18 & 20)

"15. The view taken by the trial court could have been disturbed only if there were compelling reasons. We do not find any compelling reason noticed [State of U.P. v. Hari Lal, 1998 SCC OnLine All 1216 : 1999 All LJ 142] by the High Court while setting aside the order of acquittal.

18. Even if another view regarding the occurrence was possible, as taken by the High Court, the same could not be made a basis for setting aside the order of the trial court in view of the settled position of law on the point.

20. Under the circumstances, the appeal is allowed by setting aside the judgment of the High Court convicting the accused persons and sentencing them to various imprisonments including life imprisonment. We uphold the order of acquittal passed by the trial court in favour of the appellants."

20. In another judgment in Basappa v. State of Karnataka [Basappa v. State of Karnataka, (2014) 5 SCC 154 : (2014) 2 SCC (Cri) 497] , this Court noticed plethora of judgments where this very principle had been adopted, as can be seen from the following discussion therefrom : (SCC pp. 158- 61, paras 11-12, 14 & 17-18)

"11. In Bhim Singh v. State of Haryana [Bhim Singh v. State of Haryana, (2002) 10 SCC 461 : 2003 SCC (Cri) 1469] , it has been clarified that interference by the appellate court against an order of acquittal would be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take.

12. In Kallu v. State of M.P. [Kallu v. State of M.P., (2006) 10 SCC 313 : (2006) 3 SCC (Cri) 546] , it has been held by this Court that if the view taken by the trial court is a plausible view, the High Court will not be justified in reversing it merely because a different view is possible.

14. In Ganpat v. State of Haryana [Ganpat v. State of Haryana, (2010) 12 SCC 59 : (2011) 1 SCC (Cri) 309] , SCC para 15, some of the above principles have been restated. To quote : (SCC p. 62)

'15. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(iv) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'

17. It is not the stand of the High Court that there had been some miscarriage of justice in the way the trial court has appreciated the evidence. On the contrary, it is the only stand of the High Court that on the available evidence, another view is also reasonably possible in the sense that the appellant-accused could have been convicted. In such circumstances, the High Court was not justified in reversing the acquittal.

18. The appeal is allowed. The impugned judgment [State of Karnataka v. Basappa, 2010 SCC OnLine Kar 5110] is set aside and that of the trial court is restored."

29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'

(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

30. Keeping in view the aforesaid principles and the law laid down by this Court, if the entire evidence as well as the order of acquittal recorded by the Trial Court and the impugned judgment and order passed by the High Court

are examined, we are of the view that the High Court has failed to consider the aforesaid aspect while dealing with the acquittal appeals.

31. In view of the aforesaid discussion, the judgment and order dated 28.11.2023 passed by the High Court of Karnataka is hereby set aside and the judgment and order of the Trial Court dated 30.03.2019 is restored.

32. The appellants are ordered to be released forthwith, if they are in custody and their presence is not required in any other case.

33. The appeals are accordingly allowed.

.....J. [Sanjay Karol]

.....J. [Vipul M. Pancholi]

New Delhi,

January 16, 2026

1 (2024) 8 SCC 149

2 (2020) 20 SCC 522

IN THE SUPREME COURT OF INDIA

**Neha Lal
Vs.
Abhishek Kumar**

[Transfer Petition (Crl.) No. 338 of 2025]

**[I.A.No. 200539 of 2025 - Application under Article 142 of the
Constitution of India seeking dissolution of the marriage - filed by
petitioner-wife]**

Head Note – In the changing times, the matrimonial litigation has increased manifold. It is the duty of all concerned including the family members of the parties to make their earnest effort to resolve the disputes before any civil or criminal proceedings are launched.

Few steps to be taken at first and foremost whenever a matrimonial dispute arises, while criticising the tendency to rush to the police in every matrimonial disagreement:

“First and the foremost, earnest effort should be made by the parties and to be guided by the advocates, whensoever consulted in the process, is to convince them for a pre-litigation mediation. Rather in some cases, their counselling may be required.

Even if a case is filed in a Court on a trivial issue such as maintenance under Section 144 of BNSS, 2023 (earlier Section 125 of CrPC, 1973) or Section 12 of the Protection of Women from Domestic Violence Act, 2005, the first effort required to be made by the Court is to explore mediation instead of calling upon the parties for filing replies as allegations and counter allegations sometimes aggravate the dispute.

Even when a complaint is sought to be registered with the police of simple matrimonial dispute, first and the foremost effort has to be for re-conciliation, that too, if possible, through the mediation centers in the Courts, instead of calling the parties to the police stations. This sometimes becomes a point of no return specially when any of the parties is arrested, may it be even for a day.

Warring couples cannot be allowed to settle their scores by treating Courts as their battlefield and choke the system. If there is no compatibility, there are modes available for early resolution of disputes. Process of mediation is the mode which can be explored at the stage of pre-litigation and even after

litigation starts. When the parties start litigating against each other, especially on criminal side, the chances of reunion are remote but should not be ruled out.

Practice of law is said to be noble profession. Whenever the parties in matrimonial dispute have differences, the preparation starts as to how to teach lesson to the other side. Evidence is collected and, in some cases, even created, which is more often in the era of artificial intelligence. False allegations are rampant. As any matrimonial dispute has immediate effect on the fabric of the society, it is the duty of all concerned to make earnest effort to resolve the same at the earliest before the parties take strong and rigid stand. There are mediation centres in all districts where pre-litigation mediation is also possible. In fact, it is being explored in number of cases and the success rate is also encouraging. In many cases, the parties, after resolution of their disputes, has also started living together.

Where the parties stayed together only for 65 days, are separated for the last more than a decade and have been indulging into litigation one after another, it is a fit case for exercise of discretion under Article 142 of the Constitution of India to dissolve the marriage between the parties.

JUDGMENT

Rajesh Bindal, J.

1. The present petition was filed by the petitioner-wife praying for transfer of an application filed by respondent-husband under Section 340 CrPC bearing Misc. Crl. No.7 of 2019 in MT No.853 of 2018, seeking initiation of proceedings against petitioner for offence of perjury, from Family Court, District East, Karkardooma Courts, Delhi to Family Court, Lucknow, Uttar Pradesh. The transfer is sought on the grounds that the petitioner is suffering on account of number of cases pending between the parties; for the case in question, the petitioner will have to travel from Lucknow to Delhi; she is not getting any maintenance and has no place to stay at Delhi and that the proceedings initiated by the respondent, in most of the cases, are frivolous.

1.1 The respondent has filed his counter affidavit denying the allegations. He has his own version of the matrimonial dispute, which has reached a stage where both the parties are into multiple litigation.

2. Some good sense prevailed, when on 22.07.2025, the parties requested for reference of dispute to the Mediation Center of this Court. The matter was directed to be listed on 14.10.2025. As is evident from I.A. No.176081 of 2025 filed by the respondent, the process of mediation probably could not

even take off. On the request of the parties, the date of hearing was preponed, and the main case was directed to be listed on 18.08.2025.

2.1 On the next date of hearing, the learned counsel for the petitioner pointed out that an application under Article 142 of the Constitution of India has been filed seeking dissolution of marriage between the parties. However, the same was not available on file. The order passed on that date recorded that the respondent, who appeared in-person, sought time for filing reply to the application as he had received a copy thereof. His reply was filed stating that no mutual settlement was arrived at between the parties and that there are divorce proceedings already pending before Trial courts at Delhi and Lucknow. Sum total was that the respondent did not agree to the proposal of the petitioner for grant of divorce by invoking jurisdiction of this Court under Article 142 of the Constitution of India.

3. At the time of hearing, on 28.10.2025, learned counsel for the petitioner had handed over a note mentioning list of cases filed by the parties against each other. Some of these have been disposed of whereas some are still pending. A copy thereof was supplied to the respondent, who was present in-person in the Court.

4. The argument raised by learned counsel for the petitioner was that the marriage between the parties had taken place on 28.01.2012 and the petitioner had left the matrimonial home after 65 days of the marriage on account of cruelty inflicted by the respondent and his family members. They have been living separately for the last more than a decade. Considering the fact that both the parties have been indulging in litigations one after the other, it is a case of irretrievable breakdown of marriage in which this Court can exercise its extra ordinary jurisdiction under Article 142 of the Constitution of India and dissolve the marriage. Reliance was placed upon Constitution Bench Judgment of this Court in *Shilpa Sailesh vs Varun Sreenivasan*¹.

5. On the other hand, the respondent, who appears in-person, raised strong objection to the prayer made by the petitioner. He submitted that his entire life has been ruined because of false and frivolous cases filed by the petitioner. No doubt, they stayed together for few days but the reason for the petitioner for leaving the matrimonial home is not what she claims. Immediately after she left home, she filed application under Section 125 of the Code of Criminal Procedure before the Family Court, Karkardooma, Delhi, seeking maintenance. Most of the cases filed by her have resulted in their dismissal. It shows the conduct of the petitioner. She just wants to harass the respondent.

He is just contesting various cases filed by the petitioner with no job. On account of perjury committed by the petitioner, respondent filed applications

under Section 340 CrPC/Section 379 BNSS, which are pending. As there is likelihood of conviction in these cases, the petitioner to save herself, has come up with an application under Article 142 of the Constitution of India seeking dissolution of marriage. He further submitted that the petitioner is well settled in life. She is working in the company of her sister and earning about ₹1,60,000/- per month. She has enough money to harass the respondent, whereas he does not have anything to pay or to even engage a lawyer. He is contesting his cases by appearing in-person.

6. Heard learned counsel for the petitioner and the respondent, who appeared in-person, on the application filed by the petitioner under Article 142 of the Constitution of India seeking dissolution of marriage.

7. The marriage between the parties was solemnized on 28.01.2012. It is not in dispute that the parties are living separately since 02.04.2012. The reasons claimed by both the parties are different. Filing of the Transfer Petition before this Court is one part. Besides that, parties have filed number of cases against each other. The list was furnished by the counsel for the petitioner before this Court.

8. The list, as furnished in this Court, was apparently incomplete as many details were missing. The matter was directed to be listed again. On 21.11.2025, request was made to the parties to furnish complete list of cases. The details of cases, as furnished by the counsel of the petitioner-wife on 21.11.2025, are extracted below:

TRIAL COURTS

Sl. No.	Cause Title	Reference	Status	NDOH	Date of Filing
1.	Neha Lal vs Abhishek Kumar	HMA No.229/2017 Divorce Case	Dismissed vide Order dt 04/04/2019		
2.	Neha Lal vs Abhishek Kumar	Ct Case No.50221/2016 12 and 23 of DV Act	Disposed off vide Order dated 06/08/2024		21/07/2012
3.	Abhishek Kumar vs Neha Lal	28 DV Act r/w Art 21 of Constitution of India	Dismissed vide Order dated 06/08/2024		
4.	Abhishek	25(2) r/w 28 DV Act	Dismissed		

	Kumar vs Neha Lal	and Art 14 & 21 of Constitution of India	vide Order dt 07/11/2022		
5.	Abhishek Kumar vs Neha Lal	Cr Revision No.31/2023 Against Order dt 07/11/2022 of DV Act	Dismissed vide Order dt 06/04/2023		
6.	Neha Lal vs Abhishek Kumar	MT No.853/2018 (2012) 125 CrPC	Disposed vide Order dt 07/02/2019		
7.	Abhishek Kumar vs Neha Lal	MT No.151/2021 Application u/s 127(2) r/w 125(4) CrPC [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Misc Hearing	07/01/2025	10/03/2021
8.	Abhishek Kumar vs Neha Lal	MT No.151/2021 Application u/s 24 HMA	Dismissed vide Order dt 20/01/2025		01/07/2024
9.	Abhishek Kumar vs Neha Lal	MT No.151/2021 Application u/s 144 BNSS [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Pending	09/12/2025	03/02/2025
10.	Abhishek Kumar vs Neha Lal	MT No.151/2021 Application u/s 379 BNSS r/w 215 BNSS, 2023 [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Pending	12/11/2025	03/08/2024
11.	Abhishek Kumar vs Neha Lal	MT No. 151/2021 Application u/s 10 Family Court Act	Dismissed vide Order dt 20/03/2023		24/05/2022
12.	Abhishek	Misc CrI 7/2019	Misc	10/12/20	06/03/20

	Kumar vs Neha Lal	Application u/S 340 CrPC in MT No.853/2018 [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Arguments stage	25	19
13.	Neha Lal vs Abhishek Kumar	Ex Crl No.12/2021 [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Misc	08/01/2026	22/12/2020
14.	Neha Lal vs Abhishek Kumar	Ex Crl No.104/2023 [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Misc	08/01/2026	29/03/2023
15.	Neha Lal vs Abhishek Kumar	Ex Crl No.208/2024 [Pending before Principal Judge, Family Court, East District, Karkardooma, Delhi]	Misc	08/01/2026	12/04/2024
16.	Neha Lal vs Abhishek Kumar & Ors	Pandav Nagar PS Case No.361/2012 u/s 498A/406/34 IPC	Husband acquitted vide Order dated 07/03/2020		28/08/2012
17.	Neha Lal vs Abhishek Kumar & Ors	Application u/s 156(3) for registration of a fresh case u/s 313 & 120B IPC	Tagged with Pandav Nagar PS Case No.361/2012		28/09/2012
18.	Abhishek Kumar vs Neha Lal	Complaint Case No.9151/2014 Ghaziabad Court u/s 323, 504, 506 IPC [Pending before ACJM Court No.7,	Application u/s 482 pending before Allahabad HC		

		Ghaziabad, UP]	[16285/2019]		
19.	Abhishek Kumar (Informant) Neha Lal & Ors (Accused)	Criminal Case No.11372/2016 Arising out of Indirapuram PS Case No.500 of 2013 (u/s 406, 323, 504 IPC) [Pending before CJM, Ghaziabad, UP]	Appearance		26/03/2013
20.	Abhishek Kumar (Informant) Neha Lal (Accused)	Criminal Case 8241/2019 Arising out of Indirapuram PS Case No.501 of 2013 (u/s 406, 323, 504 IPC) [Pending before ACJM Court No.8, Ghaziabad, UP]	Appearance		
21.	Abhishek Kumar vs Neha Lal	CT Cases 1437/2016 (u/s 191/193/194/195/211/471/ 120B IPC)	Dismissed vide Order dated 03/05/2023		
22.	Abhishek Kumar vs Neha Lal	Cr Revision 125/2023 (Against Order dated 03/05/2023 in Ct 1437/2016)	Dismissed vide Order dated 24/12/2024		24/05/2023
23.	Neha Lal Vs Abhishek Kumar	Matrimonial Case 2238/2024 (Divorce u/s 13 HMA) [Pending before Addl. Principal Judge, Court No.9, Lucknow, UP]	Pending for appearance of Respondent	03/01/2026	
24.	Abhishek Kumar vs Neha Lal	HMA No 1866/2025 (Divorce Case u/s 13 of HMA)	Withdrawn vide Order dated 11/07/2025		
25.	Abhishek Kumar vs Neha Lal	HMA No 1244/2025 (Divorce Case u/s 13 of HMA) [Judge Family Court, North Rohini Courts, Delhi]	Notice issued on 08/08/2025	16/12/2025	25/07/2025

HIGH COURT

Sl. No.	Cause Title (Case No.)	Reference	Status	NDOH
1.	Abhishek Kumar vs Neha Lal	CRL REV No 441/2019 Against Judgment dt 07/02/2019(Maintenance) [Pending before Delhi High Court]	Pending	12/01/2026
2.	Abhishek Kumar vs Neha Lal	WP(CRL) No 1025/2023 Against Order dt 20/03/2023 passed in MT No 151/2021	Dismissed vide Order dated 01/08/2025	
3.	Abhishek Kumar vs Neha Lal	WP(CRL) No 1217/2023 Against Order dt 06/04/2023 passed in Cr Revision No 31/2023 and quashing of Ct Case No 50221/2016	Disposed of vide Order dated 29/01/2024	
4.	Abhishek Kumar vs Neha Lal	CRL M C No 1504/2023 Against Order dated 13/11/2017 (Interim Maintenance Order)	Disposed of vide Order dated 23/02/2018	
5.	Abhishek Kumar vs Neha Lal	WP (CRL) No2758/2024 Against the Judgment & Order dated 06/08/2024) [Pending before Delhi High Court]	Pending	10/12/2025
6.	Abhishek Kumar vs Neha Lal	CRL M C No 562/2025 Against Order dated 24/12/2024	Dismissed as Withdrawn vide Order dated 12/02/2025	
7.	Abhishek Kumar vs Neha Lal	WP (CRL) No 735/2025 Against Order dated 24/12/2024	Dismissed vide Order 14/08/2025	
8.	Neha Lal & Anr vs Abhishek Kumar & Anr	Application u/s 482 16285/2019 (Allahabad High Court) Quashing of CC No 9151 of 2014 & Order dt 12/12/2018 [Pending before Allahabad High Court - Allahabad Bench]	Pending	
9.	Neha Lal & Ors v	Application u/s 482 (Allahabad High Court) Quashing	Disposed	

	State & Anr			

8.1 A list of cases was also filed by the respondent-husband on 24.11.2025, wherein certain new cases, pending as well as disposed of, came to light.

8.2 The details of additional cases which are pending between the parties, as per the list filed by the respondent-husband on 24.11.2025, are extracted below:

Sl. No.	Case No.	Under Section	Filed on	Pending Before The Hon'ble Court	Filed by	Status	Remarks / Notes
		Section 379 BNSS application (Old Code Section 340 Cr.P.C.)	05.11.2024	Family Court, East District, Delhi	Petitioner / Neha Lal	Pending	Filed in MT No.151/2021. Separate Case number is not assigned. Counter blast case to the respondent's 340 Cr.P.C. application. Filed on subjective beliefs of typographical error made in daily order, without producing any cogent evidence.
03	MT No.-	Section	31.08.20	Famil	Respond	Pendi	Filed in MT

.	853/2018 (2012)	340 Cr.P.C. Application	15	y Court, East District, Delhi	ent / ng Abhishek Kumar	No. - 853/2018 (2012) much earlier to the pronounce ment of judgement on 07.02.2019. Separate Case number is not assigned. Filed for fabrication of financial affidavit, concealments of vital material facts and documents, and false averments on affidavit under oath. Pending adjudication since last more than a decade huge period of time. Kindly refer Counter affidavit to

							TP Page No.- 43, Para No.- 62 and Annexure-A14 over Page No.- 235.
12	CRL MA No. - 42585/2019	Section 340 Cr.P.C	10.12.2019	Hon'ble Delhi High Court	Respondent / Abhishek Kumar	Pending	Filed for absolutely making several false averments on affidavit under oath in reply to the revision petition by Petitioner/ Neha Lal.
15	CRL MA No. - 29967/2025	Section 528 BNSS (Old Code 482 Cr.P.C)	26.09.2025	Hon'ble Delhi High Court	Respondent / Abhishek Kumar	Pending	Filed for the modification of order by way of expunction/removal of the remarks made in the order dated 01.08.2025 passed in WP (Crl) No. - 1025/2023. Petitioner has concealed this present case.

8.3 The details of additional cases which are disposed of between the parties, as per the list filed by the respondent-husband on 24.11.2025, are extracted below:

Sl. No.	Particulars of Case	Filed By	Date of Filing	Remarks / Notes/ Status
02	A Complaint before Delhi Mahila Aayog, Near ITO Delhi	Petitioner/ Neha Lal	19.06.2012	Closed. Kindly refer Counter to TP Page No. - 66, Annexure- A1 Colly. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court.
03	Police complaint before PS Madhu Vihar, Delhi.	Petitioner/ Neha Lal	23.06.2012	Closed. After investigation it turned out as a false complaint. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court. Kindly refer Counter to Affidavit Page No. - 69, Annexure- A1 Colly.
06	Another Complaint before Police at CAW CELL (East) Delhi.	Petitioner/ Neha Lal	13.09.2012	Closed. Kindly refer Counter to TP Page No.- 151 third paragraph of the DELHI Police report. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court

08	A complaint under Section 200 Cr.P.C for criminal defamation.	Petitioner/ Neha Lal and her mother Smt. Prity Lal	28.09.2012	Closed. Both wife and mother-in-law has demanded Rs 10 Lakhs from me. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court. Kindly refer Counter to TP Page No. - 84, Annexure- A1Colly.
10	An interim Application for monthly allowance.	Petitioner/ Neha Lal	20.07.2012	Closed. Ad interim Maintenance was awarded to petitioner/ Neha Lal.
12	Execution Application against interim maintenance order. EX No. - 84/2018 (Ex No. - 158/2017)	Petitioner/ Neha Lal	21.08.2017	Closed vide order dated 28.01.2019. Respondent/husband has made excess payment of Rs 24,404/- than the claimed amount in said execution proceeding to wife. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court
13	Application Under Section 311 Cr.P.C in the complaint of Section 12 of PWDV Act 2005.	Petitioner/ Neha Lal	15.03.2024	Closed. Hon'ble Mahila Court has dismissed the said application of petitioner. Petitioner has

				deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court
14	Application under Section 319 Cr.P.C in the trial of 498A IPC FIR Case for summoning of other relatives of respondent/ husband.	Petitioner/ Neha Lal	Date is unknown to respondent	Closed. Hon'ble Mahila Court has dismissed the said application after hearing both parties on merits. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court
15	WP (CRL) No. - 1469/2012 Prayed for Quashing of 498A IPC FIR before Hon'ble Delhi High Court.	Respondent/ Abhishek Kumar	10.10.2012	Closed. It was withdrawn with liberty. Disposed of as not pressed.
17	Criminal Revision No.- 176/2016 before Hon'ble ASJ Court, East District, KKD Courts Delhi. Preferred Being dissatisfied with the Impugned order of charge framing under Sections 498A/406 IPC against Husband.	Respondent/ Abhishek Kumar	05.03.2016	Closed. On 26.12.2016 the Hon'ble ASJ Court has precisely observed that no ground to interfere with the impugned order and dismissed the said criminal revision.

19	CRL MC No. 440/2017 is filed before the Hon'ble Delhi High Court being aggrieved with the Hon'ble ASJ Court revisional order seeking quashing of framed charges and charge sheet.	Respondent/ Abhishek Kumar	02.02.2017	Closed On 13.02.2019 Hon'ble Delhi High Court has dismissed the said case thereafter SLP (Crl.) No. - 2925/2019 was filed. Petitioner has deliberately concealed the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court.
21	Crl MC No. - 1504/2018 Filed before Hon'ble Delhi High Court in which interim maintenance order of Hon'ble Family Court dated 17.07.2015 was challenged.	Respondent/ Abhishek Kumar	21.03.2018	Closed. On 07.05.2018 Hon'ble Delhi High Court has ordered respondent/husband to Pay Rs 2 Lakhs to petitioner and further directed to conclude the trial in 125 Cr.P.C case in three months and dispose of the said application.
23	WP (Crl.) No. - 2067/2019 After dismissal of SLP (Crl.) No. - 2925/2019 this present writ petition was filed before the Hon'ble Delhi High Court seeking quashing of charges and chargesheet of Section 498A IPC.	Respondent/ Abhishek Kumar	24.07.2019	Closed. Hon'ble Delhi High Court has asked a Status report from the Hon'ble Mahila Court thereafter disposed of the writ petition with directions to consider/ point out the contradictions in the statements of petitioner/ Neha Lal and conclude the Trial in six months on 17.09.2019. Petitioner has deliberately concealed

				the said fact in her chart dated 21.11.2025 before this Hon'ble Supreme Court.

8.4 As the information regarding the number of cases filed, disposed of and other particulars thereof was still not found to be complete, this Court had no choice but to make a request to the Registrars General of the concerned High Courts to verify the information furnished by the parties before this Court, as the order passed by this Court could not be vague or incomplete, and the idea was to deal with all the issues between the parties and for that purpose correct details of the cases were required.

8.5 If the list submitted by the petitioner and the respondent is compared with the information as received from the High Court of Delhi, the following discrepancies were noticed:

(i) Crl. M.A. No.7920 of 2019 in Crl. Rev. P. No.441 of 2019 was not found in the list provided by the parties, however, finds mention in the list received from the High Court of Delhi.

(ii) Crl. M.A. No.42585 of 2019 in W.P. (Crl.) No.1025 of 2023 was not found in the list provided by the petitioner, however, the case is mentioned in the lists received from the respondent as well as the High Court of Delhi.

(iii) W.P. (Crl.) No.2758 of 2024 is found in all the lists given by petitioner, respondent and the High Court of Delhi. The only addition in the list received from the High Court of Delhi is that judgment in the case has been reserved.

(iv) Application under Section 379 read with 215 BNSS filed in MT Case No.151 of 2021 was not found in the list provided by the petitioner, however, the case is mentioned in the lists received from the respondent as well as the High Court of Delhi.

(v) The petitioner in the list provided by her, has mentioned MT Case No.151 of 2021 at three places, namely, at serial no.7, 9 and 10. The only difference being that at serial no.10, it is stated to be an application filed under Section 379 read with 215 of BNSS, 2023. In the list provided by the respondent, in MT Case No.151 of 2021, multiple applications were filed which are stated to be pending. In the list received from the High Court of Delhi, multiple applications were filed in MT Case No.151 of 2021, out of which two were disposed of whereas three are pending.

(vi) At serial no.2 in the cases before the Family Courts, Delhi District Courts, in the list as received from the High Court of Delhi, case bearing MT No.609

of 2025 filed under Section 144 of BNSS, 2023 is stated to be pending before Family Court, District East, Karkardooma Courts, Delhi. The same is not mentioned in the list provided by the parties.

(vii) Application under Section 340 of CrPC filed in MT No.853 of 2018 was not found in the list provided by the petitioner, however, the case is mentioned in the lists received from the respondent as well as the High Court of Delhi.

8.6 If the list submitted by the petitioner and the respondent is compared with the information as received from the High Court of Judicature at Allahabad, the following discrepancies were noticed:

(i) In the list provided by the respondent, reference has been made to the case pertaining to FIR No.501 of 2013 only.

(ii) As per the information received from the High Court of Judicature at Allahabad, common chargesheet is stated to have been filed in Crime Case No.50/2013 and FIR No.501/2013 both the aforesaid cases. In addition, Case No.2012 of 2019 has been mentioned where the proceedings by the High Court have been stayed.

8.7 The information which has been received after verification from the Registrars General of both the High Courts shows that the information, as furnished by the parties before this Court, was not complete.

8.8 As per the information received from the High Court of Judicature at Allahabad and the High Court of Delhi, the following cases are found to be pending between the parties before the High Courts, the Family Courts and the District Courts:

HIGH COURT OF DELHI	
S. No.	Case details
1.	Crl. Rev. P. No.441 of 2019 DLHC010183702019
2.	Crl M.A. No.7920 of 2019 in Crl. Rev. P. No.441 of 2019
3.	Crl M.A. No.42585 of 2019 in W.P. (Crl) No.1025 of 2023
4.	W.P. (Crl) No.2758 of 2024 DLHC010587772024

ALLAHABAD HIGH COURT	
S. No.	Case details
1.	Application U/s 482 No.16285 of 2019 Neha Lal & Anr vs State of U.P. & Anr

FAMILY COURT, DISTRICT EAST, KARKARDOOMA COURTS, DELHI	
S. No.	Case details
1.	MT Case No.151 of 2021 u/s 127 CrPC DLET04-000615-2021
2.	Application u/s 379 r/w 215 BNSS filed in MT Case No.151 of 2021
3.	Application u/s 379 r/w 215 BNSS filed in MT Case No.151 of 2021
4.	MT No.609 of 2025 u/S 144 BNSS DLET0400-3646-2025
5.	Misc Crl No.07 of 2019 u/S 340 CrPC DLET-04-000505-2019
6.	Application u/S 340 CrPC in MT No.853 of 2018
7.	Execution Petition Crl. No.12 of 2021 DELET04-001858-2020
8.	Execution Petition Crl. No.104 of 2023 DLET04-000976-2023
9.	Execution Petition Crl. No.208 of 2024 DLET04-001216-2024

FAMILY COURT, DISTRICT NORTH, ROHINI COURTS, DELHI	
S. No.	Case details
1.	HMA No.1244 of 2025 DLNT040019852025

GHAZIABAD COURT, GHAZIABAD, UTTAR PRADESH	
S. No.	Case details
1.	Case U/s 406, 323, 504 of IPC bearing no.2897 of 2018 (FIR no.50 of 2013 & FIR no.501 of 2013) State vs Neha Lal
2.	Case U/s 323, 504, 506 of IPC bearing no.2012 of 2019 Abhishek vs Neha Lal

FAMILY COURT, LUCKNOW, UTTAR PRADESH	
S. No.	Case details
1.	Case No.2238 of 2024 u/s 13 of HMA

9. Besides the aforesaid pending cases, the details, as has been extracted in the previous part of the judgment, show the number of cases which were filed by both the parties against each other which have been dismissed or disposed of.

10. The petitioner-wife has invoked the jurisdiction of this Court to dissolve the marriage between the parties by filing application under Article 142 of the Constitution of India. It is on the grounds of irretrievable breakdown of marriage. Otherwise, under the Hindu Marriage Act, 1952, this is not a ground on which divorce can be sought or granted.

11. In Shilpa Sailesh's case (supra), one of the questions considered by this Court was whether this Court can grant divorce in exercise of power under Article 142 of the Constitution of India in case of complete and irretrievable breakdown of marriage. The answer to the aforesaid question was in positive.

This Court considered that irretrievable breakdown of marriage is not a ground for divorce under the 1955 Act, however, the same does not debar this Court to exercise the power to dissolve a broken and shattered marriage in exercise of its power under Article 142 of the Constitution of India. It is in the interest of the society that the marriages, as far as possible, should be maintained.

If there is failure in the efforts for reconciliation and it is found that marriage has been wrecked beyond the scope of salvage, it is in the interest of all concerned to recognize that fact and dissolve the marriage, otherwise the litigation, sufferings by all the parties and the miseries may continue. This Court held that such discretionary power can be exercised to do complete justice. Despite opposition by the parties, this Court can dissolve the marriage if there is no possibility of parties living together. Continuation of formal legal relationships in such circumstances would not be justified.

11.1 The relevant factors to be considered by this Court to form an opinion as to whether the marriage has irretrievably broken down have been enumerated in paragraph '63' of the aforesaid judgment and the same is extracted below:

"63. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc.

The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children.

Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration."

(emphasis supplied)

11.2 The specific question framed with regard to exercise of power under Article 142 of the Constitution of India and the answer thereto is extracted below:

"(iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

76. This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do "complete justice" to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

12. Prior to the aforesaid Constitution Bench judgment, in *Rakesh Raman vs. Kavita*³, this Court observed that multiple court cases between the parties and repeated failure in mediation are testimony of marriage being broken down. Relevant extract from the judgment is as under:

"15. The multiple Court battles between them and the repeated failures in mediation and conciliation is at least testimony of this fact that no bond now survive between the couple, it is indeed a marriage which has broken down irretrievably."

13. There are various other instances where this Court, in exercise of power under Article 142 of the Constitution of India, had dissolved the marriage on account of irretrievable breakdown considering the totality of the facts and circumstances in those cases. This is despite the fact that one of the spouses was not consenting to the same.

(i) In *Vikas Kanaujia vs. Sarita*⁴, this Court passed the decree of divorce on the grounds of irretrievable breakdown of marriage even though the wife was not consenting for passing of such decree.

(ii) *Prakashchandra Joshi vs. Kuntal Prakashchandra Joshi @ Kuntal Visanji Shah*⁵ is a case in which the wife had chosen not to appear before Court despite service. Still this Court found that case to be fit for passing a decree of divorce while proceeding the wife ex-parte.

(iii) In Vineet Taneja vs. Ritu Johari⁶, despite objection by the husband, this Court dissolved the marriage in exercise of power under Article 142(1) of the Constitution of India finding that the facts clearly suggested that to be a fit case of irretrievable breakdown of marriage.

(iv) Rinku Baheti vs. Sandesh Sharda⁷ is another such case where this Court dissolved the marriage in exercise of power under Article 142 of the Constitution of India. The order was passed in a Transfer Petition filed by the petitioner-wife therein. It was a case of second marriage of both the parties.

(v) In Nayan Bhowmick vs. Aparna Chakraborty⁸, this Court dissolved the marriage in exercise of power under Article 142 of the Constitution of India finding that the parties therein were living separately for more than two decades and there was no sanctity left in their marriage. Grant of divorce was not to have devastating effect on any third party, as there was no child born from the wedlock. The proceedings arose from a divorce petition filed by the husband.

14. The following observation made by this Court in Achin Gupta vs State of Haryana & Anr⁹ which are apt for the situation are extracted below:

"32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another.

Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage.

In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if

the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary.

However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty."

14.1 In some of the FIRs, the allegations are also made under Sections 377 and 376 IPC against the family members of the parties.

15. If the facts of the case in hand are examined in the light of the law laid down by the Constitution Bench of this Court in Shilpa Sailesh's case (supra) and the other judgments referred to above, we find that the marriage of the parties was solemnized on 28.01.2012. They have stayed together only for a period of 65 days and ever since then they are into litigation one after another. Once they are residing separately for more than a decade, there is no question of rehabilitation and cohabitation. Efforts were also made for reconciliation but failed.

Before this Court too, the matter was referred for mediation vide order dated 22.07.2025 and fixed for report of the Mediator on 14.10.2025. However, on an application (I.A.No.176081 of 2025) filed by the respondent in-person, the date of hearing was preponed as even the learned counsel appearing for the petitioner also submitted that the process of mediation could not take off. As a result, there are no chances for settlement of the dispute.

16. The parties are well qualified. The petitioner, as has been contended by the respondent, is working in the company of her sister and earning handsomely. The respondent is also qualified, however, he has stated that he had resigned from the job of Engineer. The age of the petitioner is about 38 years and the respondent is about 46 years old. As the parties hardly stayed together there is no child born from the wedlock though the respondent claims

that petitioner had aborted a child without his consent, however with no convincing proof.

17. Coming again to the litigation between the parties, we may add that the details thereof have been noticed in paragraph 8 as above. Number of cases have been disposed of whereas some are still pending.

18. In the application filed by the petitioner-wife under Article 142 of the Constitution of India, no claim for any alimony has been made by her. She has prayed for quashing of the proceedings in the cases which are stated to be pending in different Courts at Delhi, Allahabad, Ghaziabad and Lucknow. The details of cases, as furnished by the parties, were verified from the Courts concerned and for passing the order, we are referring and relying upon the details provided by the Courts concerned.

19. At the time of arguments, serious objections were raised by the respondent, who appeared in-person, to the prayer made in the application filed by the petitioner. He had submitted that the petitioner has spoiled his life. She had been misrepresenting facts before the Courts with a motive to mislead for which applications have been filed by him under Section 340 of CrPC/379 BNSS. He had further submitted that he does not consent to passing of decree of divorce.

20. From the facts of the case as noticed above, we find this to be a clear case of irretrievable breakdown of marriage where the parties do not intend to live together and cohabit. Rather they may not be able to reconcile seeing the level of bitterness generated with the passage of time. They may not have been made for each other.

Some time is taken by the young couples to understand each other and adjust accordingly. No one can be said to be perfect. Level of tolerance has gone down while level of ego has risen up. May be the differences were so much that the couple could stay together only for 65 days and immediately thereafter litigation started. It may be impossible now to put the clock back and live together after forgetting the bitterness, which has been created in last more than a decade.

21. They have indulged into filing more than 40 cases against each other. Warring couples cannot be allowed to settle their scores by treating Courts as their battlefield and choke the system. If there is no compatibility, there are modes available for early resolution of disputes. Process of mediation is the mode which can be explored at the stage of pre-litigation and even after litigation starts. When the parties start litigating against each other, especially

on criminal side, the chances of reunion are remote but should not be ruled out.

22. Practice of law is said to be noble profession. Whenever the parties in matrimonial dispute have differences, the preparation starts as to how to teach lesson to the other side. Evidence is collected and, in some cases, even created, which is more often in the era of artificial intelligence. False allegations are rampant.

As any matrimonial dispute has immediate effect on the fabric of the society, it is the duty of all concerned to make earnest effort to resolve the same at the earliest before the parties take strong and rigid stand. There are mediation centres in all districts where pre-litigation mediation is also possible. In fact, it is being explored in number of cases and the success rate is also encouraging. In many cases, the parties, after resolution of their disputes, has also started living together.

23. The problem is more after the birth of a child or children. Many a times, he/she becomes a bone of contention between the warring parties. His/her custody is another battle which starts before Court. In many cases, the orders passed by the Courts are not even complied with.

24. First and the foremost, earnest effort should be made by the parties and to be guided by the advocates, whensoever consulted in the process, is to convince them for a pre-litigation mediation. Rather in some cases, their counselling may be required. Even if a case is filed in a Court on a trivial issue such as maintenance under Section 144 of BNSS, 2023 (earlier Section 125 of CrPC, 1973) or Section 12 of the Protection of Women from Domestic Violence Act, 2005, the first effort required to be made by the Court is to explore mediation instead of calling upon the parties for filing replies as allegations and counter allegations sometimes aggravate the dispute.

Even when a complaint is sought to be registered with the police of simple matrimonial dispute, first and the foremost effort has to be for re-conciliation, that too, if possible, through the mediation centers in the Courts, instead of calling the parties to the police stations. This sometimes becomes a point of no return specially when any of the parties is arrested, may it be even for a day.

25. In the changing times, the matrimonial litigation has increased manifolds. Even this Court is flooded with transfer petitions, mainly filed by the wives, seeking transfer of the proceedings initiated by their husbands, may be at the first instance or as a counter blast. In such situations, it is the duty of all concerned including the family members of the parties to make their earnest

effort to resolve the disputes before any civil or criminal proceedings are launched.

26. However, from the facts noticed above, we find this to be a case of irretrievable breakdown of marriage, where the parties stayed together only for 65 days, are separated for the last more than a decade and have been indulging into litigation one after another. We find this to be a fit case for exercise of our discretion under Article 142 of the Constitution of India to dissolve the marriage between the parties. As a result, by passing the decree, we dissolve the marriage between the parties. No alimony has been claimed by the petitioner-wife and all her previous claims stand settled.

27. It is directed that the parties shall not indulge in further litigation with reference to their matrimonial dispute.

28. Now coming to the cases pending between the parties. All the cases pending between the parties, as mentioned in paragraph No.8.8, shall stand disposed of without any further action by them. However, the following applications filed by the parties raising plea of perjury shall continue because no one can be permitted to pollute the stream of justice, as emphasized by this Court in *Kusha Duruka vs. The State of Odisha*¹⁰. The cases being:

(i) Crl. M. A. No.42585 of 2019 in W. P. (Crl.) No.1025 of 2023 (under Section 340 CrPC)

(ii) Application under Section 379 read with 215 BNSS filed in MT No.151 of 2021

(iii) Application under Section 379 read with 215 BNSS filed in MT No.151 of 2021

(iv) Misc. Crl. No.7 of 2019 filed in MT No.853 of 2018

(v) Application under Section 340 CrPC in MT No.853 of 2018

29. It is clarified that if besides the cases mentioned in the paragraph 28, any other application(s) filed by the parties either under section 340 CrPC or under Section 379 read with 215 of BNSS, 2023, the same shall be dealt with on merits by the concerned Courts and will not be disposed of, in view of this order passed by this Court.

30. A copy of the order passed by this Court shall be sent to the Courts concerned for taking action as per the direction in this order. However, if there is any other case arising out of matrimonial dispute, though not

mentioned in the list, but pending, the same shall also stand disposed of on production of copy of this order by the parties.

31. No further order is required to be passed in the Transfer Petition and the same is disposed of.

32. In view of the fact that the parties stayed together only for a period of 65 days and have indulged in numerous litigations for the last more than a decade apparently with a view to settle scores, in our opinion, both of them deserve to be penalised with costs, which is quantified at 10,000/- each, as ₹ a token amount. Let the cost be deposited with the Supreme Court Advocates on Record Association.

33. Pending application(s), if any, shall also stand disposed of.

.....J. (Rajesh Bindal)

.....J. (Manmohan)

New Delhi;

January 20, 2026.

1 2023 INSC 468: (2023) 14 SCC 231

2 For short "the 1955 Act"

3 (2023) 3 SCR 552: 2023 INSC 433

4 (2024) 7 SCR 933: 2024 INSC 517

5 (2024) 1 SCR 697: 2024 INSC 55

6 MANU/SCOR/93862/2024: MA No.2009 of 2023 in SLP (C) No.3667 of 2023

7 2024 INSC 1014

8 2025 INSC 1436

9 (2024) 6 SCR 129: 2024 INSC 369

10 2024 INSC 46

IN THE SUPREME COURT OF INDIA

Viraj Impex Pvt. Ltd.
Vs.
Union of India and Anr.

[Civil Appeal No. _____ of 2026 @ SLP (C) No. 1979 of 2019]
[Civil Appeal No. _____ of 2026 @ SLP (C) No. 2297 of 2019]
[Civil Appeal No. _____ of 2026 @ SLP (C) No. 2778 of 2019]
[Civil Appeal No. _____ of 2026 @ SLP (C) No. 1977 of 2019]

Head Note - Subordinate legislation does not become binding unless it is published in the Official Gazette, and it is the date of such Gazette publication, not the mere date of issuance of the notification, which renders it binding.

Once the legislature has prescribed the specified mode of promulgation, the executive cannot introduce an alternative mode and attribute legal consequences to it. A Notification cannot operate in a fragmented manner. In law, it is born only upon publication in the Official Gazette, and it is from that date alone that rights may be curtailed or obligations imposed. To hold otherwise, would permit unpublished delegated legislation to burden citizens, a proposition expressly rejected by this Court in long line of decisions.

Delegated legislation, unlike plenary legislation enacted by the Parliament, is framed in the executive chambers without open legislative debate. The requirement of publication in the Gazette, therefore, serves a dual constitutional purpose i.e. –

- (a) it ensures accessibility and notice to those governed by the law, and
- (b) it ensures accountability and solemnity in the exercise of delegated legislative power.

The requirement of publication in the Gazette, is therefore not an empty formality. It is an act by which an executive decision is transformed into law. It is precisely for this reason that courts have consistently insisted that strict compliance with the publication requirements is a condition precedent for the enforceability of delegated legislation.

JUDGMENT

Alok Aradhe, J.

1. Leave granted.

2. These appeals arise from Common Order and Judgment dated 21.12.2018 passed by the High Court of Delhi, in a batch of writ petitions, whereby the writ petitions filed by the appellants were dismissed. By the aforesaid order and judgment, the High Court dismissed the challenge laid by the appellants to a Notification issued by the Central Government imposing a Minimum Import Price on certain steel products. The controversy lies in narrow compass and turns primarily on the interpretation of the expression 'date of this Notification' occurring in para 2 of Notification No.38/2015-2020 (Notification), issued under the Foreign Trade (Development and Regulation) Act, 1992 (Act).

THE FACTUAL BACKGROUND

3. The appellants are private limited companies incorporated under the Companies Act, 1956 and are engaged in the import and trading of mild steel items such as Hot Rolled Coils, Cold Rolled Coils, Hot Rolled Steel Plates and Pre Painted Steel Coils etc. Admittedly, prior to February, 2016, the said items were freely importable and fell under Chapter -72 of the Indian Trade Clarification (Harmonized System), 2012 (hereinafter, referred to as 'ITC-HS'), Schedule-I of the Foreign Trade Policy, 2015-2020 (FTP).

4. Between 29.01.2016 and 04.02.2016, the appellants entered into firm sale contracts with exporters from China and South Korea. The appellants on 05.02.2016 opened irrevocable letters of credit in favour of foreign suppliers.

5. On the same date i.e. 05.02.2016, the Directorate General of Foreign Trade (DGFT), uploaded Notification on its website, introducing Minimum Import Price (MIP) for specified steel products. The uploaded document itself contained an endorsement 'To be published in the Official Gazette of India'. Admittedly, the Notification was published in the Official Gazette on 11.02.2016.

6. Anticipating restriction, the appellants, on 08.02.2016, applied for registration of their Letters of Credit under transitional protection contemplated by para 1.05(b) of the FTP.

7. The appellants thereafter approached the High Court, contending that the Notification having been published in the Official Gazette on 11.02.2016, could not be applied to imports covered by Letters of Credit opened earlier. The appellants sought relief to quash the Notification and in the alternative, a declaration was sought that the Notification does not apply to Letters of Credit opened by the appellants prior to publication of the Notification in the Official Gazette.

8. The High Court by a Common Order and Judgment dated 21.12.2018, though held that the Notification would operate from 11.02.2016 i.e., the date of its publication, yet it held that uploading of the Notification on 05.02.2016, constituted sufficient notice to bind importers whose letters of credit were not opened before 05.02.2016. The High Court further held that the Notification is not an act of delegated legislation. Accordingly, the writ petitions were dismissed. Aggrieved thereby, the appellants are before this Court.

SUBMISSIONS

9. Learned senior counsel for the appellants submitted that admittedly the Notification was published in the Official Gazette only on 11.02.2016 and, therefore, was non-est prior to the aforesaid date. It is contended that on a plain reading of para 2 of the Notification read with para 1.05 (b) of the FTP, it is evident that the importer should have opened the irrevocable Letters of Credit before the date of imposition of restriction i.e., 11.02.2016.

It is pointed out that, in the present cases, the appellants have opened the irrevocable Letters of Credit on 05.02.2016. It is further pointed out that para 1.05 (b) of the FTP is incorporated into and made an integral part of para 2 of the Notification. It is contended that the date of the Notification cannot be read as 05.02.2016, as the Notification was admittedly published on 11.02.2016 and would be effective from the aforesaid date. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court¹.

10. On the other hand, learned counsel for the respondents submitted that even though the Notification comes into effect from 11.02.2016, yet the benefit of para 2 of the Notification is restricted to Letters of Credit entered into before 05.02.2016. It is contended that the expression 'date of Notification' will remain static as 05.02.2016. It is pointed out that very often legislations get enacted on a particular date but either the Act, in its entirety, or some of the provisions in the Act are brought into force on a particular date.

In this connection, our attention has been invited to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is pointed out that even though the aforesaid Act received the assent of the President on 27.09.2013, yet, the Act came into force on 01.01.2014. It is contended that legal consequence of para 2 of the Notification is that the Notification would govern imports on and from 11.02.2016 but the benefit of para 2 of the Notification would be extended only to the imports under the Letters of Credit entered into before 05.02.2016.

11. It is pointed out that the appellants have not opened the Letters of Credit before the date of the Notification i.e., 05.02.2016 and, therefore, para 1.05(b) of the FTP has no application to the facts of the case. It is argued that even otherwise, reference to para 1.05(b) of the FTP has no relevance to para 2 of the Notification, as the condition mandated in para 1.05(b) is only registration of Letter of Credit with Jurisdictional Regional Authority. Alternatively, it is contended that in case of a conflict between the Notification and the policy, the mandate of the statutory Notification will prevail over the policy of the Government. In support of the aforesaid submission, reliance has been placed on decisions of this Court². Lastly, it is contended that the judgment and order passed by the High Court does not call for any interference in these appeals.

THE CENTRAL ISSUE

12. The pivotal issue that falls for our consideration is whether the expression 'date of Notification' mentioned in para 2 of the Notification issued under the Act, can be interpreted to mean any date, other than the date of its publication in the Official Gazette.

STATUTORY FRAMEWORK

13. Before proceeding further, it is apposite to take note of the relevant statutory provisions. The Act was enacted to provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India, and matters connected therewith and incidental thereto. Section 3 of the Act empowers the Central Government to regulate imports and exports by an order published in the Official Gazette. The relevant extract of Section 3 is reproduced below for the facility of reference:-

"3. Powers to make provisions relating to imports and exports-

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting, or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the [Import or export of goods or services and technology]"

14. In exercise of powers under Section 3 of the Act read with paras 1.02 and 2.01 of FTP, the Central Government amended the Import Policy Conditions vide Notification against 173 HS Codes under Chapter - 72 of ITC (HS), 2012

- Schedule - I (Import Policy) subject to the conditions mentioned therein.
The said Notification reads as under:

"To be Published in the Gazette of India Extraordinary Part-II,
Section -3, Subsection (ii)
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan

Notification No. 38/2015-20

New Delhi, Dated: 5 February, 2016

Subject: Minimum Import Price (MIP) on Iron and Steel under Chapter 72 of ITC (HS), 2012 - Schedule -1 (Import Policy): amendment in import Policy Conditions.

S. 0. (E). - In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Import Policy Conditions against 173 HS Codes under Chapter 72 of ITC (HS), 2012 - Schedule -I (Import Policy) as per the Annex subject to the following conditions:

a) Imports under Advance Authorisation Scheme are exempted from Minimum Import Price (MIP) under this Notification;

b) MIP is also exempted for all API grade steel conforming to X-52 and higher API grades for manufacturing pipes used for pipeline transportation systems in the petroleum and natural gas industries; and

c) MIP conditions laid down in this Notification are valid for six months from the date of the notification or until further orders, whichever is earlier.

2. Further, imports / shipments under Letter of Credit already entered into before the date of this notification shall be exempted from the Minimum Import Price condition subject to Para 1.05(b) of Foreign Trade Policy, 2015-20.

3. Effect of this Notification: Minimum Import Price (MIP) is introduced against 173 HS Codes under Chapter 72 of ITC (HS), 2012 - Schedule-I (Import Policy) as detailed in the Annex.

(Anup Wadhawan)
Director General of Foreign Trade
E-mail: dgft[at]nie[dot]in

[Issued from F.No.01i89/180/Moni-5852/AM-03Nol.- I/PC-2 (A)]"

15. Para 1.05(b) of the FTP is extracted below for the facility of reference: "In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction or regulation, unless otherwise stipulated.

This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity available and time period of such irrevocable letter of credit. For operationalising such irrevocable letter of credit, the applicant shall have to register the Letter of Credit with jurisdictional Regional Authority (RA) against computerized receipt, within 15 days of the imposition of any such restriction or regulation."

ANALYSIS

16. We have given our thoughtful consideration to the rival submissions and have taken note of the relevant statutory provisions. Law, to bind, must first exist. And to exist, it must be made known in the manner ordained by the legislature. Delegated legislation, unlike plenary legislation enacted by the Parliament, is framed in the executive chambers without open legislative debate.

The requirement of publication in the Gazette, therefore, serves a dual constitutional purpose i.e. (a) it ensures accessibility and notice to those governed by the law, and (b) it ensures accountability and solemnity in the exercise of delegated legislative power. The requirement of publication in the Gazette, is therefore not an empty formality. It is an act by which an executive decision is transformed into law. It is precisely for this reason that courts have consistently insisted that strict compliance with the publication requirements is a condition precedent for the enforceability of delegated legislation.

17. The legal position in this regard stands crystalised by a long line of decisions of this Court. The true test of the effective commencement of a statutory order or subordinate legislation is whether it has been published in a manner reasonably calculated to bring it to the notice of all persons who may be affected by it, namely, through a mode which is ordinarily and generally accepted for that purpose³.

The aforesaid principle was referred to with approval by this Court⁴ and it was held that natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with exercise of due and reasonable diligence.

18. Another two-Judge Bench of this Court⁵ undertook a comprehensive survey of law relating to publication of subordinate legislation. The court recognised the modern reality that delegated legislation pervades almost every sphere of governance, often framed unobtrusively and without the visibility that attends Parliamentary enactments. It was, therefore, held that publication of promulgation is indispensable to enforceability of subordinate legislation. It was further held that when the parent statute prescribes a particular mode of publication, that mode must be strictly followed. The aforesaid position was reiterated, in subsequent decisions⁶.

19. In the backdrop of aforesaid well-settled legal position, we may advert to the facts of the case in hand. The parent statute, namely the Act expressly mandates that any order regulating imports or exports shall be made by an order published in the Official Gazette. The legislature in its wisdom, has not left the mode of promulgation to executive discretion. Delegated legislation is an instrument to give effect to the policy and purpose of the parent statute. It, therefore, has to be construed in the manner that advances the object of the Act, namely to regulate foreign trade through transparent, predictable and legally certain measures.

Tested on the aforesaid legal principles, coupled with requirement of publication in the Official Gazette, contained in parent statute, it is manifest that the Notification could not have acquired the force of law prior to its publication in the Official Gazette on 11.02.2016. Indeed, the Notification itself acknowledges its incompleteness by declaring that it is 'to be published in the Gazette of India'. The acknowledgement is a confession that, until such publication, the Notification had not crossed the threshold from intention to obligation.

Once the legislature has prescribed the specified mode of promulgation, the executive cannot introduce an alternative mode and attribute legal consequences to it. A Notification cannot operate in a fragmented manner. In law, it is born only upon publication in the Official Gazette, and it is from that date alone that rights may be curtailed or obligations imposed. To hold otherwise, would permit unpublished delegated legislation to burden citizens,

a proposition expressly rejected by this Court in long line of decisions referred to supra.

20. Paragraph 2 of the Notification dated 05.02.2016 provides that imports/shipments under Letter of Credit already entered into before the date of this Notification shall be exempt from MIP condition subject to para 1.05(b) of the FTP. Thus, Notification incorporates para 1.05(b) of the FTP, which provides that in case an export or import i.e. permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such a restriction or regulation, otherwise stipulated. We do not, therefore, find any force in the submission that para 1.05(b) of the FTP has either no relevance or the same is in conflict with the Notification.

21. For yet another reason, the benefit of transitional provision contained in para 1.05(b) of the FTP cannot be denied to the appellants, as the same would defeat the plain language of the FTP and would undermine the object of the parent Act, and would introduce uncertainty to a field where certainty is indispensable. The imposition of fiscal or trade burdens on the basis of an unpublished Notification would erode commercial confidence and offend the Rule of Law, the result which the court must steadfastly guard against.

22. Once it is held that Notification became operative only on 11.02.2016, the expression 'date of this Notification' occurring in para 2 thereof, must necessarily be construed to mean the date of its publication in the Official Gazette. Accordingly, the issue is answered. The appellants having opened irrevocable Letters of Credit prior to 11.02.2016 and having complied with procedural requirements under para 1.05(b) of the FTP are clearly entitled to the benefit of transitional provision contained therein. The MIP introduced by the Notification with effect from 11.02.2016 cannot be applied to imports effected by the appellants pursuant to irrevocable Letters of Credit prior to 11.02.2016.

CONCLUSION

23. We accordingly hold that the Notification issued under Section 3 of the Act acquires the force of law only upon its publication in the Official Gazette. The expression 'date of this Notification' must necessarily mean the date of such publication.

ORDER

24. For the foregoing reasons, the impugned order and judgment dated 21.12.2018 of the High Court is quashed and set aside. The appellants are held entitled to protection of para 1.05(b) of the FTP.

25. The appeals are allowed. There shall be no order as to costs.

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

.....J. [Alok Aradhe]

New Delhi;

January 21, 2026.

1 B.K. Srinivasan & Ors. vs. State of Karnataka & Ors., (1987) 1 SCC 658 and Raja Harish Chandra Raj Singh vs. Deputy Land Acquisition Officer & Anr., (1962) 1 SCR 676.

2 State of M.P. & Anr. v. M/s. G.S. Dall and Flour Mills, 1992 Supp (1) Supreme Court Cases 150, Commissioner of Customs (Import), Mumbai v. Dilip Kumar And Company And Others, AIR 2018 Supreme Court 3606.

3 JOHNSON V SARGANT AND SONS, (1918) 1 KB 101 : 87 LJ KB 122

4 HARLA V STATE OF RAJASTHAN, 1951 Supreme Court Cases 936

5 B.K. SRINIVASAN AND ORS. V STATE OF KARNATAKA AND ORS., 1987 (1) Supreme Court Cases 658

6 GULF GOANS HOTELS CO. LTD. V UNION OF INDIA AND ORS., (2014) 10 Supreme Court Cases 673, UNION OF INDIA AND OTHERS V G.S. CHATHA RICE MILLS AND ANOTHER, (2021) 2 Supreme Court Cases 209 and NABHA POWER LTD. AND ANR. V PUNJAB STATE POWER CORPORATION LTD. AND ANR. (2025) 5 SCC 353

IN THE SUPREME COURT OF INDIA

Hemalatha (D) by LRS.
Vs.
Tukaram (D) by LRS. & Ors.

Head Note – It is necessary to suggest to the Union and State Governments the urgent need for the digitization of registered documents and land records using secure, tamper-proof technologies such as Blockchain. Many experts believe that Blockchain, a shared, digital record book (ledger) system would ensure that once a transaction of a sale or mortgage or like nature is recorded, it becomes immutable and cryptographically secured.

It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered instrument as a “sham”.

JUDGMENT

Manmohan, J.

1. Present appeal has been filed challenging the impugned judgment and order dated 04th February 2010 passed by the High Court of Karnataka, Circuit Bench at Gulbarga in R.S.A. No. 163 of 2000, whereby the High Court allowed the appeal filed by Respondent-Plaintiff Tukaram (now deceased) and set aside the judgment dated 13th December 1999 passed by Additional District Judge, Bidar in R.A. No. 12 of 1986. By virtue of the impugned judgment and order passed by the High Court, the suit filed by Respondent-Plaintiff seeking relief of injunction and declaration to declare the Sale Deed and Rental Agreement dated 12th November 1971 as sham and not to be acted upon, has been decreed.

FACTUAL BACKGROUND

2. Briefly stated, the relevant facts are that the Respondent-Plaintiff Tukaram (now deceased) mortgaged his house bearing House No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar (hereinafter referred to as "suit house") in favor of one Mr. Sadanand Garje vide registered Mortgage Deed dated 7th September 1966 for a sum of ₹ 8,000/- (Rupees Eight Thousand only). On the same date, the Respondent-Plaintiff's brother Mr. Ramakrishnappa-Defendant No.3 (now deceased) executed another Mortgage Deed in favour of Mr. Sadanand Garje for an amount of ₹ 2,000/- (Rupees Two Thousand only) for another property bearing House No. 2-5-9/1.

3. It is the case of Appellants-Defendant Nos.1 and 2 that when the Respondent-Plaintiff was unable to comply with Mr. Sadanand Garje's demand for repayment of mortgage amount, the Appellant-Defendant No.2 Mr. Bharatraj was approached by the Respondents to discharge the mortgage amount to Mr. Sadanand Garje and in consideration of the said discharge, the suit house was agreed to be sold to Appellant-Defendant No.1.

4. Admittedly, a registered Sale Deed dated 12th November 1971 was executed in favour of Appellant-Defendant No.1 Smt. Hemalatha (wife of Appellant-Defendant No.2) for a consideration of ₹10,000/- (Rupees Ten Thousand only). In the said Sale Deed, there is no term which can be construed as mortgage by conditional sale. The registered Sale Deed dated 12th November 1971 is reproduced hereinbelow: -

"SALE DEED

**SALE DEED EXECUTED ON THIS 12TH DAY OF NOVEMBER 1971,
AT M. BIDAR BY:**

1. Tukaram Bandi, aged 60 years, S/o late Manikappa Bandi, Occ: Business hereinafter called the VENDOR NO.1;

2. Ramakrishnappa Bandi, aged 55 years, Late Manikappa, occupation cloth business hereinafter called the VENDOR NO.2;

3. Sathyanaryan Bandi, aged 29 years, S/o Ramkishtappa Bandi, Occ: Librarian, B . Bhoomreddy College M, Bidar, hereinafter called the VENDOR NO.3.

4. Manohar Bandi, aged 27 years, S/o Ramkishtappa Bandi, Occ: Divisional Representative M.S.I.L. Bangalore, hereinafter called the VENDOR NO.4.

5. Hari Bandi, aged 24 years, S/o Ramkishtappa Bandi, Occ: Business, hereinafter called the VENDOR NO.5. All residents in H. No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, hereinafter called the "VENDORS". Which each terms of vendor or vendors, shall mean and include their respective heirs, executors, administrators and assigns.

IN FAVOUR OF

Smt. Bacha Hemlatha wife of B. Bharatraj, Hindu, aged 25 years, occupation household, r/o Brahmanwadi, M. Bidar, hereinafter called the "PURCHASER". Which terms shall mean and include her heirs, executors, administrators and assigns.

WHEREAS the Vendor No.1 is the sole and absolute owner of H. No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, and whereas Vendor No.2 to 5 no right, title or interest in the said house, whereas the said house stands in the name of Vendor No.1 only in the Municipal, Records of M. Bidar as per their certificate No. BMC/Tax/2167 /71-72 dt. 16.10.1971.

WHEREAS the Vendors 2 to 5 are added to execution of this sale deed as abundant caution so that even if they have any right, title or interest, they may also pass on the Vendee:

WHEREAS Vendor No.1 had mortgaged the said house with possession to Sri Sadanand Son of Narayan Rao Garje for a sum of Rs.8000/- (Rs. Eight thousand only) under a registered Mortgage deed dated 7.9.1966, duly registered in the office of Sub-Registrar Office, M. Bidar as serial No. 1863 of 1966 on pages 36- 37, of Book No. I, Vol.6 (2) of 1967 dated 3.6.1967.

WHEREAS the Vendor No.1 has no means to redeem the said house and therefore decided to sell away the said house and offered to sell the same to the Vendee for a consideration of Rs.10,000/. (Rs. Ten Thousand only) and whereas the Purchaser has agreed to purchase the said house for the said consideration:

WHEREAS Vendor No.1 has requested the Purchaser to pay the said Mortgage amount of Rs.8000/- (Rs. Eight thousand only) to the said mortgage Sri Sadanand and redeem the Mortgage on his behalf, and accordingly the Purchaser has at the instance of Vendor No.1 had paid the said sum of Rs.8000/- to the said Mortgage Sri Sadanand on 3.11.1971 and redeemed the said mortgage duly registered in the Sub- Registrar Office, M. Bidar as serial No. 2107/71-72/Book I. dated 12th Nov. 1971.

WHEREAS the Purchaser has paid the balance consideration of Rs.2000/- (Rs. Two thousand only) to Vendor No.1 on the same day in cash i.e. on 3.11.1971 the receipt of which the Vendor No.1 hereby admits and acknowledges, and thus the entire consideration of Rs.10,000/- (Rs. Ten thousand only) has been paid to the Vendor No.1 by the purchaser, in the above said manner, the receipt of which the Vendor No.1 hereby admits and acknowledges.

NOW THIS SALE DEED WITNESSETH:

1. That in pursuance of the said agreement and in consideration of the said sum of Rs.10,000/- (Rs. Ten thousand only) well and truly paid by the Purchaser to the Vendor No.1 as stated hereinabove, duly receipted by the Vendor No.1, the Vendors hereby jointly and severally, hereby sell, transfer, alienate, and convey the said H. No. 2-5-9, Pansal Taleem, near Fathedarwaza

Darwaza, M. Bidar, in favour of the Purchaser, absolutely free from all encumbrances of whatsoever nature to HOLD AND ENJOY the same as her absolute property without any let or hindrance either from the Vendors or anyone else claiming thought them. Hereafter the Vendors have ceased to be the Owners of the said house and that the Vendee has become its sole and absolute owner thereof.

2. The Vendors have delivered symbolic possession of the said house to the Vendee by executing a separate rental agreement in her favour and thus converting their status from that of Owner to that of Tenants of the Vendee.

3. The Vendors have delivered the redeemed mortgage deed cited above to the Vendee.

4. The Vendors 2 to 5 hereby declare that they have no right, title or interest in the said house and that Vendor No. 1 alone is the sole and absolute owner and that they have joined only by way of abundant caution.

5. The Vendor No.1 hereby declares that he has not created any encumbrances of whatsoever nature except the Registered Mortgages cited above and that there are no arrears of taxes on the said house upto the date of his sale and that if there be any arrears of taxes found to be due on the house upto this date of sale the Vendor No.1 alone shall bear and pay the same.

6. The Vendor No.1 hereby undertakes to indemnify and keep indemnified the Vendee (Purchaser) against any loss or damages or expenses to which she may be put to due to any defect in his title to the said house or due to any rival claim.

7. The Well situate in backside of the said house is common to the Vendee (purchaser) and the neighbour Haribandi.

8. There are two latrines behind House No. 2.5.9/1 belonging to Hari Bandi, out of which eastern side latrine shall be exclusively belong to the Purchaser herein.

9. The Vendors undertake to co-operate with the Purchaser for mutation of ownership of the said house and perfecting the title thereof including the common usage of the well and the passage on Eastern side of the said house, and the exclusive usage of the Eastern side latrine.

DESCRIPTION OF HOUSE HEREBY SOLD

All that house bearing Municipal No.2-5-9, measuring built up area 2616 sq. ft. situate at Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar bound on the:-

North: Road

South: House belonging to Hari Bandi.

East: Common passage and house of M/d. Ismail.

West: Lane and house of Ramanna Phulari and Kallappa phulari's house as shown in RED in the enclosed plan with all easementary rights appurtenant thereto.

The lane on the eastern side of the said house is common."

(emphasis supplied)

5. It is also the case of Appellants-Defendant Nos.1 and 2 that as the Respondent-Plaintiff and his family had no place to reside, he requested the Appellants-Defendant Nos.1 and 2 to lease the suit house to him. As the husband of Appellant-Defendant No.1 i.e. Appellant-Defendant No. 2 Mr. Bharatraj was a government servant in a transferable job, the suit house was leased to the Respondent-Plaintiff by way of a registered Rental Agreement dated 12th November 1971. The said Rental Agreement is reproduced hereinbelow:

"RENTAL AGREEMENT

THIS RENTAL AGREEMENT EXECUTED ON THIS THE 12TH DAY OF NOVEMBER 1971, BY:

1. Tukaram Bandi, aged 60 years, S/o late Manikappa Bandi, Occ: Business;
2. Ramakrishnappa Bandi, aged 55 years, Late Manikappa, occupation cloth business;
3. Sathyanaryan Bandi, aged 29 years, S/o Ramkishtappa Bandi, Occ: Librarian, B. Bhoomreddy College M, Bidar.
4. Manohar Bandi, aged 27 years, S/o Ramkishtappa Bandi, Occ: Divisional Representative M.S.I.L. Bangalore.
5. Hari Bandi, aged 24 years, S/o Ramkishtappa Bandi, Occ: Business.

All residents of H. No.2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, hereinafter called the TENANTS:

IN FAVOUR OF

Smt. Bacha Hemlatha wife of B. Bharatraj, Hindu, aged 25 years, occupation household, r/o Brahmanwadi, M. Bidar, hereinafter called the "LANDLADY", Whereas the Tenants herein have sold their H. No.2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, to the landlady under separate Registered sale deed executed by them in her favour today; and the tenants being unable to secure alternative accommodation and therefore requested the landlady to let out the said house to them on a monthly rent of Rs.200/- (Rs. Two hundred only) to which the landlady has agreed on the following terms and conditions:

NOW THIS RENTAL AGREEMENT WITNESSETH:

1. That the Tenants have taken on rent from the landlady the said H.No.2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, belonging to the landlady, a monthly rent of Rs.200/- (Rs. Two hundred only) and agree to pay the said monthly rent regularly every month on or before 15th of each English Calendar month and obtain her receipt.
2. That the Tenancy shall be for a period of (5) months from today, subject to extension on mutual consent.
3. That the Tenants shall bear and pay the electricity and water consumption charges separately apart from the rent herein agreed direct to the concerned department.
4. That the Tenants shall not sublet either the portion or whole of the said house to any other person or persons without the written prior permission of the landlady.
5. That the tenant shall not make any additions or alterations to the existing a structure without the prior written consent of the landlady.
6. That the Tenant shall not damage the said house in any manner whatsoever and shall not do any act whereby the value of the house be reduced.
7. That the Tenants shall keep the said house in good and habitable condition and shall allow the landlady or her agent inspect the same at all reasonable hours.

8. That the Tenants are liable for eviction if they fail to pay any two months rent during the Tenancy of commits breach of any of the terms herein above mentioned."

6. After fourteen months, the Respondent-Plaintiff defaulted in making payments of monthly rents i.e. after January 1973. Accordingly, Appellants-Defendant Nos.1 and 2 issued a legal notice dated 19th April 1974 to the Respondents to pay the arrears of rent as well as deliver vacant possession of the suit house. The said legal notice is reproduced hereinbelow:-

"From:-

Law Office,
Sri Balwanth Rao Kehanapurkar,
B.A.L.L.B. Advocate,
M. Bider,

Under the instructions of my client Smt. Bacha Hemalatha w/o of Bacha Bharat Raj, r/o of Brahmanwadi, M. Bidar this notice is given to you as under.

All of you, jointly took on lease the house No.3-5-9- situated at Pansal Taleem near Fateh Darwaja, M. Bidar from my said client on 12th November 1971 for residential purpose at the rate of Rs.200/- p.m. on the following terms and conditions.

1. You agreed to pay the monthly rent regularly every month on or before 15th of each English month and obtained receipt.
2. The tenancy was for five months in the beginning subject to extension on mutual consent.
3. You agreed to pay, the Electricity and Water consumption charges separately to the concerned departments.
4. You undertook not to sublet either the portion or the whole of the said house to any other person without consent of my client.
5. You have no rights to make any alterations and additions to the existing structure without prior permission of the client.
6. You should not damage the said house any manner what so ever and shall not do any act whereby the value of the house be reduced.
7. You shall keep the said house in good and habitable conditions and shall allow the client or her agent to inspect the said house at all reasonable hours.

8. You are liable to for eviction if you fail to pay any two months rent during the period of tenancy or commit any breach of the terms referred above.

9. As per the above said agreement of tenancy, you occupied the house as tenants of my client from the date of 12th November 1971, you have paid monthly fixed rent from the said date for the period of 14 months i.e. upto 12th January 1973. After that you discontinue to pay the rent and you have not paid upto now. Any rent of the remaining period i.e. from 13th January 1973 to August 1974 which amounts to Rs.3,8000/- so, the above said amount is due to my client till the date of issue of notice.

My client demanded, several times the due rent amount orally and every time you put forth one or another lame excuses. My client waited for sufficient period and has decided to take legal steps against you for recovery of rent and also for your eviction.

As you have been defaulter for the payment of due rent amount and also contravened the terms of agreement. So you are entitled to continue the tenancy and my client is entitled to file a suit for recovery of the due rent amount and for your eviction.

Before filing this suit I thought it is better issue a notice to you, so that you may settle the disputed applicably and for this purpose one week's time is given to you. If you fail to pay the rent due amount within one week from receipt of this notice the suit will be filed to competent court for eviction as well as for recovery of due rent amount. After that you will be held responsible for the cost and consequences jointly and severally.

Dt/- 19-4-1974...."

7. In response to the legal notice, Respondents wrote a letter dated 5th October 1974 expressing regret for default in payment of rent and promised to pay arrears of rent by Diwali 1974 and also conceded the right of Appellants-Defendant Nos.1 and 2 to take legal action. The reply to the legal notice dated 5th October 1974 is reproduced hereinbelow:-

"To

Sri Balwant Rao Khanapurker.
Advocate Rider.

Sub: Notice for your Law Office.

Sir,

With reference to the above we want beg to state following few lines for your

kind consideration and sympathetic action. It is a grave mistake on our part that we did not pay the rent. To be very true we went financially bad to worse. Once it was so difficult to make the livelihood.

However, we have overcome that and now we are making definite attempts and we will pay entire rent by Dipawali November 1974.

Failing which you have every right to take any legal action. But kindly give this a let clause and oblige.

Thanking you we remain"

(emphasis supplied)

8. Subsequently, Respondents paid rent for one month only and, thereafter, did not make any payment.

9. Due to Respondents' failure to pay arrears of rent and vacate the suit house, Appellants-Defendant Nos.1 and 2 initiated proceedings under Karnataka Rent Control Act (HRC 16/1975) before the Court of Munsiff at Bidar to vacate and deliver the vacant possession of the suit house.

10. It is the Appellants-Defendant Nos.1 and 2's case that as a counterblast to the suit for eviction filed by Appellants, the Respondent-Plaintiff Tukaram filed the subject suit i.e. O.S. No. 39 of 1977 on 21st June 1977 against Appellants- Defendant Nos. 1 and 2 seeking relief of declaration and injunction to declare the Sale Deed bearing document No. 2109/71-72 dated 12th November 1971 in respect of House No. 2-5-9 situated at Pansal Taleem, Bidar as nominal and sham and not to be acted upon. The prayer clause in the aforesaid suit is reproduced hereinbelow:-

"The suit of the plaintiff be decreed as under:-

a) It be declared that the sale deed bearing document no. 2109/71-72 dated 12.11.1971 in respect of the House no. 2-5-9 of Pansal Taleem, Bidar executed by the plaintiff and the defendant nos. 3 to 6 in nominal, sham and not to be acted upon;

b) The defendant Nos. 1 and 2 be perpetually restrained from evicting the plaintiff by continuing the proceedings of eviction in H.R.C. 16/75 in the Hon'ble Munsiff Court, Bidar, showing the plaintiff as lessee on the basis of the above said sale deed;

c) Costs of the suit, to be awarded against all the defendants;

d) Any other relief to which the plaintiff is legally and equitably entitled to, may also be awarded."

11. The aforesaid suit was decreed by the Court of Additional Civil Judge, Bidar vide judgment and decree dated 10th March 1986 whereby the Sale Deed dated 12th November 1971 was held to be nominal and sham document. The trial court observed as under:

"29. It is clear from this decision (Gangabai v. Chhabubai (1982) 1 SCC 4) that the objection raised by the learned advocate for the Defendants that oral evidence of Plaintiff which is contrary to the recitals of the document, hit by sec. 92 cannot be accepted.

31. Anyhow, the evidence of the Plaintiff and his witnesses that Plaintiff was of simpleton nature is neither disputed nor proved otherwise. Hence I come to conclusion that Plaintiff is a man of simple nature, who is not educated, who had no sons and for family matters he was mainly relying his brother Defendant No.3 and his sons.

32. If we see all the documents in juxtaposition and its coming into existence on 12.11.1971, it is sufficient to conclude that Rs.10,000/- were received from the Defendants No. 1 and 2 and not only by Plaintiff, but by the Plaintiff and Defendants NO. 3 to 6 together. It is also clear from the evidence of the Sadanand Garje, PW5 Ramkrishanappa and DW 4 Satyanaryan that the entire alleged sale proceeds of Rs.10,000/- were utilized for redemption of both the mortgages.

35. the third and important circumstance is satisfactorily proved by the Plaintiff to the effect that the value of the suit property in the year 1971 was some bigger than the alleged sale price of Rs. 10,000/ -.

36. If the value of the house was only Rs.10,000/- Plaintiff ought to have preferred to sell the suit house to the mortgagee himself. There was no need for the Plaintiff to search for another purchaser and sell the property merely for an additional amount of Rs. 2000/- in the year 1971. This indicates that the nature of transaction was some thing else than it is shown in Ex.D1.

37. actual possession of the suit property was never delivered to the Defendant No.1 and 2, under the alleged sale-deed, Ex.D1.

38. Much reliance was placed by the learned advocate for the Defendants- on the alleged admission of Plaintiff and his brother in a reply notice given on 5.10.1974. Here again it is necessary to mention that Defendants No.1 and 2 were aware that Plaintiff alone is the owner of the suit house. Why they have obtained the rent agreement from the Plaintiff, his brother and brother's son, is

not clear. One more circumstance is that the tenancy was only for a period five months, which expired in the month of April 1972.

But for the first time, the notice was allegedly issued in the year 1974, as per Ex.D6. I have to see whether the alleged reply at Ex.D3 operates as an admission against the present Plaintiff. Plaintiff is, admittedly, an illiterate person. He does not know English. Similarly Defendant No.3 is also not knowing English and he signs in Modi. Ex.D3 which is reply to the legal notice is not given through any Advocate. It is in the form of a letter written in English that rent was not paid due to mistake and they will make an attempt to pay the rent upto November 1974. The signature of the Plaintiff is allegedly obtained in two places, below and above the word 'yours faithfully'.

Who has written the document is not clear. Whether this document was sent by post or by what method, is not clear. It is not known whether the recitals were explained to the Plaintiff. PW1 states that after receiving the notices he informed Defendant No.4 Satyanarayan and he has not given any reply. So the reliance which is placed by the Defendants on Ex.D5 cannot operate as an admission. Even otherwise, admission is a conclusive piece of evidence, but it is to be seen under the circumstances which will be proved before the Court. The non claiming of rent for a long period also acts as an additional circumstance in favour of the Plaintiff.

39, No man will continue to pay the taxes in the hands of a tenant for more than 10 years. It is admitted by DW 1 that he never attempts to get his name entered in the municipal register as a owner, from the date of alleged purchase in the year 1971, till the suit is filed. This suit is filed in the year 1977. There is no satisfactory explanation given by the Defendant No.1, for such a long delay in getting his name entered in the revenue records. Infact, he purchased the property for his residence and he would not have kept quiet if it was a real sale transaction between the parties. So this circumstances also goes in favour of the Plaintiff.

40. The eight circumstances is that the Plaintiff states that he has repaired the suit house, he has leased out various portions of the suit house to various tenants. DW1 shows his ignorance about such lease. PW1 categorically states that one Arjun Rao of D.C.C. Bank was residing as his tenant. DW1 is not able even to tell the actual accommodation available in the suit house. He has not produce any material to show that he has effected any repair from the year 1971 onwards. PW1 to 5 categorically states in their evidence that the Plaintiff is residing in the suit house along with his six daughters and wife. This is also admitted by the Defendant No.2. This, act of the Defendant will disclose that he never attempted to exercise his right of ownership over the suit house.

41. The ninth circumstances in the present case is the payment of Rs.8426/- on 2.1.1974 by the Plaintiff and Defendant No.4 in account of Defendant No.1 through the Defendant No.7.

when DW 2 was not at all knowing any transaction between the parties, why he dared to receive an amount of Rs.8426/- under Ex.P2 is not made clear. The wordings of Ex.P2 are necessary to be seen:

"received Rs. 8426/- only as part, payment towards dues of Bharatraj account."

It is clear that it was not the full payment, but part payment. The transaction of the Defendant No.1 all the while was dealt by the Defendant No.2 Bharatraj himself. Even DW1 is not able to explain to which account he adjusted this amount and how much is the balance. The learned advocate for the Defendants vehemently argued that the Defendant No.2 has filed a separate suit before the court of Munsiff and there were other hand loan transaction between the parties. When there is definite and positive evidence on record, that mere such assertion on the part of the Defendant No. 2 is of no use.

The learned advocate for the Defendants further submitted that the reply was given on 5.10.1974 after this amount was received. As already observed by me, the said reply notice is not proved to be an admission against the Plaintiff. In this context, the evidence of PW1 to the effect that he pressed his brother and sons of brother to make this payment, thereafter part amount was paid towards the suit loan account, is more believable and acceptable. This is much so, because of the corroborating documentary evidence and the shaky evidence of the DW2 and 3. This itself clearly indicates that the transaction under Ex.D1, was not intended to be acted upon by the parties as sale transaction."

12. Aggrieved by the judgment and decree of the Additional Civil Judge, Bidar, the Appellants herein preferred a Regular Appeal before the Court of Additional District Judge, Bidar which was numbered as R.A. No. 12 of 1986. The aforesaid appeal filed by the Appellants herein was allowed vide judgment dated 13th December 1999 and Respondent-Plaintiff's suit was dismissed observing that oral evidence could not have been adduced in the presence of a written document in view of Section 92 of the Indian Evidence Act, 1872. The lower Appellate Court observed as under:

"40. On a detailed and anxious consideration of the entire evidence, both oral and documentary, and attending circumstances brought out in the evidence, I have no hesitation to hold that the intention of the parties while entering into

transaction as per Ex.D-1 was to have an outright sale of suit house in favour of Defendant No. 1 for valuable consideration of Rs.10,000/-. There is evidence to show that out of the said sale consideration the Plaintiff who had earlier mortgaged the suit house in favour of Sadanand Garje had paid the mortgage money to Sadanand Garje and had redeemed the property.

The claim of Plaintiff that he has not gained the benefit of even the balance of Rs.2000/- cannot be accepted as basis to set aside Ex.D-1. There is clear collusion between Plaintiff and D-4, if not D-3 to D-6 in this proceeding. One of the Plaintiff's witnesses' has admitted that Plaintiff and D-3 to D-6 are on cordial terms. Therefore, the court cannot extend its helping hand to an unscrupulous person to set aside the legitimate transaction that took place very many years ago. Accordingly, I hold that the impugned document was a real and genuine sale deed, and was intended to be acted upon, and that it was not a nominal or sham document or was not intended to be acted upon. Accordingly, point No.1 is answered in the negative and point No.2 in the affirmative."

13. Thereafter, the Respondent-Plaintiff filed a second appeal before the High Court of Karnataka, Circuit Bench at Gulbarga, challenging the judgment dated 13th December 1999 passed by the Additional District Judge, Bidar. By impugned order, the High Court set aside the judgment and decree passed by the lower Appellate Court and restored the judgment passed by the Trial Court, thereby decreeing Respondent-Plaintiff's suit. The High Court observed as under:

"13. In view of the law declared by the Supreme Court in the decisions referred to above, the Plaintiff is entitled to adduce oral evidence to show that the transaction in a particular document/set of documents is sham fictitious, nominal or not intended to be acted upon. Further the facts in GANGABAI'S case are identical to the facts in the instant case. In GANGABAI'S case, the Plaintiff executed a nominal sale deed and a rent note and they were never intended to be acted upon and rent paid by her was in fact interest on the loan.

The Plaintiff further contended that she continued to be in possession of the house property throughout and carried on repairs from time to time. The Plaintiff further stated that the Defendants made an attempt to enforce the document as a sale deed by filing a suit for recovery of rent. Therefore, the Plaintiff filed a suit against the Defendants to declare the sale transaction as nominal, sham and not intended to be acted upon. On the basis of these facts, the Supreme Court held that oral evidence is admissible to show that the document executed was never intended to operate as an agreement, but some other agreement altogether not recorded in the document was entered into between the parties.

Therefore the trial court rightly held that Plaintiff is entitled to adduce oral evidence to establish that the sale transaction dated 12.11.1971 as nominal, sham and not intended to be acted upon. The lower appellate court committed an error in holding that there is a bar under Section 92 of the Evidence Act for the Plaintiff to lead oral evidence contrary to unambiguous and clear sale deed Ext. D1.

14. The reasoning of the lower appellate court is not only contrary to the facts of the case but also to the law laid down by the Apex Court in the decisions referred to above. It is not the case of the Plaintiff that there is ambiguity in the terms of the sale deed Ext.D1 and therefore, he wants to adduce oral evidence. On the other hand, it is the case of the Plaintiff that the transaction in the sale deed Ext. D1 is nominal, sham and not intended to be acted upon and as such, he is entitled to adduce oral evidence under Section 92 of the Evidence Act. Therefore, the finding of the lower appellate court that there is a bar under Section 92 of the Evidence Act for the Plaintiff to lead evidence is liable to be set aside. Accordingly, the substantial question of law framed by this court is answered."

14. The present appeal has been filed by the Appellants-Defendant Nos.1 and 2 challenging the judgment dated 04th February 2010 passed by High Court in R.S.A. No 163 of 2000.

SUBMISSIONS ON BEHALF OF APPELLANTS-DEFENDANT NOS. 1 AND 2

15. Mr. Bhardwaj S. Iyengar, learned counsel for Appellants-Defendant Nos.1 and 2 stated that the High Court failed to notice that there is no ambiguity in the language employed in the Sale Deed dated 12th November 1971. He submitted that if the terms of the written document are clear and unambiguous, extrinsic evidence to ascertain true intention of the parties is inadmissible under Section 92 of the Indian Evidence Act, 1872 as it mandates that in such cases, the intention must be gathered from the language employed in the document.

16. He stated that the Respondent-Plaintiff failed to produce any document or evidence to show that the sale transaction was never intended to be a sale and was rather a mortgage transaction. He submitted that to prove that the agreement was executed only as a security for the amount advanced as loan by Appellants- Defendant Nos.1 and 2 to Respondents, the Respondents ought to have produced a registered mortgage agreement as the law requires a mortgage transaction to be reduced in writing and to be mandatorily registered. He, however, emphasised that the parties had never executed any mortgage agreement.

17. He further stated that the documents produced and relied upon by the Respondent-Plaintiff viz. house tax receipts, water tax receipts and electricity bills to prove his ownership of the suit house, were from 1975 onwards i.e. after the suit for eviction was filed by the Appellants herein. He contended that no explanation was forthcoming from the Respondents with respect to non-payment of aforesaid taxes between 1971 to 1975.

18. He submitted that Respondent-Plaintiff had not taken any of the pleas and defences, taken in his plaint, in his reply to the legal notice dated 5th October 1974. He emphasized that on the contrary the Respondent-Plaintiff had categorically admitted his liability to pay rent in his reply dated 5th October 1974 and he had undertaken to clear the arrears of rent by November 1974.

SUBMISSIONS ON BEHALF OF RESPONDENTS

19. Mr. S.N. Bhat, learned senior counsel for Respondents stated that the consideration received on execution of Sale Deed dated 12th November 1971 was utilised towards clearance of debts incurred by Defendant Nos.3 to 6 and Respondent-Plaintiff did not receive a single penny from Appellant-Defendant No.1. He contended that had the Respondent-Plaintiff wanted to sell the suit house for a meagre sum of ₹10,000/- (Rupees Ten Thousand only), the Respondent-Plaintiff would have sold it to the mortgagee i.e. Mr. Sadanand Garje himself.

20. He further stated that the value of the suit house was more than ₹50,000/- (Rupees Fifty Thousand only) on the date of execution of Sale Deed i.e. 12th November 1971 and therefore, the Respondent-Plaintiff could not have entered into a transaction of sale with Appellant-Defendant No.1 for a sum of only ₹10,000/- (Rupees Ten Thousand only).

21. He also stated that the actual possession of the suit house was never delivered to Appellant-Defendant No.1 and the Respondent-Plaintiff continued to be in possession of the suit house from 1971 onwards without any interference from the Appellants-Defendant Nos.1 and 2.

22. He pointed out that all the municipal records in respect of the suit house stand in the name of the Respondent-Plaintiff and he had been paying water tax, property tax, electricity bills, etc. with respect to the suit house as an owner.

23. He stated that the Respondent-Plaintiff had categorically averred in the plaint that the said Sale Deed was nominal, sham and not intended to be acted upon. He further stated that the intention of the parties was to create a mortgage under the transaction dated 12th November 1971 and not to execute a true and real Sale Deed.

24. He submitted that in view of the principles laid down by this Court in Gangabai w/o Rambilas Gilda (Smt.) vs. Chhabubai w/o Pukharajji Gandhi (Smt.), (1982) 1 SCC 4, the Respondent-Plaintiff was very much entitled to adduce oral evidence to establish that the said transaction dated 12th November 1971 was never intended to operate as a true and real Sale Deed and it was a sham and nominal transaction. The relevant portion of the judgment in Gangabai (supra) is reproduced hereinbelow:-

"The bar imposed by sub-sec. (1) of Section 92 applies when a party seeks to rely upon the document embodying the terms of the transaction. In that event the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms.

The subsection is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose, oral evidence is admissible to show that the document executed was never intended to operate as an agreement; but that some other agreement altogether, not recorded in the document was entered into between the parties."

25. He further submitted that this Court in Ishwar Dass Jain (Dead) Through Lrs. vs. Sohan Lal (Dead) By Lrs., (2000) 1 SCC 434 has observed as under:

"16. This Court has held in Gangabai v. Chhabubai [(1982) 1 SCC 4] that in spite of Section 92(1) of the Evidence Act, it is permissible for a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. In the above case, it was observed by D.A. Desai, J. as follows: (SCC Headnote)

"The bar imposed by Section 92(1) applies only when a party seeks to rely upon the document embodying the terms of the transaction and not when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an

agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

26. He stated that the transaction was never intended to be a Sale Deed and the same is evident from the fact that the Respondent-Plaintiff had paid an amount of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) to Defendant No.7/Respondent No.11 for the dues of Appellants-Defendant Nos.1 and 2 in respect of the loan of ₹10,000/- (Rupees Ten Thousand only). He emphasised that pursuant to the same, Defendant No.7/Respondent No.11 had issued a receipt acknowledging part payment towards dues of Appellants-Defendant Nos.1 and 2.

27. He further stated that the reply to the legal notice dated 5th October 1974 was issued by the Counsel for Respondent-Plaintiff without any instructions by the Respondent-Plaintiff. He emphasised that Respondent-Plaintiff was an illiterate man of simple nature who could not understand the contents of the reply as the same was written in English.

28. He submitted that the lower Appellate Court reversed the finding of the Trial Court without adverting to the reasoning given by the Trial Court and without assigning any reason itself.

29. He lastly submitted that since the impugned order of the High Court is based on cogent materials and grounds, the same does not call for any interference by this Court.

QUESTION OF LAW THAT ARISES FOR CONSIDERATION

30. Having heard learned counsel for the parties, this Court is of the opinion that a seminal question of law arises for consideration in the present proceedings, namely, what is the threshold for declaring that a registered Sale Deed is a sham.

REASONING

COURTS SHOULD NOT CASUALLY DECLARE A REGISTERED DEED A "SHAM", AS REGISTRATION CREATES A STRONG PRESUMPTION OF VALIDITY & GENUINENESS

31. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered instrument as a "sham".

Adopting the principles enunciated in Prem Singh and Ors. vs. Birbal and Ors., (2006) 5 SCC 353 1, Jamila Begum (Dead) Through Lrs. vs. Shami Mohd. (Dead) Through Lrs. and Anr., (2019) 2 SCC 727 2, and Rattan Singh and Ors. v. Nirmal Gill & Ors., (2021) 15 SCC 300 3, this Court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the Deed was never intended to operate as a bona fide transfer of title.

32. The grounds typically accepted to challenge a registered Deed at the instance of the vendee/executant are fraud or want of capacity in any party or mistake of fact or fundamental illegality like where the Deed was executed under deceit or sold by a fraudster who did not own the land or where the Deed was executed without consideration, namely, if no money or value was actually exchanged despite recitals in the Deeds or where there was coercion or intimidation like where the seller was forced to sign without free consent.

33. While the aforementioned grounds are illustrative and not exhaustive, this Court must caution against the growing tendency to challenge registered instruments 'at the drop of a hat'. If the sanctity of registered documents is diluted, it would erode public confidence in property transactions and jeopardize the security of titles. In a society governed by the Rule of Law, registered documents must inspire certainty; they cannot be rendered precarious by frivolous litigation.

PLEADING STANDARDS AND THE RULE AGAINST CLEVER DRAFTING

34. The person alleging that a registered Deed is a sham must satisfy a rigorous standard of pleading by making clear, cogent, convincing averments and provide material particulars in his pleadings and evidence. This Court is of the view that the test akin to a test under Order VI Rule 4 CPC is applicable to such a pleading and clever drafting creating illusion of cause of action would not be permitted and a clear right to sue would have to be shown in the plaint.

35. As pointed out by this Court in I.T.C. Limited vs. Debts Recovery Appellate Tribunal and Ors., (1998) 2 SCC 70, the ritual of repeating a word like 'fraud' or creation of an illusion in the plaint can certainly be unraveled and exposed by the Court at the nascent stage of litigation without waiting for a full trial. Mere suspicion or nebulous averments without material particulars would not be sufficient to dislodge the presumption under Sections 91 and 92 of the Indian Evidence Act, 1872.

36. Additionally, even if the suit is allowed to proceed to trial, like in the present case, the level of proof required to be produced by the Plaintiff would have to be extremely strong.

37. This Court may mention that in none of the judgments cited by the Respondent-Plaintiff, this Court has held that strong presumption of validity and genuineness of a registered document and/or test of Order VI Rule 4 CPC is not applicable. To be fair, the judgments cited by the learned senior counsel for the Respondent-Plaintiff do not consider the said issues and are sub silentio to that extent. [See: State of U.P. & Anr. v. Synthetics & Chemicals Ltd. & Anr., (1991) 4 SCC 1394]. In any event, even if the said judgments are read to lay down a proposition that an averment in the plaint that the registered document is sham, is good enough to entitle the Plaintiff to lead evidence, that would make the judgments cited by the Respondent-Plaintiff per incuriam being contrary to Sections 91 and 92 of the Indian Evidence Act, 1872 and binding judgments of this Court.

38. Keeping in view the aforesaid, this Court is of the view that as both the Sale Deed and Rental Agreement in question are registered, there is a very strong presumption about the validity and genuineness of the documents in question.

39. The pleadings in the present suit do not satisfy the test of Order VI Rule 4 CPC as despite averring in the plaint that the Respondent-Plaintiff had executed the initial mortgage in favour of Sadanand Garje and the impugned Sale Deed as security mortgage in lieu of loan of ₹10,000/- (Rupees Ten Thousand only) in order to help Defendant Nos. 3 to 6 to pay off their debts and that all the Defendants had 'conspired against the Respondent-Plaintiff', yet no relief had been sought in the plaint against Defendant Nos. 3 to 6 and no material particulars of the indebtedness of Defendant Nos. 3 to 6 had been mentioned. On the contrary Defendant No.3 was produced as Plaintiff's witness! Consequently, this Court agrees with the finding of the First Appellate Court that Respondent-Plaintiff was in collusion with Defendant Nos. 3 to 6 which proves that the case set up by the Respondent-Plaintiff is unbelievable.

40. Further, the averment in paragraph 12 of the plaint that upon repayment of alleged loan of ₹10,000/- (Rupees Ten Thousand only), the Appellants-Defendants No.1 and 2 were to execute a suitable reconveyance deed is contradictory and self-defeating because if the parties had really agreed and intended to treat the impugned document as a mortgage deed, as is the 'burden of song' in the plaint, there is no question of Sale with repurchase option at a later date.

41. Also, the Respondent-Plaintiff at the first opportunity i.e. while replying to the legal notice did not take any of the pleas/defences mentioned in the plaint. Additionally, in the plaint there is no averment that reply to the legal notice had been issued without understanding its contents. Consequently, the present plaint was liable to be rejected at the initial stage as it was nothing more than a clever drafting creating an illusion of cause of action and further as the terms of the registered documents were clear and unambiguous, extraneous evidence to ascertain true intention of the parties was inadmissible under Sections 91 and 92 of the Indian Evidence Act, 1872.

42. However, as the matter has been disposed of by the Courts below on merits after recording evidence, this Court considers it appropriate to deal with the arguments advanced on merits also.

INTENT WHILE ENTERING INTO THE SALE DEED WAS TO CONDUCT AN OUTRIGHT SALE AND NOT A MORTGAGE BY CONDITIONAL SALE

43. Further as all the recitals and the covenants in the Sale Deed are clear, categorial and admit of no ambiguity, this Court has no doubt that the intent of the parties while entering into the said Deed dated 12th November 1971 was to conduct an outright sale of suit house in favour of Appellant-Defendant No.1 for a valuable consideration of ₹10,000/- (Rupees Ten Thousand only).

44. It is pertinent to mention that in the impugned Sale Deed, there is no clause which effects or purports to effect the sale as mandated in proviso to Section 58(c) of the Transfer of Property Act, 1882 which reads as under:-

"(c) Mortgage by conditional sale.- Where the mortgagor ostensibly sells the mortgaged property- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale."

(emphasis supplied)

45. The Special Committee, at whose instance Section 58(c) of the Transfer of Property Act, 1882 was amended, had stated in its Report⁵ as under:-

"Section 58(c) contains the definition of a mortgage by conditional sale. It is with the greatest difficulty in many cases that such mortgages can be distinguished from sales with a condition for repurchase; As clause (c) of section 58 indicates, the real point of difference between the two kinds of transactions, is that in the case of a mortgage by conditional sale, the sale is only ostensible, whereas in the case of an out and out sale, it is real. The ostensible or real nature of transaction can, however, be only determined by finding out the intentions of the parties.

In order to escape the liability of accounting for the profits of the property and other liabilities imposed on a mortgage, and also to escape the provisions of some of the local laws enacted for the benefit of agriculturists, creditors resort to the mode of having a mortgage which is in form an out and out sale. Since the decision of the Privy Council in *Balkishen Das v. Legge* [(1900) I.L.R. 22 All. 149.] it has been a well-settled rule that it is not open to courts to allow any extraneous evidence in order to find out the intention of the parties. Such intention must, therefore, be gathered from the document itself which purports to effect the transaction.

These transactions have given rise to a great deal of litigation and Courts are compelled to enumerate and consider all the various criteria which have been laid down for the purpose of determining whether a transaction is a mortgage or an out and out sale. In order to avoid the difficulties indicated above, we think, it desirable to lay down a statutory test by which the intention is to be gathered. We, therefore, propose that no transaction should be deemed to be a mortgage by conditional sale unless the condition is embodied in the document which operates or purports to effect the sale."

(emphasis supplied)

46. This Court while interpreting proviso to Section 58(c) of the Transfer of Property Act, 1882 in *Shri Bhaskar Waman Joshi (deceased) vs. Shri Narayan Rambilas Agarwal (deceased)* (1959) SCC OnLine SC 112 observed as under:

"6. The proviso to this clause was added by Act 20 of 1929. Prior to the amendment there was a conflict of decisions on the question whether the condition contained in a separate deed could be taken into account in ascertaining whether a mortgage was intended by the principal deed. The Legislature resolved this conflict by enacting that a transaction shall not be deemed to be a mortgage unless the condition referred to in the clause is embodied in the document which effects or purports to effect the sale. But it does not follow that if the condition is incorporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have been intended.

The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The circumstance that the condition is incorporated in the sale deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and mortgagee, the price being charged on the property conveyed.

In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified. What distinguishes the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The definition of a mortgage by conditional sale itself contemplates an ostensible sale of the property.

As pointed out by the Judicial Committee of the Privy Council in *Narasingerji Gyanagerji v. Panuganti Parthasarathi and Others* 1924 LR 51 IA 305 the circumstance that the transaction as phrased in the document is ostensibly a sale with a right of repurchase in the vendor, the appearance being laboriously maintained by the words of conveyance needlessly reiterating the description of an absolute interest or the right of repurchase bearing the appearance of a right in relation to the exercise of which time was of the essence is not decisive. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances.

If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance; but evidence as to subsequent conduct of the parties is inadmissible."

(emphasis supplied)

47. Further, this Court in *Sopan (Dead) Through His LR vs. Syed Nabi* (2019) 7 SCC 635 observed as under:

"5. From a perusal of the proviso to Section 58(c) as emphasised, it indicates that no transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale. Therefore, any recital relating to mortgage or the transaction being in the nature of a conditional sale should be an intrinsic part of the very sale deed which will be the subject matter."

48. This Court in *Tulsi & Ors. v. Chandrika Prasad & Ors.* (2006) 8 SCC 322 and *Leela Agrawal v. Sarkar & Ors.* 2024 SCC OnLine SC 3813 observed that the condition precedent for arriving at a finding that the transaction involves mortgage by way of conditional sale is that there must be an ostensible sale and the condition that on default of payment of mortgage money on a certain date, the sale shall become absolute or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller shall be embodied in the same document.

49. One of us, (Rajesh Bindal, J6), while dealing with proviso to Section 58(c) of Transfer of Property Act, 1882, observed that 'a deeming fiction was added in the negative that a transaction shall not be deemed to be a mortgage unless the condition for reconveyance is contained in the document which purports to effect the sale'. Consequently, this Court is of the opinion that the Sale Deed dated 12th November 1971 is not a mortgage by conditional sale.

CONTRADICTIONS AND OMISSIONS

50. There is no finding recorded by the Trial Court or the High Court as to the legal compulsion for the Respondent-Plaintiff to execute a Sale Deed if it was the intention to execute a mortgage with conditional sale. There is no discussion of this aspect either in the Trial Court or High Court judgments.

51. Moreover, the claim made in para 12 of the plaint clearly indicates that the intent of the parties at the time of execution of the Sale Deed dated 12th November 1971 was to treat it as a real and genuine sale deed that was intended to be acted upon.

52. Additionally, this Court finds that Appellant-Defendant No.1 initiated eviction proceedings before the Rent Controller in 1975, while the underlying suit was filed by Respondent-Plaintiff only on 21st June 1977 and allegedly the payment of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) was made by the Plaintiff-Tukaram in January 1974. If the plea of the Respondent-Plaintiff was genuine, it would have approached Appellant-

Defendant No.1 immediately in January 1974 for re-conveyance. This time lag from 1974 to 1977 makes the case set up by the Respondent-Plaintiff of mortgage by conditional sale or reconveyance unbelievable and shows that the plea is false and set up to defeat the eviction proceeding.

53. In the present case, no suggestion was even put to DW-1 (Appellant-Defendant No.2) during cross-examination that on payment of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only), the suit house was to be reconveyed to Respondent-Plaintiff.

54. This Court is of the view that the Trial Court failed to consider the effect of non-challenge to the registered lease deed dated 12th November 1971 and payment of rent for fourteen months for the period December 1971 to January 1973 and for one month in 1974 by the Respondent-Plaintiff. 55. Consequently, the Deed in question is a bonafide Sale Deed which was intended to be acted upon and not a mortgage by conditional sale.

PW-5 DEPOSED THAT AS THE RESPONDENT-PLAINTIFF WAS IN NEED OF MONEY, HE SOLD THE SUIT HOUSE

56. Pertinently, Respondent-Plaintiff's own witness, Mr. Ramakrishnappa (brother of the Respondent-Plaintiff who was arrayed as Defendant No.3) has deposed as PW-5 that in order to get the suit house redeemed from Mr. Sadanand Garje, the Respondent-Plaintiff needed money and for this purpose, he sold the suit house to Appellant-Defendant No.1 vide the impugned Sale Deed.

He further deposed that since the Respondent-Plaintiff had no house to reside in after the aforementioned sale, he rented the suit house from Appellant-Defendant No.1 by executing a registered Rental Agreement dated 12th November 1971. This Court is in agreement with the aforesaid deposition of PW-5 because from the record, it is apparent that the initial mortgagee - Mr. Sadanand Garje was pressing Respondent-Plaintiff for repayment of his loan as the former had to purchase another property.

57. It is pertinent to mention that during the hearing, learned senior counsel for Respondent-Plaintiff had repeatedly emphasised that Appellants-Defendant Nos.1 and 2 were closely related to Respondent-Plaintiff. However, the said fact was denied by learned counsel for Appellants-Defendant Nos.1 and 2. This Court finds from the evidence on record that it is an admitted position that Appellants- Defendant Nos. 1 and 2 are not related to Respondent-Plaintiff.

58. Additionally, admission of symbolic possession having been handed over to Appellants-Defendant Nos.1 and 2 is to be found in the Sale Deed dated 12th November 1971.

BY SELLING SUIT HOUSE AND BY REDEEMING THE INITIAL MORTGAGE, RESPONDENTS SAVED THE SECOND MORTGAGED PROPERTY

59. This Court is of the opinion that there is no merit in the contention of Respondent-Plaintiff that if the value of the suit house had been ₹10,000/- (Rupees Ten Thousand only) in 1971 (i.e. the consideration at which the Sale Deed was executed by Respondent-Plaintiff in favour of Appellant-Defendant No.1), the Respondent-Plaintiff would have sold the suit house to the mortgagee Mr. Sadanand Garje himself.

It is pertinent to note that the Respondents had obtained a loan of ₹10,000/- (Rupees Ten Thousand only) from the mortgagee Mr. Sadanand Garje by mortgaging the suit house against a loan of ₹8,000/- (Rupees Eight Thousand Only) along with another property i.e. House No.2-5- 9/1 against a loan of ₹2,000/- (Rupees Two Thousand Only). By executing the Sale Deed in favour of Appellant-Defendant No.1 for the suit house for a consideration of ₹10,000/- (Rupees Ten Thousand only), the Respondents were able to redeem and save the other property i.e. House No. 2-5-9/1.

MERE ALLEGATION OF INADEQUACY OF CONSIDERATION DOES NOT MAKE THE DEED VOID

60. Both the parties have led contrary evidence on the aspect of market price of suit house, but this Court is of the opinion that there is no conclusive evidence in the form of documentary evidence like contemporary sales or circle rates to show that the sale price mentioned in the registered Sale Deed was inadequate or below the market price. In any event, in view of Explanation 2 to Section 25 of Indian Contract Act, 1872 mere allegation of inadequacy of consideration does not make the Deed void. It is only in the absence of sale consideration being tendered that the sale deed would be void.

LACK OF MUTATION AND PAYMENT OF TAXES IS IRRELEVANT IN PRESENT CASE

61. This Court is of the view that Respondent-Plaintiff's contention that he had been paying municipal taxes for the suit house as an owner since 1971 is not correct as the Respondent-Plaintiff has failed to place on record any document to show that municipal taxes were paid by him between November 1971 (date of execution of Sale Deed) and April 1974 (date of issuance of legal notice by Appellants-Defendant Nos.1 and 2). A perusal of the receipts

of municipal taxes (Exhibits P3 to P14) placed on record by the Respondent-Plaintiff reveals that the same are of the year 1975 and onwards i.e. after the date of initiation of eviction proceedings by the Appellants-Defendant Nos.1 and 2 against the Respondents.

62. Above all, Respondent-Plaintiff, PW-1 has admitted in his cross-examination that "after filing the eviction petition by Defendant No.1 (Appellant No.1, Respondent-Plaintiff) filed this suit as counterblast". Consequently, this Court is of the view that the Respondent-Plaintiff had shown that the statutory taxes had been paid by him in a bid to defeat the rightful ownership of the Appellants herein over the suit property.

63. Further, the Respondent-Plaintiff's contention that Appellant-Defendant No. 1's name was not mutated in the revenue records is of no consequence, as it is settled law that revenue entries in the municipal records do not prove ownership. [See Suraj Bhan & Ors. vs. Financial Commissioner & Ors. (2007) 6 SCC 186; Suman Verma vs. Union of India & Ors. (2004) 12 SCC 58; Municipal Corporation, Aurangabad Through its Commissioner vs. State of Maharashtra & Anr. (2015) 16 SCC 689; Ajit Kaur alias Surjit Kaur vs. Darshan Singh (Dead) through LRs. and Ors. (2019) 13 SCC 70].

64. Additionally, there is evidence to show that immediately after execution of the impugned Sale Deed, Appellant-Defendant No.2 (husband of Appellant-Defendant No.1/buyer) was transferred from Bidar to Gulbarga and from there, he was transferred to Bellary.

65. Accordingly, when the Appellants-Defendant Nos.1 and 2 were staying away from Bidar, they could not have applied for change of mutation and in any event, such inaction in itself cannot defeat their right over the suit house.

RESPONDENT-PLAINTIFF FAILED TO PROVE THAT ₹8,426/- PAID TO DEFENDANT NO. 7 WAS TOWARDS DISCHARGE OF ALLEGED LOAN

66. This Court is of the opinion that the Respondent-Plaintiff has failed to prove that the payment of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) made to Defendant No.7/Respondent No.11 on 2nd January 1974 was towards discharge of alleged loan given by Appellants-Defendant Nos.1 and 2.

67. Defendant No.7/Respondent No.11, who runs a finance company, has categorically deposed in his evidence that the amount of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) paid by Respondent-Plaintiff was not part payment towards the alleged mortgage transaction. The relevant part of Defendant No.7's deposition is reproduced hereinbelow:-

"I have not mentioned in Ex.P2 (receipt of payment), that I have received the amount from the plaintiff. It is false to say that amount of Rs.8426/- is paid by defendant no.3 and 4 towards the part payment of mortgage amount."

68. Additionally, Appellant-Defendant No. 2 (DW-1) has stated in his deposition that the amount of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) paid by Respondent-Plaintiff on 2nd January 1974 to Defendant No.7/Respondent No.11 was towards Appellant-Defendant No.2's account and not the alleged mortgagee-Appellant-Defendant No.1's account.

69. Moreover, the Respondent-Plaintiff in the reply dated 5th October 1974 to the legal notice dated 19th April 1974 did not even take the defence that out of the total loan amount of ₹10,000/- (Rupees Ten Thousand only), ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) had been repaid to Appellants- Defendant Nos.1 and 2 through Defendant No.7/Respondent No.11 on 2nd January 1974, i.e. as recent as ten months ago.

RESPONDENT-PLAINTIFF KNEW THE DIFFERENCE BETWEEN A MORTGAGE AND A SALE DEED AND THUS UNDERSTOOD CONSEQUENCES OF HIS ACTIONS

70. From the evidence on record, it is apparent that the Respondent-Plaintiff was admittedly running a clothing business along with his elder brother-Defendant No.3. Further, PW-4, who is a close friend of Respondent-Plaintiff has clearly stated in his evidence that the Respondent-Plaintiff had been managing affairs of his family independently without consulting anyone.

71. Moreover, the fact that the Respondent-Plaintiff had initially executed a Mortgage Deed in favour of Mr. Sadanand Garje and thereafter executed a registered Sale Deed and a Rental Agreement with the Appellant-Defendant No.1 proves that the Respondent-Plaintiff was a 'wise' man, who knew the difference between a Mortgage and a Sale Deed and who understood the consequence of his actions. Consequently, there is no merit in Respondent-Plaintiff's contention that Respondent-Plaintiff was an "illiterate man of simple nature", who did not understand the consequences of his actions.

THE JUDGMENT IN GANGABAI (SUPRA) HAS NO APPLICABILITY TO PRESENT CASE

72. Further, the Respondents never denied the intent, free will, knowledge and terms of the impugned sale transaction and the Rental Agreement while executing the same. Keeping in view the aforesaid reasons, this Court is of the opinion that the High Court misinterpreted the judgment of this Court in Gangabai (supra) and allowed the appeal believing it to be an identical case.

THE RESPONDENT-PLAINTIFF AT THE FIRST OPPORTUNITY i.e. WHILE REPLYING TO THE LEGAL NOTICE DID NOT TAKE ANY DEFENCE

73. Also, the Respondent-Plaintiff at the first opportunity i.e. while replying to the legal notice dated 19th April 1974 for recovery of rental dues and for eviction, did not take the stand that the Sale Deed was a sham document and that it was actually a Mortgage Deed against a loan of ₹10,000/- (Rupees Ten Thousand only).

In the said reply, the Respondent-Plaintiff did not even take the defence that out of the total loan amount of ₹10,000/- (Rupees Ten Thousand only), ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) had been repaid to Appellants-Defendant Nos.1 and 2 through Defendant No.7/Respondent No.11 ten months ago i.e. on 2nd January 1974. In fact, in the reply to the legal notice, the Respondent-Plaintiff categorically admitted his liability to pay arrears of rent and undertook to clear the arrears by November 1974. The said reply, admittedly, bears the signature of the Respondent-Plaintiff.

IN THE PLAINT THERE IS NO AVERMENT THAT REPLY TO THE LEGAL NOTICE HAD BEEN ISSUED WITHOUT UNDERSTANDING ITS CONTENTS

74. Even in the subject suit filed by Respondent-Plaintiff in 1977 i.e. nearly three years after issuance of reply to legal notice, there is no statement/averment that the said reply dated 5th October 1974 had been given without Respondent-Plaintiff understanding its contents and/or that the said reply had been wrongly issued by the Respondent-Plaintiff's counsel without any instructions.

75. Consequently, this Court is of the opinion that the Trial Court's finding that the reply to the legal notice dated 05th October 1974 had not been issued by the Respondent-Plaintiff, is beyond the pleadings.

RECOMMENDATIONS FOR SYSTEMIC REFORMS

76. Before parting, this Court deems it necessary to suggest to the Union and State Governments the urgent need for the digitization of registered documents and land records using secure, tamper-proof technologies such as Blockchain. Many experts believe that Blockchain, a shared, digital record book (ledger) system would ensure that once a transaction of a sale or mortgage or like nature is recorded, it becomes immutable and cryptographically secured.

77. Such reforms are essential to minimize the scourge of forgery and "clever drafting" that clogs our judicial system. Registered documents must inspire absolute confidence to ensure the ease of doing business and to uphold the sanctity of property titles in a modern economy.

CONCLUSION

78. In light of the aforesaid reasons, the present appeal is allowed. The impugned judgment and order dated 4th February 2010 passed by the High Court is set aside and the judgment dated 13th December 1999 passed by Additional District Judge, Bidar in R.A. No.12 of 1986 is restored. Consequently, the suit being O.S. No.39 of 1977 is dismissed with costs in favour of the Appellants herein.

.....J. [Rajesh Bindal]

.....J. [Manmohan]

New Delhi;

January 22, 2026

1

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

2

"16. Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law."

3

"33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered."

4

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such

conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of subsilentio.

"A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by

Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

5 *Debi Singh v. Jagdish Saran Singh* 1952 SCC OnLine All 188

6 In *Prakash (Dead) By LR v. G. Aradhya & Ors.*, 2023 SCC OnLine SC 1025

IN THE SUPREME COURT OF INDIA

Bernard Lyngdoh Phawa

Vs.

State of Meghalaya

[Criminal Appeal No. 3738 of 2023]

[Criminal Appeal No. _____ of 2026

@ SLP (Crl.) No. 1798 of 2025]

Head Note - A confession can form a legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. However, it was also held that a Court shall not base a conviction on such a confession without corroboration.

A confession has to be a direct acknowledgment of guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgment of guilt it would not be a confession even though the same is of some incriminating fact which taken with other evidence tends to prove his guilt.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. An enquiry, commenced with a missing person complaint, led, to the arrest of the appellants, discovery of the body; exhumed from a graveyard, recovery of a rope; allegedly used to strangle the victim, allegation of ransom calls received and recovery of material possessions of the victim from the house of one of the accused and a mobile phone from a witness. These coupled with the last seen theory; as purportedly stated by the witnesses, resulted in the prosecution being lodged before the Trial Court. The Trial Court after examining the evidence found it to be not sufficient to enter a finding of guilt, resulting in the acquittal of the accused.

The High Court on an appeal by the State found that the five golden principles as enunciated in *Sharad Birdhichand Sarda v. State of Maharashtra*1 adequately satisfied, bringing forth a conclusion only of a hypothesis of guilt excluding all possible hypothesis of innocence. There is no weak link, and the chain of circumstances is complete was the finding of the High Court. The High Court reversed the judgment of the Trial Court but found no kidnapping

as charged, all the same finding the accused guilty of murder (Section 302 of the Indian Penal Code, 1860) and causing disappearance of evidence (Section 201 of the IPC).

3. We are, in the above appeals, confronted with the divergence of opinion as expressed by the Trial Court and the High Court respectively. We heard Sh. Subhro Sanyal, Advocate-on-Record and Sh. Ajay Sabharwal, Advocate appearing for the two appellants and Sh. Avijit Mani Tripathi, Advocate-on-Record appearing for the State.

4. Learned counsel appearing for the accused argued that a well-reasoned judgment of acquittal was reversed by the High Court without any compelling reason and without recording a clear finding as to whether the view taken by the Trial Court was a possible view, bringing forth a reasonable doubt. The trite principle that an acquittal by one Court reinforces the presumption of innocence available to the accused, not liable to be displaced lightly, was thrown to the winds.

The High Court has substituted its own inferences on the evidence led. There is no valid last seen theory coming out of the evidence and there is no clarity as to the exact time of death. Neither was the recovery of the murder weapon (rope) proved, nor was it found to have any connection with the crime, the traces of which having not been detected in a forensic analysis. The allegation of ransom calls having been made to the father of the victim was not at all established.

The confessional statements are full of inconsistencies, not made voluntarily and does not contain any inculpatory statements. Further, there can be no conviction based merely on the confessional statement, which also was retracted. The cumulative effect of the lapses in investigation and the complete absence of incriminating circumstances; the former of which was specifically noticed by the High Court, ought to have persuaded the High Court to not disturb the acquittal by the Trial Court.

5. Learned counsel appearing for the State would, however, vehemently put forth the incriminating circumstances coming out from the last seen theory and recovery of the weapon and the other possessions of the victim, as also the confessional statement, the last of which, per State, corroborates the entire prosecution story.

The learned counsel specifically referred to the decisions of this Court in *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*³ and *Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore*⁴ to urge that a confessional statement voluntarily made, even if

retracted, can still be reckoned to bring home a conviction, which has been successfully done in the present case. The High Court rightly reversed the judgment of the Trial Court, and the conviction has to be upheld, asserts learned Counsel for the State.

6. We would examine the evidence led, keeping in mind the principles regulating a case of circumstantial evidence stated in *Sharad Birdhichand Sarda*¹ as harmonized with the principles regarding powers of the Appellate Court in dealing with an appeal from an acquittal as has been delineated in *Chandrappa & Others v. State of Karnataka*⁵.

As we noticed, the prosecution went to trial with the last seen together theory, the discovery of the dead body at the instance of A1, recovery of the rope; allegedly used for strangulation, at the instance of A2 and the seizure of various articles belonging to the deceased from the house of A2, the seizure of a mobile from the possession of PW11, and the confessional statement of both the accused under Section 164 of Code of Criminal Procedure, 1973⁶ as also the medical and forensic evidence put forth before the Trial Court, which though disbelieved by the Trial Court was reckoned by the High Court to enter a conviction. We will in the course of the judgment only refer to the witnesses who are relevant from the 34 witnesses paraded by the prosecution before the Trial Court.

7. The First Information Statement (FIS) was by PW1, a Professor of the College in which the deceased was studying, who was also his local guardian. PW1 was informed by the roommates of the deceased that he did not return to his room on the evening of 18.02.2006. It was also stated that the deceased reportedly was last seen in Police Bazar with a friend by the name of Bernard; the first accused.

Even according to PW1, who deposed in tandem with the FIS, he along with the roommates of the deceased approached Bernard, the first accused and met him at Police Bazar, when he later told him that though he was with the deceased on the evening of 18.02.2006, the deceased had left in a Maruti car bearing registration number of Delhi with a dent on the right side, in which car there were two more persons who claimed to be friends of the deceased from Siliguri.

8. On the next day, the first accused was arrested at 10 AM i.e. on 20.02.2006. On the arrest of A1, he is said to have led PW33 to the house of A2 from where a silver color chain and a spectacle was seized, which allegedly belonged to the victim. On 21.02.2006, again it was stated that A1 led the police party under PW33 to the graveyard at Mawroh from where the body of the deceased was exhumed and sent for post-mortem. But for the I.O, none

spoke of A1 having led the police to the spot nor was there any statement recorded under Section 164 of the Cr.P.C.

9. A2 was arrested on 23.02.2006, who led to the recovery of the rope. One another person, Mohd. Akbar Qureshi, though arrested on 21.02.2006, was discharged after investigation. The post-mortem report was marked by PW2, doctor. PW2 spoke of ligature marks on the front portion of the neck of the dead body and the spleen in a ruptured state, on opening the abdomen. There was also presence of air bubbles in the lungs and there were multiple abrasions on the left lateral aspect of the chest and abdomen. On the basis of the above findings, it was opined in the post-mortem report that the cause of death was asphyxia by strangulation with a 'hard, blunt and long rope' (sic). The time of death of the victim was recorded as about 48 hours prior to the conduct of post-mortem.

10. Before we proceed further, we have to first deal with the inconsistency urged by the accused regarding the time of death. The post-mortem conducted on 22.02.2006 found that the death occurred prior to two days; i.e. prior to 48 hours. The deceased was missing from 18.02.2006 and the body was discovered on 21.02.2006; a day after which the post-mortem was conducted. Hence the death could have occurred any time before 20th of February. This would necessarily warrant a closer look at the last seen together theory, is the argument of the learned counsel.

11. Be that as it may, in cross examination by A2, it was categorically stated by the doctor that the hyoid bone was found broken at both sides, which could happen in a strangulation suspending the body, that is by hanging. It was also opined that it could be a case of suicide by hanging in the instant case, especially since the larynx of the deceased was found intact and not broken, which could happen in case of strangulation.

The doctor went further to say that there was no blood clot in the nostrils, ears or mouth or cyanosis (bluish or purple discolouration) of nails or face of deceased, which are again common symptoms of strangulation. Hence, the medical evidence is not conclusive as to a homicide, but the fact remains that even if the death was by hanging, the body was exhumed from where it was buried, which raises strong suspicions at least as to the burial of the body.

12. The inconclusive medical evidence will have to be looked at on the basis of other incriminating circumstances put forth by the prosecution.

13. On the theory projected of last seen together, we cannot but notice that there is no proof of the deceased having been seen together with the accused immediately before the death occurred. We say this despite the fact that there

is no clear-cut time specified on which the death occurred, when it is trite that the last seen together theory projected by the prosecution should be proximate to the death of the victim. Even the prosecution story that the victim was in the company of the accused on the evening of 18.02.2006 is not established in the trial. It is the roommates of the deceased who informed PW1 that they were told by a friend of the deceased that he was going to meet A1 in the evening.

The roommates of the deceased were not examined but the friend to whom the deceased talked about the meeting in the evening, was examined as PW6. PW6 deposed that she was a close friend of the deceased and they also did projects together for which reason the laptop of the deceased was entrusted to PW6. It was the statement of PW6 that the deceased had rung her up in the course of the day, i.e. on 18.02.2006, to tell her that he will be collecting the laptop later and also that he would be meeting A1 in the evening. This is not in proof of the victim having been seen with the accused in the evening.

14. One other witness projected to prove the last seen together theory was PW12, the auto rikshaw driver who is said to have picked up three persons from the Police Bazar and dropped them near the scene of occurrence. PW12 spoke in tandem with his statement under Section 161 Cr.P.C. and identified both the accused in the dock. The prosecution interestingly did not put any question regarding the acquaintance, the witness had with the accused so as to identify them in the dock.

However, on cross-examination by A2, the witness, on a specific query stated that he has known A2 from childhood. Still, there was nothing to indicate how A1 was identified as having travelled in the auto rickshaw on the fateful day and more particularly, there was no statement regarding the identity of the third person who travelled along with the two accused.

15. It is also disturbing that the witness stated in cross-examination that the first identification was done in the Thana (Police Station) where he was taken for the identification of the accused. It was also stated that there was no other person standing with the accused at the time of identification. Hence, there was no Test Identification Parade carried out, as is required, in the course of an investigation, which in any case only lends credence to the line of investigation and not necessarily to the eventual conviction. However, it has to be noticed that the identification of the accused was first done at the Police Station putting the identification in the dock under a cloud.

Further, though PW14 a Sub-Inspector of Police speaks of the seizure of the auto rickshaw corroborated by a Police Constable, PW16, there is nothing brought on record to indicate the ownership of the auto rickshaw or the

possession by PW12, who was alleged to be the driver of the auto rickshaw. There was an interpolation to the registration number of the autorickshaw as seen from the seizure mahazar Ext-15, admitted by PW14 in cross examination, but not satisfactorily explained by the prosecution. The auto was also not produced at the time of trial despite its seizure. The last seen together theory projected by the prosecution fails miserably in the above circumstances.

16. PW5, the father of the victim deposed about two phone calls in his mobile number demanding ransom, which the police did not follow up in their investigation. PW1 and PW17; a classmate and friend of the deceased, spoke of their visit to a PCO from where they obtained documents to indicate a call having been made to PW6, the lady friend of the deceased. PW17 also spoke of the PCO owner having told him about A1 having come to the PCO on the night of 18.02.06 and requested him not to disclose the factum of his visit. A1 had accompanied PW1 & PW17 to the PCO and was sitting in the taxi was the testimony.

This does not in any manner prove the ransom calls alleged to have been made to PW5. PW22 was the PCO owner who did speak of some persons having come to his PCO on 18.03.2006 and the same persons having requested him, the next day, to not disclose their identity. But the witness categorically stated that he would not recognize them, if he met them again. The ransom calls hence remained an unsolved puzzle.

17. The discovery of the body also is not supported by any statement recorded from A1. The police party under PW33 is said to have been led by A1 to the graveyard from which the body was exhumed. PW20, a photographer summoned to the scene at the time of exhumation does not speak of the presence of A1 either at the police station at Sadar, Shillong; from where the police party started or at the exhumation spot. The discovery so made cannot be pinned against the accused under Section 27 but could very well have been proved as an incriminating circumstance if the 'last seen together' theory was proved and there was sufficient evidence to establish the burial spot having been spoken of by A1.

But for the exhumation of the body from the graveyard, there is nothing to indicate that A1 had led the police party to the graveyard. PW23, the helper of a Cameraman who was summoned to the exhumation spot, deposed that the body was recovered on 25.04.2006 but another Cameraman, PW31 deposed that he witnessed the exhumation on 21.02.2006. PW31 testified that the exact spot was pointed out by a person, whom he was told was A1, but there was no attempt to identify the accused from the dock at the time of trial.

18. Likewise, the rope was recovered allegedly at the instance of A2 as spoken of by PW33 and PW34 Investigating Officers, on 24.03.2006. The witnesses to such recovery; PW25, 26 and 27 categorically deposed that no statement was recorded from A2 before such recovery was made. The IO also did not mark any such disclosure statement which was recorded. A2 was arrested on 23.03.2006 and the rope is alleged to have been recovered on the next day.

But PW18 a police driver spoke of the rope having been seized from the graveyard on 18.03.2006 in the presence only of police personnel. Neither was a statement of A2 recorded of a concealment nor is there anything in the deposition of the IOs or the witnesses to indicate that the rope was recovered from a place of concealment. The rope is recovered from the open at the crime scene itself, from where the exhumation was carried out earlier, making it suspect and not worthy of reliance under Section 27 of the Evidence Act.

19. At the time of recovery, the seizure report indicated blood stains on the rope. PW3 who is the Senior Scientific Assistant of Meghalaya Forensic Science Laboratory deposed only of a few strands of synthetic cloth fiber, of various shades, having been detected in the rope sent to the FSL. In cross-examination, it was brought out that there was no human skin or hair present in the rope nor were any blood stains spoken of in the forensic report or in the deposition of PW3. The discovery of the body and the recovery of the alleged weapon hence fail to impress, as incriminating circumstances against the accused.

20. As has been rightly noticed by the Trial Court, there were many seizures made of the material possessions of the victim, which could have been the personal property of the victim. These, however, were not identified as that belonging to the victim and some seizure witnesses like PWs 23 & 24 turned hostile. The laptop was recovered from the father of the victim, PW5, who identified it as belonging to his son, the deceased. The laptop was received by the father from PW6, the friend of the deceased, with whom it was retained at the request of the deceased. The identification of the laptop as that belonging to the deceased is not a link to the crime.

21. The prosecution case also spoke of a mobile of the victim having been taken from the deceased after his death, by A2. A2 is said to have entrusted this mobile, for sale, to PW11. The wife of PW11 examined as PW8, spoke of the entrustment, but she admitted to have not witnessed it. PW11 interestingly spoke of very close acquaintance with A2 and the mobile having been found with A2 for long. Hence, even the evidence of PW11 does not indicate that the mobile was the proceeds of the crime alleged, of murder and in any event

the seized mobile was never put to PW5, the father of the deceased for identification as that belonging to his son.

22. Similarly, there was seizure of a bag, purse and rakhi spoken of by PW10 and the seizure of wrist watch and spectacles spoken of by PW13, from the house of A2, which was alleged to be belongings of the deceased. These material objects were also not confronted to PW5, the father of the deceased, for identification. The recoveries made thus do not form a link, in the conspicuously absent chain of circumstances.

23. The learned counsel appearing for the State had specifically urged the confession made by the two accused, which at least indicates their presence with the deceased on 18.02.2006, is the argument. The confessions were retracted by the accused and in any event, they do not bring out any inculcating circumstances against the persons who confessed. In this context, we have to examine the confessions, which are produced in the Criminal Appeal No.3738 of 2023 as Annexure P5 and P6 and available in the records.

Annexure P5 is the confession of A1 who states that after they reached the graveyard, A2 asked for a cigarette, to purchase which he had gone out of the graveyard. It was A1's statement that when he came back, he saw A2 strangulating the deceased with a plastic rope. It is his statement that he asked A2 why he killed their friend, to which A2 did not respond. A1, in the confession, spoke of having opened the shoes of the deceased and rubbed his feet to revive him. The confession so made is exculpatory in nature and clearly incriminates the co-accused.

24. The reliance placed by the State on Mohammed Ajmal Mohammad Amir Kasab³ to urge the acceptability of the confessions in this case may not be appropriate. Therein, the confession was argued to be not voluntary, but a tutored statement to suit the prosecution's case. It was argued that the language, tone and tenor of the confession coupled with its inordinate length and also the unnecessary details contained therein made it highly suspect. This Court on an examination of the facts leading to the confession found it to be a voluntary statement. Though, some of the statements made were vague that was found to be no reason to eschew the confession altogether.

It was categorically found from the statements that it was not made under any influence or under duress and that the tone and tenor indicated that it was truthful and voluntary, especially since the statement indicated that the confession was not made out of a feeling of weakness or a sense of resignation or out of remorse but on the other hand made, more out of pride and to project himself to be a role model. The Court also noticed that in the course of the trial, after 58 prosecution witnesses were examined, the accused

requested to make a statement, which though not so detailed had almost similar contents as in the confessional statement.

25. Examined, in the light of the above findings, we find the confessional statements as seen from the records, juxtaposed with the deposition of PW 32, the Magistrate who recorded the confession under Section 164 of the Cr.P.C, to be highly suspect. The confession of A1 as deposed before the Court was recorded on 07.03.2006. Insofar as A2 is concerned, in the testimony before the Court, PW32 deposed that the confessional statement of A2 was recorded on 09.03.2006.

The confessional statement, however, does not record any date nor is the signature of the Magistrate accompanied by a date. The signature of A2 is accompanied with a date; i.e. 08.03.2006. The recorded statement of A2 in the handwriting of the Magistrate, in the loose sheets affixed to the printed form, the signature of the Magistrate is accompanied with the date 09.03.2006. The said discrepancy was specifically put to the Magistrate in cross-examination.

There was no satisfactory answer to the question, regarding discrepancy of the accused having signed on 08.03.2006 but the Magistrate having signed the recorded confession on 09.03.2006. The printed portion of the confessional statement also indicates the statements having been recorded of A1 in English while that of A2 is stated to be in Khasi. This is contrary to the testimony of PW32 before Court and both the recorded statements are completely in English as seen from the records.

26. One other compelling circumstance is the fact that the accused, when produced before the Magistrate for the purpose of recording the confession, they were never asked as to whether they required the assistance of a lawyer. In Mohammed Ajmal Mohammad Amir Kasab³, a similar contention raised was negated by the Court finding that the accused had initially refused representation by an Indian lawyer and had been seeking the services of a Pakistani lawyer. Examining the question of legal assistance at the pre-trial stage on a conspectus of Article 22(1) of the Constitution of India and Section 304 of the Cr.P.C. read with Article 39A of the Constitution of India, it was held so in paragraphs 474 and 475:

"474. We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a Magistrate. We, accordingly, hold that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to

engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings.

475. It needs to be clarified here that the right to consult and be defended by a legal practitioner is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he intended to make a confessional statement in terms of Section 164 CrPC; to represent him when the court examines the charge-sheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial.

It is thus to be seen that the right to access to a lawyer in this country is not based on the Miranda [(1966) 16 L Ed 2d 694: 384 US 436] principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. The right to access to a lawyer is for very Indian reasons; it flows from the provisions of the Constitution and the statutes, and is only intended to ensure that those provisions are faithfully adhered to in practice."

[underlining by us for emphasis]

27. We do not find PW32 having offered any such legal assistance to the accused at the time of production before her before recording the confession under Section 164.

28. Yet again, as we found, the confession of A1 is purely exculpatory and accuse A2 of having strangled his friend, leading to his death. The exculpatory statements made by A1 to absolve himself from the liability and accuse A2 of having caused the death, cannot at all be relied on against A2. Insofar as A2 is concerned, he does not speak of the murder having been committed and merely admits that the deceased took his last breath in A2's lap, which is not a confession as such.

True, if the incidence of death as spoken in both confessions is eschewed and the other aspects of the three having been together on the crucial evening, even if accepted, can only be used for corroborating the circumstantial

evidence otherwise established, which we find to be totally absent in the above case. Neither has the last seen theory been proved nor has the recoveries or the seizures established as having any connection with the crime proper.

29. It has been held in a host of decisions as noticed in Manoharan⁴ that a confession can form a legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. However, it was also held that a Court shall not base a conviction on such a confession without corroboration [Pyarelal Bhargava v. State of Rajasthan⁷]. Quoting the Privy Council, it was held in Kanda Pandiyachi @ Kandaswamy v. State of Tamil Nadu⁸ that 'a confession has to be a direct acknowledgment of guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgment of guilt it would not be a confession even though the same is of some incriminating fact which taken with other evidence tends to prove his guilt.' (sic para 11). In the instant case there is no such acknowledgment of the crime proper nor is there any shred of evidence to establish the various circumstances put forth by the prosecution.

30. The confession allegedly made by the appellants is of no use in bringing home a conviction, especially when there was no corroboration available, of the statements made, from other valid evidence. There was thus no single circumstance available, incriminating the accused in the death of their friend, the son of PW5.

31. Having discussed the evidence, we fail to see any circumstance having been found from the evidence led, in the prosecution before the Trial Court to arrive at a hypothesis of guilt. The High Court proceeded on the premise that the Trial Court lost its way on the minor details and failed to see the larger picture, which was obviously and eventually admitted in the confession statements. The admissions were only that made in the confessional statements, of the death having occurred in the presence of the accused, on the day the deceased was found missing, which we have found to be not worthy of acceptance.

32. We find absolutely no reason to uphold the conviction of the accused as entered into by the High Court reversing the order of acquittal of the accused by the Trial Court. We reverse the order of the High Court and restore that of the Trial Court, which acquitted the accused. We have already granted bail to the accused on the conclusion of hearing. We direct that if the accused are still in jail, then they shall be released forthwith, if not required in any other case and if they are already released on bail, the bail bonds will stand cancelled.

33. The appeals stand allowed with the above directions.

34. Pending application(s), if any, shall stand disposed of.

.....J. (Sanjay Kumar)

.....J. (K. Vinod Chandran)

New Delhi

January 27, 2026.

1 (1984) 4 SCC 116

2 For brevity 'the IPC'

3 (2012) 9 SCC 1

4 (2020) 5 SCC 782

5 (2007) 4 SCC 415

6 For brevity 'the Cr.P.C.'

7 AIR 1963 SC 1094

8 (1971) 2 SCC 641

IN THE SUPREME COURT OF INDIA

XXX

Vs.

State of Kerala & Ors.

**[Criminal Appeal No. 4629 of 2025
arising out of SLP (Criminal) No. 5175 of 2025]**

Head Note – Prescribed the procedure for Magistrates to order an investigation against a public servant under Section 175 (4) BNSS when the alleged offense arises "in the course of the discharge of his official duties.

Section 175(4) BNSS uses the modal verb “may” and not 'shall'. In the context where it finds place and the object that is sought to be achieved, “may” has to be read as “may”, bearing an element of discretion, and not 'shall'."

Guidelines for Magistrates

Upon receiving a complaint under sub-section (4) of Section 175, BNSS alleging commission of an offence by a public servant arising in the course of the discharge of his official duties, the Court said that the magistrate may do either of the following:

(i) Reading the complaint, if the judicial magistrate is prima facie satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such magistrate may not have any option other than following the procedure prescribed under sub-section (4) of Section 175 of calling for reports from the superior officer and the accused public servant.

(ii) Or, on a consideration of the complaint, where the judicial magistrate entertains a prima facie doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in course of discharge of his official duties, such magistrate might err on the side of caution and proceed to follow the procedure prescribed in sub-section (4) of Section 175.

(iii) Or, where the judicial magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175.

Section 175(4) introduces a two-fold safeguard for public servants:-

First, at the investigation stage, the Magistrate must call for a report from the superior officer and afford an opportunity of hearing to the accused public servant.

Second, at the stage of taking cognizance, a sanction under Section 218(1) BNSS would ordinarily be required, subject to the statutory exceptions carved out for certain categories of offences such as sexual offences.

The judicial magistrate would continue to retain the authority to reject an application under Section 175(3) BNSS, lodged against a public servant, where such magistrate finds that the allegations made therein are wholly untenable, manifestly absurd, or so inherently improbable that no reasonable person could conclude that any offence is disclosed.

However, it is needless to observe, such an order of rejection ought not to be based on whims and fancy but must have the support of valid reasons.

If a report sought from a superior officer was not submitted?

A situation may arise where, in an appropriate case, the judicial magistrate has called for a report from the concerned superior officer under Section 175(4)(a) BNSS, but such officer fails to comply with the direction or does not submit the report within a reasonable period of time. What is the course open to the magistrate in such a situation?

In the unlikely event of such a situation, the judicial magistrate is not obliged to wait indefinitely for compliance and may proceed further in accordance with sub-section (3) of Section 175 after considering the version of the accused public servant under Section 175(4)(b) BNSS, if on record. What would constitute 'reasonable time' cannot be determined in rigid or inflexible terms and must necessarily depend upon the facts and circumstances of each case before the judicial magistrate who has to take the call.

Even complaints invoking Section 175(4) must be supported by an affidavit. Although the text of sub-section (4) refers only to a “complaint”. Therefore, the term must be understood contextually and harmonised with Section 175(3), which expressly mandates an affidavit.

JUDGMENT

Dipankar Datta, J.

INDEX

PREFACE

FACTS

Proceedings before the High Court

The Appeal

SUBMISSIONS ON BEHALF OF THE APPELLANT

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

QUESTIONS

ANALYSIS

What is the law laid down in Lalita Kumari?

Questions I & II: Section 175(4), BNSS - Whether standalone or not, and the procedure to be followed by a Judicial Magistrate?

Object of Section 175 (4)

Section 175 (4) is not an independent provision - reasons

Is sub-section (4) to be read as a proviso to sub-section (3) of Section 175?

Construction of Section 175(4)

Summary of the discussion

When must Section 175 (4) be invoked - a guide for Judicial Magistrates

Question (A): Whether the Single Judge exceeded his jurisdiction?

Question (B): Whether in the present case, the alleged acts of the public servants were in the discharge of their official duties? ...

CONCLUSION

PREFACE

1. This appeal, by special leave, calls in question an order of reversal of a Division Bench of the High Court of Kerala at Ernakulam¹, whereby a writ appeal² of the fifth respondent³ stood allowed and the judgment and order under challenge of a Single Judge was set aside. Important questions relating to interpretation of certain provisions of the recently enacted Bharatiya Nagarik Suraksha Sanhita, 2023⁴ are involved in the appeal.

Although the facts of the appeal are not too complicated and, hence, the same could have been decided by a short order, we thought it appropriate to consider the rival arguments in some depth since, by the time we reserved judgment and even thereafter, there has been no authoritative pronouncement of this Court on the interplay between subsections (3) and (4) of Section 175, BNSS, which creates a nuanced framework for determining the overall scope thereof.

Having regard to the same, while concluding our judgment, we also wish to indicate in brief the considerations that ought to weigh in the minds of the magistrates, empowered under Section 210, BNSS, while they are seized of applications/complaints alleging commission of an offence by a public servant in course of discharge of his official duty as well as provide a guide for due exercise of the power to direct investigation.

FACTS

2. While pursuing a complaint relating to a property dispute, the appellant was, allegedly, sexually assaulted by three police officers on separate occasions. The first incident occurred in January 2022, when R-5 visited her residence under the pretext of discussing the matter (relating to the property dispute) privately and, allegedly, proceeded to rape her.

The second incident followed in quick succession, also in January 2022, when a senior officer of the rank of Deputy Superintendent of Police (not a party herein), to whom she had complained about the first incident, allegedly behaved inappropriately with her in her house. The third incident took place in August 2022, when another senior officer of the rank of Superintendent of Police (also not a party herein), to whom she had complained about the previous two incidents, under the guise of offering help, allegedly called her to an isolated location and raped her.

3. The second incident led the appellant to lodge a complaint with the office of the Superintendent of Police, in August 2022. This complaint was forwarded to the office of the Deputy Superintendent of Police which on 11th October 2022 submitted a report⁵ stating that the allegations in the complaint filed by the appellant were untrue.

4. After the report in August 2022, there was not much of a development over the next two years.

5. After change of incumbency in the office of the Superintendent of Police of the district in September 2024, the appellant submitted a written complaint before Station House Officer, Ponnani PS, on 6th September; a complaint under sub-section (4) Section 173, BNSS to the District Police Chief on 8th

September; and on 9th September, she filed an application⁶ under "Section 210 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 173(4)" before the Judicial Magistrate First Class, Ponnani⁷ seeking a direction for registration of a First Information Report⁸ against those police officials whom she perceived as offenders.

Having regard to sub-section (4) of Section 175, BNSS⁹, the JMFC vide order dated 11th September 2024 called for a report from the Deputy Inspector General of Police, Thrissur Range. Two days later, while the appellant's application was still pending before the JMFC, the appellant invoked the writ jurisdiction of the High Court¹⁰ alleging unfair and unlawful investigation by the police. She sought directions for registration of an FIR and compliance with the directions made by this Court in *Lalita Kumari v. Govt. of U.P.*¹¹. Lastly, she implored the writ court to declare that the acts of the police officials, in sexually assaulting her, were not in the discharge of their official duties and, thus, subsection (4) of Section 175, BNSS was not required to be followed. The final prayer in the writ petition is reproduced below:

"3. The Petitioner respectfully prays before this Honourable Court to declare that the immunity provided under Section 175(4) of BNSS shall not extend to crimes committed by a public servant that are unrelated to their official duties. Specifically, the Court is requested to rule that the protection afforded to public servants does not apply to acts that constitute criminal offenses committed outside the scope of their official functions. This prayer is made to ensure that public servants are held accountable for any criminal acts they commit in their personal capacity, without the shield of immunity intended for their official duties."

(emphasis ours)

PROCEEDINGS BEFORE THE HIGH COURT

6. A Single Judge of the High Court allowed the writ petition vide order dated 18th October, 2024, holding that compliance with Section 175(4)(a), BNSS prior to registration of an FIR was not mandatory, as the alleged offence of rape could not be regarded as one committed by a public servant in the "discharge of official duties". The Single Judge further observed that the use of the word "may" in sub-section (4) of Section 175 indicates that the provision is directory, not mandatory. Accordingly, the JMFC was directed to dispose of the appellant's application as per the law declared by the Single Judge, within ten days of receiving the order. In compliance with this direction, the Magistrate, ordered registration of an FIR vide order dated 24th October, 2024.

7. Aggrieved by the order of the Single Judge, R-5 preferred the writ appeal which stands allowed by the Division Bench vide a judgment and order dated 13th November, 2024¹². While the Division Bench acknowledged that a substantial question of law did arise in the appeal, it declined to adjudicate upon the same as "the main question is whether it was appropriate to intervene at this stage under Article 226 of the Constitution of India when the complaint was pending."

The Division Bench proceeded to set aside the order passed by the Single Judge and also the order of the JMFC dated 24th October, 2024 directing registration of an FIR against the alleged offenders on the grounds that: (i) interference by the Single Judge with the order of the JMFC dated 11th September 2024 was unwarranted, when the complaint [read: application under Section 175(3), BNSS] before the JMFC was still pending; (ii) the Single Judge should not have issued directions to the JMFC when no order of the JMFC was under challenge; and (iii) owing to pendency of the application under Section 175 (4), BNSS before the JMFC, the remedy under Article 226 could not have been invoked without exhausting the remedy under the BNSS.

THE APPEAL

8. Thoroughly dissatisfied with the outcome of the writ appeal of R-5, the appellant has approached us challenging the impugned order of the Division Bench for exercise of our appellate jurisdiction to set the same at naught and to restore the order of the Single Judge.

SUBMISSIONS ON BEHALF OF THE APPELLANT

9. Mr. R Basant, learned senior counsel appearing on behalf of the appellant, argued that:

9.1 The protection to a public servant under sub-section (4) of Section 175, BNSS is only available if the offence alleged "is arising in course of the discharge of his official duties", otherwise not. Since acts of sexual assault and rape, by no stretch of imagination are in the discharge of official duties, the protection cannot be afforded to the alleged offenders (police officers). As sub-section (4) of Section 175 is not attracted, the proper course for a judicial magistrate is to direct registration of an FIR without calling for any report and/or giving any opportunity to the accused public servant to respond to the allegations.

9.2 Sub-section (1) of Section 218, BNSS [earlier Section 197(1), Code of Criminal Procedure, 1973¹³] requires prior sanction from the concerned government before cognizance of an offence can be taken against a public servant. However, the third proviso to Section 218(1) excludes the

requirement of prior sanction where a public servant is alleged to have committed a sexual offence¹⁴, reflecting the intent of the law makers not to afford any special protection to public servants in cases of sexual offences. Consequently, it is clear that the legislature did not intend to afford public servants any special protection. While Section 175, unlike Section 218, contains no proviso, it must be read and interpreted in the light of the legislature's intent and, therefore, no protection under sub-section (4) of Section 175 can be extended in cases of sexual offences.

9.3 Another perspective on this is that a public servant cannot be afforded greater protection at the stage of investigation than what is available at the stage of cognizance. Since no protection is provided for sexual offences at the stage of cognizance, where prior sanction is not required, it cannot be claimed that such protection exists at the stage of investigation.

9.4 Resultantly, when sub-section (4) of Section 175, BNSS does not apply, the general law enshrined in sub-section (3) thereof is applicable. Thus, the JMFC should have directed registration of an FIR and having not so directed, the Single Judge was justified by his interference to set things right.

9.5 Sub-section (4) of Section 175, BNSS is not a stand-alone provision. The same must be read in continuation of / as a proviso to Section sub-section (3) of Section 175 thereof. Failing to do so would result in the anomalous position that the requirement of an "application supported by an affidavit," explicitly provided in Section 175(3), would be deemed absent in Section 175(4). This would allow an order for investigation against a public servant to be initiated on the basis of a mere oral complaint, thereby depriving the public servant of the safeguard recognized by this Court in *Priyanka Srivastava v. State of U.P.*¹⁵, which held that every application under sub-section (3) of Section 156, Cr. PC must be supported by a sworn affidavit in the passage extracted hereunder:

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations.

This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the

Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

9.6 The law laid down by this Court in *Lalita Kumari* (supra) is that when a complaint discloses a cognisable offence, irrespective of whether the allegations are credible or not, an FIR has to be registered. Pursuant to the complaint made by the appellant after the second incident, the office of the Deputy Superintendent of Police filed a report stating that the allegations in the complaint were untrue.

This report was questioned on the ground that the same exceeds the scope of preliminary enquiry, as discussed in *Lalita Kumari* (supra) according to which the objective of the enquiry is not to ascertain a prima facie case but only to determine whether the allegations constitute a cognizable offence. Thus, the report which came to be submitted finding the allegations to be untrue constituted a gross violation of the law declared by this Court. Not only that, but, as per paragraph 120.3 of *Lalita Kumari* (supra), the outcome of any preliminary enquiry must be recorded in writing and a copy supplied to the complainant - which was not done in the present case.

10. Resting on the aforesaid arguments, Mr. Basant made a prayer for setting aside the impugned order and for a direction to the police for registration of an FIR, with further direction to fairly and impartially investigate the crime alleged by the appellant.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

11. Mr. Ranjit Kumar, learned senior counsel appeared on behalf of the official respondents 1 to 4, namely the State of Kerala (R-1), the Superintendent of Police, District Malappuram (R-2), the Additional Superintendent of Police, District Malappuram (R-3) and the Station House Officer of Ponnani Police Station, District Malappuram (R-4).

11.1 At the outset, Mr. Kumar supported the course of action adopted by the JMFC in the present case [in calling for a report under sub-section (4) of Section 175, BNSS].

11.2 Questioning the bona fide of the appellant in filing the complaint, Mr. Kumar submitted that the allegations levelled by the appellant against the accused police officers were stimulated by personal vengeance and arose out of a conspiracy involving the appellant herself, two of her relatives, and a television news channel. It was contended that the appellant's two relatives, who were serving police officers, had earlier been suspended from service by one of the accused officers and therefore bore animosity towards them. The

news channel, it was submitted, was similarly antagonistic, as its owners had been charge-sheeted in a criminal case.

11.3 Further, Mr. Kumar pointed out that following the appellant's complaint, a preliminary enquiry was conducted, which revealed serious inconsistencies and contradictions in her version. It was found, inter alia, that R-5 was not present in town on the date on which he is alleged to have raped the appellant. It was also revealed, with respect to the alleged third incident, that the appellant had herself travelled to the location and was not able to name the place where the incident occurred, thereby casting serious doubt on the veracity of her version.

The preliminary report, upon consideration of the materials on record, concluded that the allegations were false and motivated, and that they formed part of a conspiracy between the appellant, her suspended relatives, and the said news channel - all of whom harboured personal grievances against the accused police officers. The report further noted that the appellant was in the habit of filing complaints against public officials with the object of extorting money.

11.4 Mr. Kumar next contended that even assuming the allegations of the appellant to be true, the acts complained of were performed in the discharge of official duties by the police officers concerned. Accordingly, it was urged that they are entitled to the protection afforded under sub-section (4) of Section 175, BNSS, which seeks to protect public servants from frivolous and vexatious criminal proceedings in respect of acts performed in the course of their official functions.

11.5 It was argued by Mr. Kumar that Sections 173 and 175 of the BNSS (Sections 154 and 156 of the Cr. PC) are not standalone provisions but must be read together. Combined, they provide the procedure for registration of an FIR and sequential remedies in case of its nonregistration. Section 173, BNSS is *pari materia* with Section 154, Cr. PC, save for a significant addition.

11.5.1 Sub-section (3) of Section 173, BNSS has now introduced a statutory requirement of preliminary enquiry in cases of offences punishable with three years or more but less than seven years, to ascertain *prima facie* existence of an offence.

11.5.2 Furthermore, sub-section (4) of Section 173, BNSS is substantially similar to sub-section (3) of Section 154, Cr. PC but contains an additional and material phrase. Emphasis was laid on sub-section (4) of Section 173 and in particular the last few words, reading as follows:

(4). Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-Section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

(emphasis laid by Mr. Kumar)

11.5.3 It was, thus, submitted that the same makes clear the intention of the legislature for sequential escalation of a grievance arising out of non-registration of an FIR. 11.5.4 That Sections 173 and 175 of BNSS, according to Mr. Kumar, are not standalone provisions was also sought to be highlighted by submitting that sub-section (3) of Section 175 reflects a linkage to sub-section (4) of Section 173:

3) Any Magistrate empowered under Section 210 may, after considering the application supported by an affidavit made under sub-Section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(emphasis laid by Mr. Kumar)

11.6 Our attention was invited to the relevant portions of the 247th Report on the Bhartiya Nagarik Suraksha Sanhita, 2023 by the Department-related Parliamentary Standing Committee on Home Affairs. The said report, after referring to the provisions of the BNSS Bill, considered the suggestions made and thereafter decided to adopt or reject the suggestion. Sub-section (3) of Section 175 in the draft bill read as follows:

"3.13.3 Further, Clause 175 (3) states that:

'Any Judicial Magistrate empowered under Section 210 may, after considering the application made under clause (b) of sub-Section (4) of Section 173 and submission made in this regard by the police officer, order such an investigation as above-mentioned'."

Suggestions received by the Committee were as follows:

"SUGGESTIONS:

3.13.4 The words 'affidavit' and 'after such enquiry as he may think necessary' should be added in Clause 175(3) at the appropriate places, to provide safeguards against any misuse of the law.

3.13.5 Clause 173(4) is not explicitly divided into sub-clauses, therefore, in Clause 175(3) the reference to 'clause (b) of sub-section (4) of Section 173' is erroneous, and the reference should instead be drawn to 'sub-section (4) of Section 173'."

Having considered the suggestions, the Committee proceeded to decide as follows:

"OBSERVATIONS/RECOMMENDATIONS:-

3.13.6 The Committee is of the view that adequate safeguards should be inbuilt in Clause 175(3) to prevent its misuse and the Clause may therefore be reframed. The application made under Section 173(4), may be considered by the Judicial Magistrate empowered under Section 210, only if it is supported by an affidavit and after conducting such enquiry as he may think necessary. The Committee, therefore, recommends bringing out a suitable amendment in the said Clause, so that its misuse can be prevented. The Committee further recommends correcting the cross-referencing error in Clause 175(3) by replacing 'clause (b) of sub-section (4) of Section 173', with 'sub-section (4) of Section 173'."

11.7 While concluding his address, Mr. Kumar urged that the impugned order under challenge does not suffer from any infirmity and, accordingly, the appeal deserves dismissal.

12. Mr. Siddharth Dave, learned senior counsel, appeared on behalf of R-5 (police officer).

12.1 Mr. Dave submitted that the Legislature has consciously incorporated various procedural protection for public servants in the newly enacted BNSS.

12.1.1 In cases where a litigant seeks a direction from the judicial magistrate for registration of an FIR against a public servant, the BNSS, unlike the Cr. PC, provides a two-tier protection mechanism. First, at the stage of issuance of such an order under Section sub-section (4) of Section 175, the judicial magistrate must call for a report from the superior officer of the accused and also provide an opportunity of hearing to the accused. Secondly, at the stage of taking cognizance under Section 218, BNSS, prior sanction from the concerned government is required.

12.1.2 As a special provision, when a judicial magistrate is called upon to take cognizance of a complaint alleging the commission of an offence by a public servant, Section 223 provides similar safeguards, requiring a report from the superior police officer and an opportunity of hearing to be afforded to the public servant.

12.2 Next, Mr. Dave submitted that sub-section (4) of Section 175 is an independent provision covering a special case. While sub-section (3) of Section 175 is the general law, the next sub-section alone governs the field when a complaint is directed against a public servant for offence allegedly committed in the discharge of official duties. That sub-section (4) is a standalone provision - distinct and uncontrolled by sub-section (3) - is apparent from the following:

(i) sub-section (3) of Section 175 can be invoked only by an application supported by an affidavit, whereas sub-section (4) of Section 175 refers to a "complaint" and thus encompasses oral complaints as well [as per Section 2(1)(h), BNSS]; and

(ii) sub-section (4) of Section 175 commences with the words "Any Magistrate empowered under Section 210" rather than "the Magistrate above" underscoring the Legislature's intention to provide an additional safeguard for public servants.

12.3 Further, the fact that sub-section (3) of Section 175 requires a complaint to be accompanied by an affidavit, whereas no such requirement exists under sub-section (4) thereof, reinforces the rationale for providing an additional layer of protection to public servants, as even oral complaints are accepted under the latter which calls for additional caution.

12.4 The introduction of this provision is a well-considered legislative response to the divergence of judicial opinion on the issue. In *Anil Kumar v. M.K. Aiyappa*¹⁶, this Court held that even at the stage of directing an investigation against a public servant under Section subsection (3) of Section 156, Cr. PC, prior sanction under Section 19 of the Prevention of Corruption Act, 1988 is required. However, in *Manju Surana v. Sunil Arora*¹⁷, the Court noted a divergence of judicial opinion on this issue and referred the matter to a larger Bench. Recognizing this ambiguity, Parliament introduced sub-section (4) of Section 175 as a clarificatory and protective measure for public servants.

12.5 Relevant extracts from the decided cases referred to by Mr. Dave are reproduced below:

a. *Anil Kumar (supra)*:

17. We may now examine whether, in the abovementioned legal situation, the requirement of sanction is a precondition for ordering investigation under Section 156(3) CrPC, even at a pre-cognizance stage.

21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-Section(3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction.

That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in *Paras Nath Singh* [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and *Subramanian Swamy* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases.

b. *Manju Surana* (supra):

33. The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapters XII & XIV is well established. Thus, the question would be whether in cases of the PC Act, a different import has to be read qua the power to be exercised under Section 156(3) CrPC i.e. can it be said that on account of Section 19(1) of the PC Act, the scope of inquiry under Section 156(3) CrPC can be said to be one of taking "cognizance" thereby requiring the prior sanction in case of a public servant? It is trite to say that prior sanction to prosecute a public servant for the offences under the PC Act is a provision contained under Chapter XIV CrPC. Thus, whether such a purport can be imported into Chapter XII CrPC while directing an investigation under Section 156(3) CrPC, merely because a public servant would be involved, would beg an answer.

35. The complete controversy referred to aforesaid and the conundrum arising in respect of the interplay of the PC Act offences read with CrPC is, thus, required to be settled by a larger Bench. The papers may be placed before the Hon'ble the Chief Justice of India for being placed before a Bench of appropriate strength.

12.6 Further, referring to the equivalence drawn by Mr. Basant between sub-section (4) of Section 175 and the third proviso to sub-section (1) of Section 218 of the BNSS, Mr. Dave submitted that such a comparison is misplaced. The two provisions operate at distinct stages of the criminal process. Sub-section (4) of Section 175 applies at the threshold stage, governing the order for investigation, whereas sub-section (1) of Section 218 comes into play at the post-investigation stage, when the Court takes cognizance upon completion of investigation.

At the threshold stage, Parliament has introduced a mandatory twin safeguard under sub-section (4) of Section 175 to preserve the delicate balance between enabling genuine prosecution and preventing frivolous or motivated complaints against public servants. The legislative intent is, thus, clear: - while the requirement of prior sanction has been excluded for sexual offences at the stage of cognizance (by which time enough material is available before the Court to take a decision on cognizance), it has been consciously retained at the stage of ordering investigation (when no material is available) to ensure fairness and protect public functionaries from vexatious proceedings.

12.7 Lastly, it was submitted that the alleged acts occurred in the "discharge of official duties" since, as per the appellant's own version, they were committed by the police officials while visiting her house for the purpose of investigation and, therefore, the alleged offenders are entitled to the protection under Section 175(4).

QUESTIONS

13. In relation to interpretation of Section 175 read with Section 173, BNSS, the following two questions arise for determination:

I. Whether sub-section (4) of Section 175, BNSS is a stand-alone provision or is it to be read in continuation of / as a proviso to subsection (3) thereof?

II. What procedure should a judicial magistrate follow upon receiving a complaint against an accused, who happens to be a public servant, for his acts "arising in course of the discharge of his official duties"?

14. However, on facts of the present appeal, we are tasked to decide the following questions:

(A). Whether the Single Judge exceeded his jurisdiction by interpreting sub-section (4) of Section 175, BNSS while issuing consequential directions for the JMFC to pass an appropriate order on the appellant's application without any prayer in this behalf and particularly in the absence of any challenge to

the order of the JMFC dated 11th September 2024 calling for a report per sub-section (4) of Section 175?

(B). Whether the alleged acts of the public servants, in the facts and circumstances of the present case, fall within the discharge of their official duties?

ANALYSIS

15. Having heard learned senior counsel for the parties, we propose to answer the questions framed sequentially.

WHAT IS THE LAW LAID DOWN IN LALITA KUMARI?

16. Since the appellant's claim before the High Court was based on the decision in Lalita Kumari (supra), it would not be inapt to remind ourselves of what the law declared therein is before proceeding with the task of answering the above formulated questions.

17. Lalita Kumari (supra) arose out of a writ petition under Article 32 of the Constitution. Noticing divergent views, a three-Judge Bench ordered that the petition may be placed before a Constitution Bench of five Judges. The issue arising for an answer is noted in paragraph 1 of the decision authored by the Hon'ble the Chief Justice, reading as follows:

The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same"?

18. The observations of this Court, relevant for the purpose of this discussion, are summarised in brief as follows:

18.1 If information discloses commission of a cognizable offence, the police has no discretion to refuse registration of an FIR or to conduct a preliminary inquiry. The word "shall" in Section 154(1), Cr. PC is used in a mandatory sense (Paragraphs 37.6, 54, 83 and 105).

18.2 The placement of Section 154 before 156 makes clear the legislative intent: that recording of first information is the starting point of investigation. The same acts as a safeguard against arbitrary police actions (Paragraphs 38 and 39).

18.3 Although Section 166-A18 of the Indian Penal Code, 1860 provides for penal consequences of non-registration of FIR by a public servant for only certain kinds of offences against women, the same does not mean that a public servant (police officer) has discretion to register/not register FIR for other offences (Paragraphs 40-42).

18.4 The object of early registration of FIR is to ensure transparency, avoid embellishments and maintain judicial oversight through prompt reporting to the Magistrate (Paragraphs 93-97).

18.5 While mandatory registration of an FIR is the rule, the Constitution Bench recognised a limited need for preliminary inquiry in exceptional categories of cases. Such exceptions include cases of medical negligence, corruption cases involving public servants, situations where the information received does not, on its face, disclose a cognizable offence. Even in such cases, the scope of preliminary inquiry is limited only to determine whether a cognizable offence is disclosed. If the information, ex facie discloses such an offence, the police is bound to register the FIR forthwith, and any inquiry into falsity or credibility must follow only during investigation (Paragraphs 115-119).

18.6 In brief, this Court held the registration of FIR to be mandatory in all cognizable offences, while permitting preliminary inquiry only in limited, exceptional situations.

18.7 The "Conclusion/Directions" in Lalita Kumari (supra) read as follows: Conclusion/Directions 120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers

who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: (a) Matrimonial disputes/family disputes (b) Commercial offences (c) Medical negligence cases (d) Corruption cases (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

19. In the present case, the appellant, however, having approached the JMFC with the application under Section 210 read with sub-section (4) of Section 173, BNSS upon the omission/neglect of the Station House Officer to register an FIR based on her complaint, it is obvious that the JMFC was required to follow the mandate of the law as in sub-sections (3) and (4) of Section 175, to the extent relevant and applicable. The advisability or otherwise of any preliminary inquiry before registration of an FIR, as explained in Lalita Kumari (supra) would, therefore, *stricto sensu* not arise in the present case.

QUESTIONS I & II: SECTION 175(4), BNSS - WHETHER STANDALONE OR NOT, AND THE PROCEDURE TO BE FOLLOWED BY A JUDICIAL MAGISTRATE?

20. The present appeal could have been disposed of on the basis of our finding on issue (A) (discussed in the later part of the judgment); however,

having heard erudite submissions from learned senior counsel on either side and cognizant of the fact that Section 175, which necessarily would also include sub-sections (3) and (4) thereof, read with Section 173 and certain other provisions of the BNSS fall for a meaningful construction, which is of labyrinthine significance, we are inclined to observe how the law ought to be read upon undertaking an intrusive study of the relevant provisions.

21. Since the BNSS has been newly enacted and contains certain provisions which have been included to keep pace with time and are otherwise not to be found in the Cr. PC, obviously there is a dearth of rulings in regard thereto. However, we consider it appropriate to take note of the first decision of this Court which has a brief discussion on Section 175, BNSS before taking the discussion further.

22. In *Om Prakash Ambadkar v. State of Maharashtra*¹⁹, this Court pointed out the difference between Section 156, Cr. PC and Section 175, BNSS, referred to what is the ordainment of sub-section (4) of Section 175 and thereafter noted that the changes therein can be attributed to the judicial evolution of Section 156, Cr. PC through numerous decisions of the Court including *Priyanka Srivastava* (supra). It was observed thus:

28. However, before we part with the matter, we deem it necessary to discuss the changes brought to the scheme of Section 156 of the Cr. P.C. by the enactment of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (for short, "the BNSS").

29. Section 175 of the BNSS corresponds to Section 156 of the Cr. P.C. Sub-Section (1) of Section 175 of the BNSS is in pari materia with sub-Section 156(1) of the Cr. P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-Section (2) of Section 175 of the BNSS is identical to Section 156(2) of the Cr. P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in pari materia with Section 156(3) of Cr. P.C. However, unlike Section 156(3) of the Cr. P.C., any Magistrate, before ordering investigation under Section 175(3) of the BNSS, is required to:

- a. Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the BNSS;
- b. Conduct such inquiry as he thinks necessary; and
- c. Consider the submissions made by the police officer.

30. Sub-section (4) of Section 175 of the BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr. P.C. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made.

The provision stipulates that any Magistrate who is empowered to take cognizance under Section 210 of the BNSS may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure: a. Receiving a report containing facts and circumstances of the incident from the officer superior to the accused public servant; and b. Considering the assertions made by the accused public servant as regards the situation that led to the occurrence of the alleged incident.

31. A comparison of Section 175(3) of the BNSS with Section 156(3) of the Cr. P.C. indicates three prominent changes that have been introduced by the enactment of BNSS as follows:

a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under Section 175(3) is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4), supported by an affidavit, while making the application to the Magistrate under Section 175(3).

b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.

c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under Section 175(3).

32. The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156 of the Cr. P.C. undertaken by a number of decisions of this Court. In the case of *Priyanka Srivastava v. State of U.P.*, (2015) 6 SCC 287, this Court held that prior to making an application to the Magistrate under Section 156(3) of the Cr. P.C., the applicant must necessarily make applications under Sections 154(1) and 154(3).

23. A bare reading of Section 175, BNSS reveals the marginal note as "Police officer's power to investigate cognisable case". While sub-section (1) confers power on any officer in charge of a police station to investigate a cognisable case and sub-section (2) provides the effect of investigation by a police officer

not empowered under sub-section (1), sub-sections (3) and (4) relate to the power of a magistrate, empowered under Section 210, BNSS to order investigation as "above-mentioned", i.e., an investigation that a police officer is required to undertake as in subsection (1) of Section 175. Reference to Section 210 in sub-sections (3) and (4) is for the purpose of drawing guidance as to the class of magistrate empowered to take cognisance of an offence.

24. We are minded to hold that by the very nature of its contents, subsections (3) and (4) of Section 175 could have formed a different section of the BNSS altogether. Suffice it to record at the outset that the BNSS being a statute of recent origin, which has been enacted after exactly half a century of its precursor (the Cr. PC) governing the field of criminal procedure, one would have expected the legislative drafting thereof to be of the highest order with clear expression of the will of the people. Sadly, Section 175, BNSS is somewhat confusing and requires ironing out the creases in the legislation without altering the material of which it is woven.

25. As noticed, elaborate arguments have been advanced canvassing the different ways in which Section 175 and in particular sub-section (4) thereof should be/can be interpreted. One contention is that sub-section (4) must be read in continuity with sub-section (3). Per this interpretation, sub-section (4) is not an independent provision but operates subject to the procedural safeguards that sub-section (3) embodies, including the requirement that the application be supported by an affidavit.

It was argued that any other reading would result in the affidavit requirement being rendered nugatory in cases under subsection (4), thereby weakening an important safeguard against possible frivolous or mala fide proceedings. In contrast, the contention is that sub-section (4) has to be viewed as a distinct and self-contained provision, not controlled by sub-section (3), starting with the words "Any Magistrate" and not 'Such Magistrate as referred to above'.

Also, the term "complaint" in sub-section (4) must be understood in light of clause (h) of sub-section (1) of Section 2, BNSS, which defines complaint as including an oral complaint as well. Concerns regarding abuse of process through oral complaints (without the support of affidavit) were countered by the submission that sub-section (4) itself contains adequate additional safeguards (report from superior officer and opportunity of hearing to the accused public servant), making the requirement of an affidavit unnecessary and unwarranted.

26. After a careful and considered examination of the arguments advanced, we find ourselves in respectful disagreement with the latter view [according to which sub-section (4) of Section 175, BNSS is a standalone provision].

OBJECT OF SECTION 175 (4)

27. Sub-section (4) of Section 175 of the BNSS is a provision that was absent in the Cr. PC. It reads as follows:

(4) Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

28. Sub-section (4) prescribes a special procedure to be followed before an order for investigation is made in cases involving offences committed by a public servant "in course of the discharge of his official duties". Having regard to the modal verb "may", appearing in sub-section (4), a judicial magistrate has the discretion to order an investigation upon (i) calling for a report regarding the incident from an officer superior to the accused public servant; and (ii) considering the version of the public servant concerning the incident. It is "subject to" these conditions, that "(A)ny Magistrate, may," if satisfied of sufficient grounds existing, pass an order for investigation against the accused public servant.

29. The legislative intention behind insertion of sub-section (4) of Section 175 is clear: the Parliament intended it as an additional safeguard for public servants when a complaint is made against them. Cognizant of practical realities and to prevent false or frivolous allegations, it appears to us that the mandate is to obtain a report from the accused public servant's superior officer and to extend to such public servant an opportunity to explain his side of the story.

While society's interest is served by prosecuting offenders, it is equally vital, if not more, to ensure that prosecution is not launched against individuals, including public servants, to settle a score or wreak vengeance or put them in such an awkward position that it becomes difficult for them to act in a similar future occasion. The responsibility, nay duty, after all, is not just to pursue the actual culprit, but also to protect the innocent from being falsely implicated, wrongly accused and unnecessarily victimised.

30. Having analysed sub-section (4) of Section 175, its scope, and the object it seeks to achieve, the question that now arises for consideration is the manner in which such provision has to be interpreted - whether sub section (4) stands

alone or serves as an adjunct to sub-section (3) or is it to be read as a proviso to sub-section (3)?

SECTION 175 (4) IS NOT AN INDEPENDENT PROVISION - REASONS

31. Upon examination of the provision vis-à-vis consideration of the arguments advanced, we find that construing sub-section (4) as a standalone provision is susceptible of giving rise to certain difficulties which compels us to reject such a construction.

31.1 As per the statutory scheme ordained by the BNSS, a person aggrieved by omission/neglect of a police officer having authority to register an FIR, at the first instance, is required to approach the Superintendent of Police under sub-section (4) of Section 173. If recourse thereto does not yield the desired result, the aggrieved person may approach the judicial magistrate under sub-section (3) of Section 175. Resort to the remedy before the Superintendent of Police is a mandatory precondition to invoke the jurisdiction of the judicial magistrate, as held by this Court in *Ranjit Singh Bath v. Union Territory Chandigarh*²⁰ following earlier decisions.

31.2 However, if sub-section (4) of Section 175 were to be read in isolation or as a standalone provision, it would be open to a complainant to directly approach the judicial magistrate under the said provision while skipping to avail of the remedy provided by sub-section (4) of Section 173 before the Superintendent of Police. This would give rise to anomalous results because sub-section (3) of Section 175 expressly refers to "an application supported by an affidavit made under sub-section (4) of Section 173" which, in effect, mandates that the remedy before the concerned Superintendent of Police be pursued, whereas sub-section (4) thereof contains no such reference. Permitting a complainant to circumvent the statutory hierarchy in cases involving public servants by such an interpretation is likely to produce an outcome which, in our considered view, would run contrary to the legislative intent.

31.3 Further, the requirement of an application supported by an affidavit, which is expressly stipulated in sub-section (3) of Section 175, is conspicuously absent in sub-section (4) thereof. If sub-section (4) of Section 175 is construed in isolation, on its plain reading, such a requirement is entirely absent. We find no discernible reason for the Parliament to prescribe this procedural safeguard in sub-section (3) while omitting it in sub-section (4), thereby undermining the safeguard which *Priyanka Srivastava* (supra) propounded. Had sub-section (4) of Section 175 been intended to operate as an independent provision, it would be reasonable to expect an express

exclusion of all the attendant procedural safeguards (the requirement of an affidavit and prior recourse to the Superintendent of Police).

31.4 In addition to the above, the placement of sub-section (4) immediately after sub-section (3) and not as an independent section also persuades us to not read sub-section (4) as a provision that is independent or stands alone.

IS SUB-SECTION (4) TO BE READ AS A PROVISO TO SUB-SECTION (3) OF SECTION 175?

32. A proviso is an internal aid to construction. It is appended to a section of an enactment or any sub-section of a section.

33. In *Ram Narain Sons Ltd. v. Asstt. CST*²¹, this Court held that it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

34. In *State of Rajasthan v. Vinod Kumar*²², a coordinate Bench noted several precedents and held as follows:

22. The natural presumption in law is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso; the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately.

Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591, *Union of India v. Wood Papers Ltd.*, (1990) 4 SCC 256, *Grasim Industries Ltd. v. State of M.P.*, (1999) 8 SCC 547, *Laxminarayan R. Bhattad v. State of Maharashtra* (2003) 5 SCC 413, *IRD P v. P.D. Chacko*, 2010 6 SCC 637, and *CCE v. Hari Chand Shri Gopa* (2011) 1 SCC 236.)

35. In our considered opinion, sub-section (4) of Section 175 cannot be considered a proviso for the following reasons:

a. Generally, a proviso is drafted in language such as "Provided that". Plainly, we are not faced with a provision starting with similar words.

b. As formulated in "Craies on Statute Law", 6th Edn., p. 217, and further expounded in *Kedarnath Jute Mfg. Co. Ltd. v. CTO*²³, the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In the instant case, as we shall hold hereafter, this is not the purport of the concerned sub-section. It, in fact, creates an additional important safeguard for public servants not present either in the erstwhile Cr. PC or in sub-section (3) of Section 175.

c. Placement of the sub-section is also strongly indicative of the intent of the legislature. The Courts must presume that the legislature intended the provision to be not a proviso when placing the provision as a sub-section rather than a proviso.

d. A test one may apply to determine whether a provision is a proviso rather than a separate provision is to ask whether if the "main" provision is removed, would the concerned provision still be capable of being applied. If yes, then the provision cannot normally be considered a proviso. One may make a reference to the decisions in *S. Sundaram Pillai v. V.R. Pattabiraman*²⁴, *Hiralal Rattanlal v. State of U.P.*²⁵, and *Union of India v. VKC Footsteps (India) (P) Ltd.*²⁶ for the formulation of this test. In the instant case, it is but obvious that sub-section (4) can very well be applied if sub-section (3) of Section 175 is erased from the statute book.

36. We are, thus, not inclined to hold that sub-section (4) has to be read as a proviso to sub-section (3) of Section 175.

CONSTRUCTION OF SECTION 175(4)

37. Having held that sub-section (4) of Section 175 is neither an independent / a standalone provision nor a proviso to sub-section (3) thereof, the next question that arises is in relation to the manner in which it ought to be construed.

37.1 On a plain and contextual reading of the scheme of Section 175, we find that sub-section (3) vests the judicial magistrate (empowered under Section 210) with the power to order investigation, while subsection (4) while conferring similar power additionally prescribes a special procedural safeguard to be observed by the judicial magistrate (empowered under Section 210) where the proposed direction could concern a public servant. While the authority to direct investigation flows from sub-section (3) as well as from sub-section (4), the latter provides a qualifying procedural layer.

37.2 Ordinarily, sub-sections of a section of an Act usually deal with related, parallel aspects with one sub-section dealing with a general principle and the

other providing for a specific aspect, on its own terms. Viewed in this light, sub-section (3) lays down the general principle whereas sub-section (4) dives into specifics of public servants in the given situation, introducing an additional procedural requirement before the power to order investigation is exercised. Consequently, the exercise of power to order investigation must be preceded by satisfaction of not only the conditions expressly stated in sub-section (4) but also those implicit and traceable to sub-section (3).

37.3 Much has been argued by Mr. Dave by referring to the opening words of both sub-sections (3) and (4), which read as "Any Magistrate empowered under section 210", to buttress his contention that if the requirements of sub-section (4) were intended to operate in addition to sub-section (3), the legislature, in sub-section (4), would have used the expression "Any such Magistrate as above" or the like.

Having given the contention serious consideration and without being too critical of the legislative draftsman's efforts, what we infer from the expression "Any Magistrate empowered under section 210" is the emphasis or stress being laid on who is competent to order investigation, namely, the judicial magistrate empowered under Section 210, both by sub-sections (3) and (4) of Section 175. However, in a case to which sub-section (4) is *prima facie* attracted, the additional requirements need also be complied with. Nothing much, therefore, turns on the similarity of the words used.

37.4 The use of the expression "complaint" in sub-section (4) also does not alter this position. Clause (h) of sub-section (1) of Section 2, BNSS defines "complaint" to mean "any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report".

Though the definition of "complaint" under clause (h), as aforesaid, taken literally, includes oral complaints, the definition clause (Section 2, BNSS) (commonly known as the "dictionary clause" for understanding words and expressions used in enactments) itself qualifies every definition with the rider "(U)nless the context otherwise requires,.". In the context of sub-section (4), which operates only as a procedural adjunct to sub-section (3), the word "complaint" in such context clearly requires to be understood in the sense of an 'allegation' relating to commission of an offence which, for reasons we propose to discuss hereafter, must be in the form of a written complaint supported by an affidavit and may not include any allegation orally made.

37.5 One mandatory requirement of sub-section (3) is that the application seeking an order for investigation must be supported by an affidavit. It is true

that sub-section (4) does not expressly require receipt by a magistrate of a written complaint but refers to a "complaint" only. However, it is illogical that a magistrate would be precluded from ordering investigation against a person who is not a public servant without an affidavit supporting the allegations of cognisable offence committed by him, but may order an investigation against a public servant without needing the informant to swear to the allegations.

37.6 Since sub-section (4) of Section 175 merely provides an additional protective layer in cases involving public servants, all mandatory procedural requirements governing the exercise of power under subsection (3) of Section 175, in our opinion, must necessarily be complied with. Any contrary interpretation would result in incorporation of the procedural safeguard taking cue from the judicial precedent in *Priyanka Srivastava* (supra) in sub-section (3) being robbed off much of its substance. Consequently, a complaint against a public servant, which triggers the procedure under sub-section (4) must, in our view, be also founded on an affidavit.

37.7 The reasons discussed above suffice for us to conclude that an application alleging commission of offence(s) by public servants in discharge of their official duties must also be supported by affidavit.

37.8 Looked from another angle and in addition to the reasons discussed above, there is one more reason for our conclusion. Cognizant of the increasing number of complaints against judicial officers of the trial judiciary, and to prevent harassment of such officers, the Hon'ble the Chief Justice of India vide a communication addressed²⁷ to the Chief Justices of the High Courts emphasized the necessity to ensure that such complaints should not be entertained unless supported by affidavit. The said communication was later circulated as a circular²⁸ by the Government of India, Ministry of Law and Justice²⁹.

37.9 When the authenticity of allegations against a judicial officer is required to be supported by an affidavit, there exists equal justification to insist upon a similar requirement in the case of public servants as well. No rational basis is discernible for drawing a distinction with regard to the insistence on an affidavit. The object underlying such a requirement is common in both cases, namely, to weed out false, frivolous, or vexatious complaints and to strike a balance between bringing public servants to book and protecting them against abuse of the judicial process.

38. Accordingly, in our firm opinion, sub-sections (3) and (4) must be read harmoniously, with the latter understood as a procedural restraint upon the power conferred under both the sub-sections for ordering an investigation, and not as a substantive substitute for the former.

39. To give meaning, we hold that the opening words in sub-section (4) which reads "Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant." have to be purposively read as 'Any Magistrate empowered under Section 210, may, upon receiving a complaint in writing against a public servant of commission of offence arising in course of the discharge of his official duties, supported by an affidavit, order investigation, subject to. '.

40. So read, in the case of public servants, where the allegation is that an offence was committed in course of the discharge of official duties, the law now provides a two-tier protection. The first operates at the threshold stage, in the form of additional safeguards under sub-section (4) of Section 175 (when a prayer is made seeking an order for investigation against a public servant), and next under sub-section (1) of Section 218 (before cognizance is taken of the offence alleged). The second tier, with which we are presently not concerned, operates at the stage of taking cognizance when the "previous sanction" of the concerned Government is required.

41. We make it clear that an affidavit, such as the one referred to in subsection (3) of Section 175, must fulfil the conditions provided in Section 333, BNSS which reads as follows:

"333. Authorities before whom affidavits may be sworn.-

(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before-

(a) any Judge or Judicial or Executive Magistrate; or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief. (3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

SUMMARY OF THE DISCUSSION

42. Sub-section (3) and sub-section (4) of Section 175 are not isolated silos but must be read in harmony with sub-section (4) forming an extension of sub-section (3).

43. The power to order investigation is conferred upon a judicial magistrate by sub-section (3) of Section 175. Sub-section (4) of Section 175 too confers such power but prescribes a special procedure to be followed in case of a complaint against a public servant alleging commission of offences in the discharge of official duties.

44. The expression "complaint" in sub-section (4) of Section 175 does not encompass oral complaints. Having regard to the text of the provision and the context in which it is set, and in light of our conclusion that subsection (4) is not a provision which stands alone or is a proviso to subsection (3), the term must derive its meaning in sync with allegations of cognisable offence levelled in an application of the nature referred to in sub-section (3) of Section 175, i.e., an application supported by affidavit.

WHEN MUST SECTION 175 (4) BE INVOKED - A GUIDE FOR JUDICIAL MAGISTRATES

45. Having clarified the symbiotic relationship between sub-sections (3) and (4) of Section 175, it is indispensable to indicate the circumstances in which the procedure under sub-section (4) could get activated. Significantly, sub-section (4) of Section 175 uses the modal verb "may" and not 'shall'. In the context where it finds place and the object that is sought to be achieved, "may" has to be read as "may", bearing an element of discretion, and not 'shall'. The principles, discussed in the following paragraphs, are intended to guide judicial magistrates at the stage of considering applications under Section 175.

46. Upon receiving a complaint under sub-section (4) of Section 175, BNSS alleging commission of an offence by a public servant arising in course of the discharge of his official duties, the magistrate may do either of the following:

46.1 Reading the complaint, if the judicial magistrate is prima facie satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such magistrate may not have any option other than following the procedure prescribed under sub-section (4) of Section 175 of calling for reports from the superior officer and the accused public servant.

46.2 Or, on a consideration of the complaint, where the judicial magistrate entertains a prima facie doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in course of discharge of his official duties, such magistrate might err on the side of caution and proceed to follow the procedure prescribed in sub-section (4) of Section 175.

46.3 Or, where the judicial magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175.

47. It is hereby clarified that the judicial magistrate would continue to retain the authority to reject an application under sub-section (3) of Section 175, lodged against a public servant, where such magistrate finds that the allegations made therein are wholly untenable, manifestly absurd, or so inherently improbable that no reasonable person could conclude that any offence is disclosed. However, it is needless to observe, such an order of rejection ought not to be based on whims and fancy but must have the support of valid reasons. 48. A situation may arise where, in an appropriate case, the judicial magistrate has called for a report from the concerned superior officer under clause (a) of sub-section (4) of Section 175, but such officer fails to comply with the direction or does not submit the report within a reasonable period of time. What is the course open to the magistrate in such a situation? In the unlikely event of such a situation, we hold, the judicial magistrate is not obliged to wait indefinitely for compliance and may proceed further in accordance with sub-section (3) of Section 175 after considering the version of the accused public servant under clause (b) of sub-section (4) of Section 175, if on record. What would constitute 'reasonable time' cannot be determined in rigid or inflexible terms and must necessarily depend upon the facts and circumstances of each case before the judicial magistrate who has to take the call.

QUESTION (A): WHETHER THE SINGLE JUDGE EXCEEDED HIS JURISDICTION?

49. Perusing the prayers in the writ petition, we find that the appellant had sought directions for registration of an FIR, securing compliance with this Court's directions in Lalita Kumari (supra), and for a declaration that the acts of the police officials were not in the discharge of official functions and, therefore, not covered by the protection afforded under Section 175(4), BNSS.

50. Should the Single Judge have entertained the writ petition, interpreted Section 175(4) and granted relief to the appellant? We think not.

51. As rightly held by the Division Bench, the Single Judge could not have granted relief that the appellant did not pray. We may profitably refer to the decisions of this Court in Krishna Priya Ganguly v. University of Lucknow³⁰, Om Prakash v. Ram Kumar³¹ and Bharat Amratlal Kothari v. Dosukhan

Samadkhan Sindhi³² where this Court held that the writ court will, normally, grant relief that is prayed; and, though discretion to grant relief under Article 226 is wide, the writ court cannot, ignoring and keeping aside the norms and principles governing grant of relief, proceed to grant a relief not even prayed by the petitioner.

52. Having prayed for directions in the writ petition to register an FIR and to secure compliance with the directions made by this Court in Lalita Kumari (supra) and that too, at a stage, when the JMFC seized of the application under Section 210 read with sub-section (4) of Section 173, BNSS had called for a report in exercise of power conferred by subsection (4) of Section 175, there was no occasion for the Single Judge to interpret sub-section (4) and interfere with the proceedings that had been set in motion pursuant to the order of the JMFC.

The Single Judge would have been justified in interpreting the law if the order of the JMFC, by which he had called for a report in accordance with sub-section (4) of Section 175, BNSS been challenged in a petition under Section 528 thereof or even under Article 227 of the Constitution - which is not the case here. The JMFC having called for a report from the superior police officer by his order, it was a judicial order passed in exercise of power conferred by sub-section (4) of Section 175. A three-Judge Bench of this Court in Radhe Shyam v. Chhabi Nath³³ has held that a judicial order in a civil matter cannot be challenged in a writ petition under Article 226 of the Constitution.

In Pradnya Pranjal Kulkarni v. State of Maharashtra³⁴, the principle has been extended by this Court to judicial orders passed in criminal matters. Notwithstanding that such a judicial order could not have been challenged in a writ petition under Article 226 of the Constitution and despite the absence of any challenge to the JMFC's order, the Single Judge directed the Magistrate to pass an order in accordance with the law that such Judge declared. This was plainly impermissible. Nevertheless, as directed by the Single Judge, the JMFC proceeded to direct registration of an FIR against the accused persons. In effect, the Single Judge directed the Magistrate to recall his own order - which again constitutes exercise of a power unknown to the law of criminal procedure.

53. We, thus, agree with the Division Bench that the facts before the Single Judge did not call for an interpretation of sub-section (4) of Section 175, BNSS.

QUESTION (B): WHETHER IN THE PRESENT CASE, THE ALLEGED ACTS OF THE PUBLIC SERVANTS WERE IN THE DISCHARGE OF THEIR OFFICIAL DUTIES?

54. The answer to this question should well be avoided having regard to the particular jurisdiction of the High Court, which the appellant had invoked, coupled with the pendency of the appellant's application before the JMFC. We, thus, refrain from so answering lest any observation prejudicially affects any party to the proceedings before the JMFC. Invocation of the writ jurisdiction under Article 226 of the Constitution by the appellant was ill-advised. Not only did the appellant approach the writ court when proceedings before the JMFC under Section 175, BNSS were underway and thereby indulged in pursuing parallel remedies, no interference was even merited having regard to the relief claimed.

55. Be that as it may, at the insistence of the parties, we now proceed on a limited examination as to whether the appellant could at all have sought any declaratory relief of the nature claimed before the Single Judge in the writ petition.

56. Although declaratory relief can, inter alia, be sought before a writ court and granted by it upon establishment of a threatened breach or an apprehended breach of a legal right at the instance of a respondent, being a public authority, the nature of declaratory relief prayed by the appellant could not have been granted by the writ court without a challenge being mounted to the order of the JMFC calling for a report.

Seeking a declaratory relief that the acts of offence committed by the accused public servants did not arise in the discharge of official duties by them without the order of the JMFC (calling for a report) being challenged would have necessarily required the writ court to embark on a fact-finding exercise in that behalf, as if it were a court of a magistrate. A writ court is a court exercising high prerogative writ jurisdiction; such court could not have been urged by the appellant to convert itself into a court for conducting sort of a magisterial inquiry. The Single Judge overlooked this fundamental flaw.

57. Thus, no relief could have been granted by the High Court to the appellant in exercise of writ jurisdiction.

CONCLUSION

58. As a sequel to our foregoing discussion, we uphold the impugned order of the Division Bench.

59. After the order of the Single Judge was set aside by the impugned order, the JMFC has issued notice to the accused under Section 175(4)(b), BNSS, giving them a chance to state their side of the story. We leave it open to the appellant to participate in the proceedings before the JMFC and raise such points that are available to her in law, including that the actions of the accused police officers were not in discharge of their official duties and also that without considering the report that has been called for vide the order dated 11th September, 2024, an FIR should be directed to be registered by the jurisdictional police station.

It is also clarified that the JMFC must first satisfy himself that the application under Section 175(3), BNSS is accompanied by an affidavit sworn or affirmed in accordance with the terms of Section 333 thereof.

60. The appeal is disposed of on the aforesaid terms. Parties shall, however, bear their own costs.

.....J. (Dipankar Datta)

.....J. (Manmohan)

New Delhi;

January 27, 2026.

1 High Court

2 Writ Appeal No. 712/2024

3 R-5

4 BNSS

5 as will unfold, submissions have been made challenging the validity of this report

6 C.M.P. No. 3288 of 2024

7 JMFC, hereafter

8 FIR

9 a new provision in the BNSS

10 WP (C) No. 33035 of 2024

11 (2014) 2 SCC 1

12 impugned order

13 Cr. PC

14 "Provided also that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 64, Section 65, Section 66, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79, Section 143, Section 199 or Section 200 of the Bharatiya Nyaya Sanhita, 2023."

15 (2015) 6 SCC 287

16 (2013) 10 SCC 705

17 (2018) 5 SCC 557

18

166A. Public servant disobeying direction under law.- Whoever, being a public servant,-

(a) ***

(b) ***

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

19 2025 SCC OnLine SC 238

20 2025 SCC OnLine SC 1479

21 (1955) 2 SCR 483

22 (2012) 6 SCC 770

23 AIR 1966 SC 12

24 (1985) 1 SCC 591

25 (1973) 1 SCC 216

26 (2022) 2 SCC 603

27 D.O. letter No. CJI/CC/Comp/2014/1405 dated 03rd October, 2014

28 F.No.L-15011/50/12-Jus.

29 "As you are aware, recently, Hon'ble the CJI, vide his D.O. No.CJI/CC/Comp/2014/1405 dt. 03.10.2014 addressed to the Chief Justice of all the High Courts has asked the High Courts and subordinate judiciary not to entertain any complaint against a judicial officer unless it is accompanied by sworn affidavits and verifiable material to substantiate the allegation. Expressing concern over the large number of complaints being filed against subordinate judiciary by people having vested interest and personal agenda, Hon'ble CJI has directed that authenticity of the complaints must be ascertained before any action is taken on it. In view of the provisions of the Article 235 of the Constitution, further action relating to the grievance/complaints against the judicial officers lies at the High Court level."

30 (1984) 1 SCC 307

31 (1991) 1 SCC 441

32 (2010) 1 SCC 234

33 (2015) 5 SCC 423

34 2025 SCC OnLine SC 1948

IN THE SUPREME COURT OF INDIA

Habib Alladin and Ors.

Vs.

Mohammed Ahmed

**[Civil Appeal No. _____ of 2026
@ SLP (C) No. 2937 of 2022]**

Head Note – Waqf Tribunals have jurisdiction only over properties notified in the “list of auqaf” or registered under the Waqf Act, and not over disputes concerning unregistered properties.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. The neat question arising in the above appeal as to the reach and sweep of the jurisdiction of the Tribunal constituted under the Wakf Act, 19951, though short, has been rendered complex by divergent opinions expressed by coordinate benches of this Court.

3. On facts, for the present suffice it to notice that the 1st appellant herein was the owner of a land which was developed by constructing an apartment complex through a builder on the strength of a development agreement. The respondent herein contended that on the ground floor of the building, meant for residential purpose, an area was enclosed as a Mosque with the active participation of the owner, constructed by the builder.

The respondent claimed that himself and other members of the public have been offering prayers in the premises, more fully described in the schedule to the plaint, which is now being obstructed by the petitioners. The cause of action according to the respondent arose when the ingress to the Mosque, established in the year 2008, was obstructed in the year 2021. The plaintiff sought for a perpetual injunction restraining the defendants from causing any interference or hindrance to the plaintiff and other Musallies from entering into the premises and offering prayers.

4. The appellants filed an application under Order VII, Rule 11 of the Code of Civil Procedure, 19082 specifically contending that there is no such Mosque established or continued in the residential complex. There is no demarcation of such a Mosque in the sanctioned plan and in any event, it is not a waqf

under the Act of 1995; inclusion in the list notified or registration by the Waqf Board under that Act being mandatory for the plaintiff to approach the Tribunal.

The confined jurisdiction conferred on the Tribunal, by the Act of 1995, does not enable the prayer for an injunction with respect to the property which has not been conferred with the status of a wakf under that Act. An Order VII Rule 11 application having been rejected, the defendants were before the High Court, which revision was dismissed by the impugned order. The High Court found that the averments in the plaint indicate a 'waqf by user' covered under the definition of waqf in Section 3(r)(i) of the Act of 1995. The defendants are hence before this Court canvassing their prayer for rejection of plaint.

5. Shri C. Aryama Sundaram learned Senior Counsel appearing for the appellant argued that the prayer for injunction simpliciter before the Tribunal is impermissible in view of the fact that the scheduled premises has not been established to be a Mosque or even a waqf. A declaration to that status of a property, not included in the list notified under Chapter II or registered under Chapter V of the Act of 1995 cannot be agitated before the Tribunal constituted under that Act.

Section 6 and 7 of the Act of 1995 confers jurisdiction on the Tribunal specifically with respect to a question arising as to whether a particular property is a waqf property or not or to be determined by the Tribunal, if and only if such property is specified as a waqf property in a 'list of Auqaf' under Section 5. The same having not been done, there is no question of even a declaration being sought before the Tribunal, which prayer has to be necessarily made before the Civil Court, without which there cannot be a relief prayed for injunction simpliciter.

6. Reliance is placed on Madanuri Sri Rama Chandra Murthy v. Syed Jalal³ wherein, a dispute regarding noninclusion of certain property in the 'list of auqaf' notified long back in the official gazette was found by the Tribunal to be a manifestly vexatious and meritless suit in the sense of it disclosing no right to sue; rejected under Order VII Rule 11.

Insofar as the claim of 'waqf by user', reliance was placed on Faqir Mohamad Shah v. Qazi Fasihuddin Ansari⁴, in which it was held that, as a matter of law, a waqf normally requires express dedication and in the event of the contention being one of user for religious purpose, it should be from time immemorial. In the present case, the plaint itself asserts the Mosque to have been established only in the year 2008, which assertion is also false. It is argued that the decision in Rashid Wali Beg v. Farid Pindari⁵ insofar as it finds jurisdiction of the Tribunal having been conferred under Section 83 of

the Act requires reconsideration, especially looking at the contrary stance taken in *Ramesh Gobindram v. Sugra Humayun Mirza Wakf*⁶, an earlier decision of a coordinate bench.

7. Shri Niranjana Reddy learned Senior Counsel for the respondent/plaintiff, at the outset, argues that there is no case made out for rejection of a plaint under Order VII, Rule 11 of the CPC. The only question that arises is as to whether a Gazette notification is necessary for the Tribunal to get jurisdiction to deal with the question as to whether a property is a waqf property or not. It is urged that the statute provides for three measures by which the status of a waqf can be conferred on a property.

The first is by a survey under Chapter II, in pursuance of which a 'list of auqaf' is prepared, which after consultation with the Board has to be published, in pursuance to which the revenue authorities are required to update the land records in accordance with that list and reckon it when proceeding with a mutation of a property, included in the list. The second measure in which the status can be conferred is by a registration under Chapter V by the Waqf Board, which can be done by an application or even suo motu, after collection of information regarding the subject property and issuing notice to whomsoever is interested in the said property.

The third measure according to the learned Senior Counsel is under Chapter VII, specifically under Section 83 of the Act where the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a waqf or waqf property which takes within it the decision as to whether a property is a waqf or not.

8. It is also pointed out that the survey as per Section 4(6) is a decennial exercise which also has not been carried out scrupulously. The auqaf so dedicated in the interregnum between two surveys cannot be said to have no status of waqf, the disputes regarding which cannot be adjudicated by the Tribunal. Emphasis is laid on Section 2 of the Act, providing that the Act applies to all auqaf whether created before or after the commencement of this Act, again read with Section 2(r)(i) brings in, a waqf by user, which identical issue arises in the subject case.

Reference is also made to Section 2(g) which was substituted by an amendment of 2013 bringing within the definition clause not only the list published under Section 5(2) but also those contained in the 'Register of Auqaf' maintained by the Board under Section 37 of the Act. *Ramesh Gobindram*⁶ has been distinguished in *W.B. Wakf Board v. Anis Fatma Begum*⁷, which later decision has been followed by *Akkode Jumayath Palli*

Paripalana Committee v. P.V. Ibrahim Haji⁸ and Punjab Wakf Board v. Pritpal Singh⁹.

9. Another Coordinate Bench in Rashid Wali Beg⁵ found the sub-stratum of Ramesh Gobindram⁶ to have been removed by the Amendment Act 27 of 2013. It was categorically held that though Sections 6 and 7 speak of only two categories of cases, Section 83 covers the entire gamut of possible disputes in relation to any waqf or waqf property and the Civil Court's jurisdiction with regard to "other matters which is required by or under this Act to be determined by a Tribunal" has also been ousted by Section 85. Rashid Wali Beg⁵, hence requires no reconsideration; it pithily states and declares the law. Insofar as the principles governing a Mosque and 'waqf by user' reliance is placed on Syed Mohd. Salie Labbai v. Mohd. Hanifa¹⁰ and M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das¹¹.

10. Before we look at the plaint which is produced as Annexure P-9, we have to understand the law as delineated by this Court in the various decisions starting from Ramesh Gobindram⁶, which came in the year 2010, before the amendment of 2013. Ramesh Gobindram⁶ was a case in which three appeals arising from the orders of the High Court, raised a common question whether the Tribunal constituted under Section 83 of the Act of 1995 was competent to entertain and adjudicate upon disputes regarding eviction of tenants occupying property which are admittedly waqf properties. It was found on an examination of the various provisions that neither Sections 6 and 7 nor the other provisions confer on the Tribunal the power to deal with eviction of tenants.

11. Anis Fatma Begum⁷, Pritpal Singh⁹, P.V. Ibrahim Haji⁸ and Mumtaz Yarud Dowla Wakf v. Badam Balakrishna Hotel Pvt. Ltd.¹² distinguished the decision in Ramesh Gobindram⁶ and found the subject issues arising in all the three cases capable of determination by the Tribunal. At the same time, Haryana Wakf Board v. Mahesh Kumar¹³, Bhanwar Lal v. Rajasthan Board of Muslim Wakf¹⁴ and Punjab Wakf Board v. Sham Singh Harike¹⁵ followed Ramesh Gobindram⁶. Sham Singh Harike¹⁵ in fact found the divergent opinion in Anis Fatma Begum⁷, P.V. Ibrahim Haji⁸ and Pritpal Singh⁹ to be wholly unwarranted.

It was categorically found that despite Anis Fatma Begum⁷ having only distinguished the decision in Ramesh Gobindram⁶, its ratio as available from para 10 of the judgment sounds substantially different from Ramesh Gobindram⁶ meaning thereby that a divergent view was taken. Anis Fatma Begum⁷ categorically held that the "Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property" as indicated from the words employed in Section 83(1) of the Act of 1995.

On a bare perusal of the citation, it is evident that Ramesh Gobindram⁶ was the first in point of time, a decision of a two-Judge Bench, the other decisions referred are of coordinate benches, which have taken a divergent view. This would not accord with the principles laid down in the decision of the Constitution Bench in *National Insurance Co. Ltd. v. Pranay Sethi*¹⁶. To understand the ratio decidendi of each of the aforesaid decisions, we have to necessarily look at the principles culled out, and the application of law made to the facts germane to the individual decisions.

12. Ramesh Gobindram⁶ as we noticed dealt with eviction of tenants from admitted waqf properties. We have to notice at the outset that the amendment of 2013 conferred powers for removal of encroachers from waqf properties, on the Tribunal, bringing in a definition of an 'encroacher' which also included tenants, lessees and licensees whose rights had either expired or had been terminated by the Mutawalli or Board. True, the declaration with respect to the Tribunal not having powers to evict tenants stands offset by the amendment made, which removed the sub-stratum of the reasoning regarding that dispute, in the said decision.

However, the larger principle of the ouster of jurisdiction of civil courts being confined to the precise power conferred under the statute, according to us, survives the amendment and is not extinguished by reason of the particular amendment. We are of the opinion that the principle laid down that, the Tribunal is only clothed with the powers under Sections 6 and 7, to resolve disputes and questions arising with respect to whether a property is wakf property or not; survives the amendment, as confined to those properties included in the 'list of auqaf', defined in Section 2(g).

The definition clause by the amendment of 2013 was expanded to bring within it, those properties registered by the Board and entered in the register maintained under Section 37, in addition to properties entered in the list under Section 5(2). Only such disputes or questions as to the status of such properties in the 'list of auqaf' can be agitated before the Tribunal, especially since finality is conferred and conclusiveness provided, only to the decision of the Tribunal [Section 6(1)]. Finality is conferred on the list, only if it is not modified by the Tribunal [Section 6(4)]; meaning thereby that the list and the register are subject to modification by the Tribunal.

13. Ramesh Gobindram⁶ noticed the divergence of opinion with respect to the specific issue of eviction of tenants, as coming forth from the decisions of the various High Courts. It opened with the trite law that even if the statute accords finality to the orders of the Tribunal, a Court will have to see whether the Tribunal has the power to grant the reliefs, which the Civil Courts would

normally grant and if the answer is in the negative, ordinarily there can be no inference of exclusion of the Civil Courts' jurisdiction.

Reliance was placed on Rajasthan SRTC v. Bal Mukund Bairwa (2)17, a three-Judge Bench decision which reiterated the presumption of a Civil Court being conferred with jurisdiction, unless there is an express ouster made by the statute, which cannot be readily inferred and has to be confined to such matters on which power is conferred on the Tribunal, by express words employed. Sections 6, 7 and 85 were extracted, it was categorically held so in paragraphs 25 to 28:

"25. Whenever a question arises whether "any dispute, question or other matter" relating to "any wakf or wakf property or other matter" falls within the jurisdiction of a civil court, the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of the civil court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question.

The bar of jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) read with Section 7 of the Wakf Act. While the latter bars the jurisdiction of the civil court only in relation to questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the civil courts not only in relation to matters that specifically fall in Sections 6 and 7 but also other matters required to be determined by a Tribunal under the Act. There are a host of such matters in which the Tribunal exercises original or appellate jurisdiction.

26. To illustrate the point, we may usefully refer to some of the provisions of the Act where the bar contained in the said section would get attracted. Section 33 of the Act deals with the power of inspection by a Chief Executive Officer or person authorised by him. In the event of any failure or negligence on the part of a mutawalli in the performance of his duties leading to any loss or damage, the Chief Executive Officer can with the prior approval of the Board pass an order for the recovery of the amount or property which has been misappropriated, misapplied or fraudulently retained.

Sub-section (4) of Section 33 then entitles the aggrieved person to file an appeal to the Tribunal and empowers the Tribunal to deal with and adjudicate upon the validity of the orders passed by the Chief Executive Officer. Similarly, under Section 35 the Tribunal may direct the mutawalli or any

other person concerned to furnish security or direct conditional attachment of the whole or any portion of the property so specified.

27. Section 47 of the Act requires the accounts of the wakfs to be audited whereas Section 48 empowers the Board to examine the audit report, and to call for an explanation of any person in regard to any matter and pass such orders as it may think fit including an order for recovery of the amount certified by the auditor under Section 47(2) of the Act. The mutawalli or any other person aggrieved by any such direction has the right to appeal to the Tribunal under Section 48. Similar provisions giving powers to the Wakf Board to pass orders in respect of matters stipulated therein are found in Sections 51, 54, 61, 64, 67, 72 and 73 of the Act. Suffice it to say that there are a host of questions and matters that have to be determined by the Tribunal under the Act, in relation to the wakf or wakf property or other matters.

28. Section 85 of the Act clearly bars jurisdiction of the civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the civil courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the civil court does not fall within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred."

[underlining by us for emphasis]

14. It was hence found that a reading of Section 6 and 7 makes it clear that the jurisdiction, to determine whether or not a property is a waqf property, or whether a waqf is a Shia waqf or a Sunni waqf, inheres in the Tribunal only if the particular property is specified as waqf property in the 'list of auqaf'. The bar of jurisdiction under Section 85 is much wider than that in Section 6(5) since there are various provisions under the Act of 1995 which confers power on the Tribunal, the jurisdiction to consider which is ousted from the Civil Court; some of these provisions illustrated in paragraphs 26 to 28 above.

15. What is more important for our purpose is the interpretation of Section 83 in Ramesh Gobindram⁶, which according to us survives the amendment of 2013. Section 83 has been given an expansive interpretation, an all-inclusive definition by the later decisions, taking a divergent view. We extract herewith paragraphs 31 & 32 again from Ramesh Gobindram⁶:-

"31. It is clear from sub-section (1) of Section 83 above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf.

What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the Rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.

32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question or other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reason of such establishment."

[underlining by us for emphasis]

16. Section 85, but for the cosmetic change of having corrected the spelling of the word 'waqf' from 'wakf' and substitution of 'Civil Court, Revenue Court and any other authority' for the words 'Civil Court' is substantially and verbatim the same as it existed prior to the amendment of 2013. Section 83 likewise, effectively has incorporated the aspect of eviction of a tenant or determination of the rights and obligations of the lessor and lessee of such property; the conferment of such power being under Section 54 (3) & (4), enabling the Chief Executive Officer to move the Tribunal either on complaint received or suo motu. Both these provisions, in our definite opinion, falls for no fresh interpretation, even after the Amendment of 2013.

Ramesh Gobindram⁶ followed:

17. Bhanwar Lal¹⁴ dealt with a suit instituted by the Waqf Board in the year 1980 for possession of a property as well as for rendition of accounts claiming it to be a waqf property. After evidence was led, at the final stage, the Board

itself raised a contention under Section 85 of the Act that the suit would be triable by the Tribunal and not the Civil Court as per the Act of 1995. This Court in the cited case referred to Ramesh Gobindram⁶ with approval and found so in paragraph 23 to 24 extracted herein below:

23. The exclusion of the jurisdiction of the civil courts to adjudicate upon disputes whether a particular property specified in the wakf list is or is not a wakf property or whether a wakf specified in the list is a Shia wakf or a Sunni wakf is clear and presents no difficulty whatsoever. The difficulty, however, arises on account of the fact that apart from Section 6(5) which bars the jurisdiction of the civil courts to determine matters referred to in Section 6(1), Section 85 of the Act also bars the jurisdiction of the civil courts to entertain any legal proceedings in respect of any dispute, question or matter relating to a wakf property.

24. Section 85 of the Act reads:

"85. Bar of jurisdiction of civil courts.- No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal."

A plain reading of the above would show that the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words "which is required by or under this Act to be determined by a Tribunal" holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court."

[underlining by us for emphasis]

18. The principle that the jurisdiction of the Tribunal constituted under Section 83 and the ouster of jurisdiction of the Civil Court provided under Section 85 would only be applicable to those matters specified under Sections 6 and 7 as also the specific conferment of jurisdiction contained elsewhere in the Act, and the ouster of jurisdiction is not absolute or all pervasive, were reiterated.

It was found that, after the Act of 1995 some of the reliefs sought for, like rendition of accounts and removal of trustees would be within the jurisdiction of the Tribunal. But therein, the civil suit having been filed before the commencement of the Act, was possible of continuance before the Civil Court under Section 7(5) based on the exception to ouster of jurisdiction provided in the Act for suits initiated prior to the Act of 1995, was the finding.

19. In Mahesh Kumar¹³, the suit was filed by the Waqf Board before the Civil Court, seeking possession of a property given on rent to a third party, whose widow in turn executed a long-term lease in favour of the defendant and handed over possession. The property was duly notified under Section 5(2) of the Wakf Act, 1954.

The decree passed by the Civil Court was reversed by the Appellate Court finding that the question as to whether the suit scheduled property is waqf property or not could be decided only by the Tribunal constituted under the Act of 1995 and directed the plaint to be returned under Order VII Rule 10 of the CPC to be presented before the Court of competent jurisdiction, which order was affirmed by the High Court. Therein the Waqf Board, as found by the Trial Court, clearly and cogently led consistent evidence and proved its title over the land in question, which was also specified in the 'list of waqfs', in which event, the jurisdiction was with the Tribunal. It was held so in paragraph 11:

11. As per sub-section (1) of Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the Tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the jurisdiction of the civil court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to mention that, as per sub-section (5) of Section 7, if a suit or proceeding is already pending in a civil court before the commencement of the Act in question, then such proceedings before the civil court would continue and the Tribunal would not have any jurisdiction.

[underlining by us for emphasis]

20. In Sham Singh Harike¹⁵, there were two appeals, both filed by the Punjab Waqf Board. The suit filed against Sham Singh Harike before the Civil Court was transferred to the Waqf Tribunal after its constitution. The suit was filed for grant of permanent injunction restraining the respondent from raising any construction and changing the agricultural land into a residential property, which land was asserted to have been leased out to Sham Singh Harike. The defendant had initiated litigation against the interest of the Board which was decided in favour of the Board. In the subject suit, the defendant raised a question as to whether the property was a waqf property or not and contended that the jurisdiction to entertain the suit was before the Civil Court.

The High Court relying on the judgment of Ramesh Gobindram⁶ allowed the revision against the order of the Waqf Tribunal and also found that the petitioner being a non-Muslim, the Waqf Tribunal has no jurisdiction in the

matter. This Court, in appeal, found that when the question raised is of a waqf property being a waqf or not, the jurisdiction was with the Tribunal and Ramesh Gobindram⁶ would not be applicable. This Court relied on Mahesh Kumar¹³, which in similar circumstance, directed; in an appeal from a suit in which such dispute was raised, the plaint to be returned for transfer to the Tribunal.

It was also found that the limitation under Section 6(1) of raising such dispute within one year of the list being published applies to any person interested in the waqf and the limitation would apply only if a reasonable opportunity had been accorded to the interested person so as to put forth his case, by notice served and heard on that behalf, during the course of the relevant inquiry under Section 4. Obviously, that was a case in which the property was included in the list after the survey.

21. The other appeal dealt with in Sham Singh Harike¹⁵ was a suit filed by the Waqf Board against one Teja Singh who was admittedly a lessee of the property belonging to the plaintiff Board. Teja Singh had also filed a suit for injunction, which was decreed by the Civil Court restraining the respondent from forcible and illegal eviction other than under due course of law. The defendant's case was that despite his readiness to pay the rent, it was not accepted. The suit filed by the Waqf Board was one for possession of the leasehold property and seeking permanent injunction restraining the respondent from interfering in and changing the nature of the property.

The suit filed by the Waqf Board before the Tribunal was found to be incompetent relying on Ramesh Gobindram⁶ since it was one for possession of a leased out property which would have to be preceded by eviction of the tenant, the power to adjudicate which cause was not available to the Tribunal at that point of time as has been held in Ramesh Gobindram⁶. The plaint was directed to be presented before the appropriate Court.

22. Faseela M. v. Munnerul Islam Madrasa Committee¹⁸, was concerned with a suit for eviction filed before the Waqf Tribunal by the Madrasa Committee against the appellant. The appellant who was the defendant denied that the subject property was waqf property and challenged the jurisdiction of the Waqf Tribunal to determine the dispute.

The decision in Ramesh Gobindram⁶ was noted with approval and the interpretation of Section 6, 7, 83 and 85 to explain the jurisdiction of the Waqf Tribunal vis-a-vis the Civil Court was affirmed. The contention taken by the appellant that Bhanwar Lal¹⁴ took a different view, was negated. After looking at both the decisions, it was held that Bhanwar Lal¹⁴ follows Ramesh Gobindram⁶ and it is not in any manner inconsistent or contrary to

the view taken in Ramesh Gobindram⁶ despite Bhanwar Lal¹⁴ having also referred to Anis Fatma Begum⁷.

Ramesh Gobindram⁶ distinguished/differed from:

23. Anis Fatma Begum⁷ distinguished Ramesh Gobindram⁶ noticing that it dealt with eviction proceedings which alone was declared as falling within the jurisdiction of the Civil Court but more importantly, it looked at Section 83 (1) of the Waqf Act, 1995 (hereinafter referred to as the Act of 1995) and held so in paragraph 10 as under:-

10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word "wakf" has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

24. In Pritpal Singh⁹, the Waqf Board filed a suit before the Tribunal for possession as also for mesne profits which was decreed. The High Court set aside the same, finding no jurisdiction on the Tribunal to entertain a suit for ejectment which was reversed by this Court finding that the subject suit was not one for eviction but for recovery of possession and mesne profits.

The short order does not disclose the facts and does not deal with the provisions of the Act, which do not confer on it the sheen of a binding precedent since precedents sub silentio, without arguments addressed and reasoning supplied is of no import [Municipal Corporation of Delhi v. Gurnam Kaur¹⁹]. As has been held by a Constitution Bench in State of Orissa v. Sudhansu Sekhar Misra and Others²⁰ a decision is a precedent and is binding for what it explicitly decides, and every observation made or what logically follows, is not the ratio of the decision.

25. P.V. Ibrahim Haji⁸ was a case in which the plaintiff was a Society registered under the Societies Registration Act, 1860 formed for the management and administration of the waqf property, including a mosque situated therein. An injunction suit was filed by the plaintiff before the Civil Court, which was transferred to the Tribunal, which decreed the suit. The High Court, relying on Ramesh Gobindram⁶ set aside the judgment and

decree passed by the Tribunal and directed the plaintiff to take back the plaint for presenting it before the appropriate Civil Court.

A Division Bench of this Court found Ramesh Gobindram⁶ to be not applicable since that decision was solely concerned with the dispute regarding eviction of tenants from the admitted waqf properties. This Court relied on Anis Fatma Begum⁷ which distinguished Ramesh Gobindram⁶ while holding that the dispute arising for consideration in P.V. Ibrahim Haji⁸ was with respect to management and peaceful possession and enjoyment of the mosque and other properties which relates to the waqf on the expansive interpretation given to Section 83.

26. Telangana State Wakf Board v. Mohamed Muzafar²¹ was a case in which the Waqf Board approached the Waqf Tribunal seeking to evict a tenant and also remove the encroachment the tenant had made on the Waqf property, which was registered and later renotified making an amendment to the extent of the land from 667.8 sq.yard to 998.66 sq.yard. The respondent tenant who had defaulted the rent and also had allegedly encroached upon a certain additional extent, raised a dispute that the property was not a waqf property.

The Tribunal decreed the suit directing vacation of the suit scheduled properties, which was reversed by the High Court referring to Ramesh Gobindram⁶ finding the suit to be not maintainable before the Tribunal. Ramesh Gobindram⁶ was applied since the property in the subject case was admittedly waqf property and the relief was only for eviction of tenant, which at that point was not permissible to be agitated before the Tribunal. This Court, however, on facts noticed that the amended notification referred to a larger extent, in which context the dispute was raised as to whether the property was a waqf property or not, despite the entire extent having been notified, i.e.: being specified in the 'list of Auqaf'.

The encroachment alleged was of 40 sq.yard, the removal of which could not be agitated before the Tribunal unless it is found to be a waqf property. This Court held that the very observations made by the High Court indicate that there was a dispute with respect to the extent of the property included in the notification in which event the dispute had to be agitated before the Tribunal despite no legal remedy having been availed by the respondent within the time frame as provided by Section 6 of the Act.

27. Kiran Devi v. Bihar State Sunni Wakf Board and Others²² dealt with a dispute between two tenants, again, in an admitted Waqf property, wherein the Waqf Board was impleaded as the landlord. The plaintiff, who approached the Civil Court, was the descendant of the earlier tenant who claimed that the surrender of tenancy made by his predecessor-in-interest cannot be justified

since the hotel run in the tenanted premises was a Joint Hindu Family business.

The Waqf Board asserted that the tenancy was surrendered and later another person, the appellant before the Supreme Court, had been inducted as tenant in the very same property. While the matter was pending before the Civil Court the appellant and the Waqf Board who were the defendants filed an application for transfer of the case to the Waqf Tribunal, which was permitted. The Tribunal rejected the suit but later the High Court reversed it and found the surrender of tenancy to be not proper.

Before the Supreme Court, the subsequent tenant, the appellant, raised a contention that the Tribunal did not have jurisdiction, which was rejected on the sole ground that it was the appellant along with the Waqf Board who sought for transfer of the suit to the Tribunal, which cannot be later resiled from, by contesting the very jurisdiction of the Tribunal, they invited and acquiesced to voluntarily, which, if permitted would result in the party being permitted to approbate and reprobate.

28. First of all, we observe that Anis Fatma Begum⁷ was in clear conflict with the interpretation of Section 83 in Ramesh Gobindram⁶. It was divergently opposite to the conclusion in Ramesh Gobindram⁶ that a plain reading of Section 83 does not suggest that it pushes the jurisdiction of the Civil Court beyond what has been provided in Section 6(1) & (5), Section 7 and Section 85 of the Act.

Then, we notice that the wider jurisdiction found to have been conferred under Section 83(1) was after noticing the words, "any dispute, question or other matters relating to a Wakf or Wakf property" which words in fact were followed by the words "under this Act", which has a definite meaning, available before and after the amendment. Hence, as held in Pranay Sethi¹⁶, if a divergent view had to be taken, necessarily the Coordinate Bench in Anis Fatma Begum⁷, ought to have referred the matter to a Larger Bench, following which the dictum in the earlier Division Bench survives.

29. Pertinently, the facts as coming out in Anis Fatma Begum⁷ did not require such a finding on Section 83. Even otherwise, the subject matter of the said case brings it within the ambit of the jurisdiction of the Tribunal as conferred by the Act of 1995. The question raised therein was with respect to a wakf which was "enrolled under the appropriate laws, then prevailing as a Wakf estate" (sic-para 3). The aforesaid property was partitioned by metes and bounds, keeping 25% for religious and charitable purposes and 75% for the benefit of the descendants of the family of the Wakifa; which benefit was

expressly provided in the dedication, a registered Deed of Wakf dated 22.09.1936.

The question raised was with respect to the correctness and validity of the demarcation and if it is found correct, whether the Act of 1995 applies to the property earmarked for Wakf-al-al- Aulad. The order challenged before this Court was of the Division Bench of the High Court answering both questions in the negative, while the learned Single Judge answered the first question in the negative and the second question in the affirmative. The plea raised before this Court was that the jurisdiction was with the Wakf Tribunal under the Act of 1995 which was agreed to by the Division Bench of this Court, setting aside the order of the High Court and leaving liberty to the parties to approach the High Court, if they so desired.

Since there was a dedication by a registered deed and it was also enrolled under the appropriate laws and registered as a waqf estate, the matter would squarely fall under Section 6(1) or 7(1) of the Act of 1995, since the question was of excluding 75% of the property from the purposes of the waqf. A wider interpretation of Section 83, in conflict with the earlier interpretation of a coordinate bench, according to us, with due respect, was not warranted.

30. We are conscious of the fact that the dispute in both the above cited cases arose before the amendment of 2013 and when the suit was filed before the High Court, the definition clause read as "'list of Wakfs' means the list of Wakfs published under sub-section (2) of Section 5". But even before the amendment of 2013, as argued by the learned Senior Counsel for the respondent, there were two methods by which a waqf gets recognised under the Act, subject to any modification by the Tribunal constituted under the Act.

The first, by a published list pursuant to a survey, after consultation with the Board under Chapter II, specifically by Section 5 (2) and the other by registration under Chapter V, more precisely under Section 37. The amendment of 2013 substituted the definition under Section 3 (g), including within its ambit both the list published under Section 5(2) and that contained in the register of Auqaf maintained under Section 37.

31. It is trite that an Amendment will be retrospective only if expressly provided for and at times, when it follows by necessary implication. In *Garikapati Veeraya v. N. Subbiah Choudhry*²³, a Constitution Bench of this Court reaffirmed the principle that a vested right can be taken away by a subsequent enactment which by express words or necessary intendment makes it retrospective. *Dayawati v. Inderjit*²⁴ held that the relief granted by an Act prohibiting future interest, is applicable to appeals pending from decrees passed, looking at the necessary intendment. The principles culled out

in *Hitendra Vishnu Thakur v. State of Maharashtra*²⁵, in para 26 is extracted hereunder:

"26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

32. The amendment in 2013 providing an expanded definition of 'list of Auqaf' was procedural in nature since it merely enabled the disputes with respect to whether a property entered in the register maintained under Section 37, is a waqf property or not, also to be resolved by the Waqf Tribunal, as were similar disputes pertaining to those included in the list under Section 5(2) enabled to be resolved by the Tribunal. The right of action remained as such but the forum in which the issue had to be agitated was specified to be the Tribunal under the Act of 1995.

33. An amendment by way of substitution does not invariably result in a retrospective application. In the Act of 1995, originally the definition of 'list

of Waqfs' included only that notified under Section 5(2), which later was substituted, including also the register maintained under Section 37; which was in rectification of an anomaly, applicable from the inception of the Act. In *Zile Singh v. State of Haryana*²⁶, a three-Judge Bench while reaffirming that retrospectivity is not to be presumed and the presumption is to the contrary, held it was open for the legislature to enact laws having retrospective operation, by express enactment or by necessary implication from the language employed. It was held so, in paragraphs 15, 17 and 19:

"15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation.

In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right."

"17. Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it" (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act."

"19. The Constitution Bench in *Shyam Sunder v. Ram Kumar*, [(2001) 8 SCC 24] has held: "Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the

previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word 'declaration' in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective."

34. In *Zile Singh*²⁶ the amendment which came up for interpretation was an exception to a disqualification, brought in, on 05.04.1994. The amendment was made to the Municipality Act bringing in a disqualification for being elected or continued as a member of the Municipality. The disqualification was to visit persons having more than two children, which also provided an exemption to those who had more than two living children: 'on or after the expiry of one year of the commencement of the Act'. The exemption brought in anomalous consequences verging on absurdity since a person who has a third child after the commencement of the amendment would be disqualified, but the disqualification ceases to operate after the expiry of a year.

That was not the intention and noticing the anomaly a substitution was made in October changing the word 'after' to 'upto'. *Zile Singh*²⁶ who had the fourth child in August, 2004, when disqualified, argued that there can be no retrospective amendment given to the Act. This Court found that the substitution was intended to remove an anomaly and by necessary implication, it had retrospective effect from the date the disqualification was first brought into the statute.

35. The legislative measure of substitution having been employed in the amendment of Section 3(g) we are of the opinion that it was clarificatory in nature and applies to the Act from its inception. *Anis Fatma Begum*⁷, did not have the benefit of perusing the amendment of 2013 since it was rendered in the year 2010 much before the amendment. However, the fact that the subject property had been enrolled under the appropriate laws and registered as a wakf estate, ought to have persuaded the Division Bench to find jurisdiction on the Tribunal under the Waqf Act to decide upon the demarcation of that waqf property, excluding 75% from the ambit of a waqf, to be squarely with the Tribunal as per the power conferred under the statute.

36. Hence, this Court in *Anis Fatma Begum*⁷ even without looking at Section 83 could have found jurisdiction on the Tribunal for the subject matter dealt with and if it was otherwise, ought to have noticed the declaration of law with respect to Section 83 in *Ramesh Gobindram*⁶ and referred it for consideration before a Larger Bench. On the same principle, we would have been persuaded to refer the matter, but for the fact that we have the benefit of the Amendment of 2013 which substituted the definition of 'list of Waqfs' with the new

definition of 'list of Auqaf', additionally including those registered under the Act of 1995, which we find to be clarificatory based on Zile Singh²⁶.

37. More importantly, we cannot find Section 83 to be a provision conferring jurisdiction on the Tribunal with respect to matters in addition to which already jurisdiction has been conferred under the other provisions of the Act, as already noticed in Ramesh Gobindram⁶. Section 83 has a nominal heading of 'Constitution of the Tribunal etc'. and it enables the State Government by notification in the official gazette to constitute as many Tribunals as it may think fit for the determination of disputes, questions or other matters relating to a waqf or waqf property under this Act. The last three words have not been omitted in the amendment, as we found in paragraph 10, which we will deal with more elaborately when considering the ambit and scope of Section 83.

38. In Sham Singh Harike¹⁵ a Coordinate Bench reaffirming the principle in Ramesh Gobindram⁶, while noticing the divergent opinion in Pritpal Singh⁹ and P.V. Ibrahim Haji⁸, clearly found that though the two Judge Bench decision in Ramesh Gobindram⁶ was distinguished in Anis Fatma Begam⁷, in fact, a substantially different note was struck in the later decision on an interpretation of Section 83 quite contrary to the interpretation given in Ramesh Gobindram⁶. Reference was made to two decisions of this Court again by Coordinate Benches which followed Ramesh Gobindram⁶; Mahesh Kumar¹³ and Bhanwar Lal¹⁴.

39. The gamut of decisions referred to above, or most of them were considered in Rashid Wali Beg⁵ which held, again, that the amendment made by Act 27 of 2013 removed the basis of the decision in Ramesh Gobindram⁶; which, with all the respect at our command, we are unable to subscribe to. Rashid Wali Beg⁵ was a case in which the defendant in a suit, challenged the judgment of the High Court, which held that a permanent injunction prayer before a Civil Court is not barred by Section 85 of the Act of 1995. The plaintiff filed the suit on the contention that the predecessor-in-interest of the property had created a Waqfal- al-aulad and the Mutawalli was appointed by way of succession from the descendants, which position came to be occupied by him; in usurpation of his father's right, as entrusted to him by the grandmother due to the wayward life of the father.

The defendants at the instigation of the father of the plaintiff was alleged to have encroached into the property and attempted constructions thereon. The defendant who was the appellant before the Supreme Court, filed a written statement admitting the existence of the waqf. Later, the defendant took out an application under Order VII Rule 11 for rejection of the plaint on the sole ground of the Civil Court having no jurisdiction. The Civil Court accepted the

prayer and rejected the suit, and the First Appellate Court dismissed the appeal.

The High Court reversed the finding of the Courts below on the short ground that the nature of the property was not a question involved in the case and hence, the simpliciter injunction sought for would be maintainable before the Civil Court. This Court tabulated the various provisions and the reliefs which could be sought for before a Tribunal and culled out the aspects on which proceedings could be initiated before the Tribunal constituted under the Wakf Act of 1995 in paragraphs 54 which we extract hereunder:-

"54. In sum and substance, the Act makes a reference, to 3 types of remedies, namely, that of a suit, application or appeal before the Tribunal, in respect of the following matters:

54.1. Any question or dispute whether a property specified as waqf property in the list of waqfs is a waqf property or not [Sections 6(1) & 7(1)].

54.2. A question or dispute whether a waqf specified in the list of waqfs is a Shia Waqf or Sunni Waqf [Sections 6(1) & 7(1)].

54.3. Challenge to the settlement of a scheme for management of the waqf or any direction issued in relation to such management [Section 32(3)].

54.4. Challenge to an order for restitution/restoration of the property of the waqf or an order for payment to the waqf of any amount misappropriated or fraudulently retained by the mutawalli [Section 33(4)].

54.5. Conditional attachment of the property of a mutawalli or any other person [Section 35(1)].

54.6. Challenge to the removal or dismissal of an Executive Officer or member of the staff [Section 38(7)].

54.7. Application by the Board, seeking an order for recovery of possession of a property earlier used for religious purpose but later ceased to be used as such [Section 39(3)].

54.8. Challenge to a direction issued by the Board to any Trust or Society to get it registered [Section 40(4)].

54.9. Challenge to an order for recovery of money from the mutawalli, as certified by the Auditor [Section 48(2)].

54.10. Challenge to an order for delivery of possession of a property issued by the Collector [Section 52(4)].

54.11. Application by the Chief Executive Officer for the removal of encroachment and for delivery of possession of a waqf property [Section 54(3)].

54.12. Challenge to the removal of mutawalli from office [Section 64(4)].

54.13. Challenge to an order superseding the Committee of Management [Section 67(4)].

54.14. Challenge to the removal of a member of the Committee of Management [Section 67(6)].

54.15. Challenge to any scheme framed by the Board for the administration of waqf, containing a provision for the removal of the mutawalli and the appointment of the person next in hereditary succession [Section 69(3)].

54.16. Challenge to an order for recovery of contribution payable by the waqf to the Board, from out of the monies lying in a bank [Section 73(3)].

54.17. Any dispute, question or other matter relating to a waqf [Section 83(1)].

54.18. Any dispute, question or other matter relating to a waqf property [Section 83(1)].

54.19. Eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property [Section 83(1) after its amendment under Act 27 of 2013].

54.20. Whenever a mutawalli fails to perform an act or duty which he is liable to perform [Section 94]."

40. We have absolutely no doubt with respect to paragraphs 54.1 to 54.16 and 54.20; which we respectfully concur with. The expansion of the jurisdiction based on Section 83 as has been laid down in paragraphs 54.17 to 54.19, according to us is contrary to the principles culled out in Ramesh Gobindram⁶ and quite divergent from the interpretation of Section 83 coming out in Ramesh Gobindram⁶.

41. This Court, no doubt, in Rashid Wali Beg⁵ looked at the various decisions which followed Ramesh Gobindram⁶ and took a contrary view, holding that the very basis of the decision was removed by Act 27 of 2013. It was held that

Section 83(1) even as it stood before the amendment provided for determination by the Tribunal, any dispute, question or other matter, (i) relating to waqf and (ii) relating to a waqf property. Thus, holding that Section 83 has two limbs conferring jurisdiction on the Tribunal to decide questions arising with respect to (i) the waqf and (ii) the waqf property. To get over the divergence of opinion the decision in Kiran Devi²² was relied on, a three-Judge Bench decision to find that definitely if the Waqf Tribunal did not have jurisdiction to decide the question, the Court would not have held so in Kiran Devi²².

42. We are unable to agree. In Kiran Devi²² the plaintiff had approached the Civil Court against the possession of a tenanted premises by one of the defendants, on such demise being made by the Waqf Board itself, of an admitted waqf property. Therein the dispute was between the tenants, one of whom was supported by the Waqf Board. The defendant tenant and the Waqf Board, sailing together, requested for a transfer of the proceedings to the Tribunal and later, before this Court a contention was raised that the Tribunal did not have jurisdiction.

True, the three-Judge Bench despite referring to Ramesh Gobindram⁶ found that the defendants having requested for a transfer to the Tribunal, could not later challenge the jurisdiction especially when the matter had attained finality before the Tribunal and there was no such contention raised, even before the High Court. The High Court reversed the order of the Trial Court only on the ground that the surrender of tenancy was not proper. The above measure employed by a three-Judge Bench cannot be said to have overruled Ramesh Gobindram⁶. As was explicitly stated by the three Judge bench, the decision turned on the principle that a party to a litigation cannot approbate and reprobate and this was a measure adopted to avoid multiplicity of litigation.

43. Quite similar is the context in Mumtaz Yarud Dowla Wakf¹² wherein Rashid Wali Beg⁵ was reaffirmed by another two-Judge Bench. Therein also the proceedings for eviction were commenced long prior to the amendment of 2013, before the Tribunal which was never attempted to be challenged on the ground of lack of absence of jurisdiction. The defendants, despite a decree passed on 13.11.2002, continued to occupy the property in which circumstance the waqf filed an execution petition in 2014. Still later, after four years, a plea was raised on jurisdiction relying on Faseela M¹⁸ and Ramesh Gobindram⁶ which was rightly rejected by this Court.

In fact, in Mumtaz Yarud Dowla Wakf¹², the contention could have been rejected based on the dictum in Kiran Devi²² and not necessarily raising a doubt on Ramesh Gobindram⁶. In fact, if the suit for eviction though instituted without jurisdiction before the Tribunal, at the point of time this

Court ruled on it, the jurisdiction for removal of encroachment was squarely on the Tribunal, by virtue of the Amendment Act 27 of 2013. No purpose would have been served by a remand, and the litigation would have merely prolonged.

44. Ramesh Gobindram⁶ as we noticed, was the first in the line of the decisions cited hereinabove wherein the question arose as to whether an eviction of a tenant can be sought for before the Tribunal constituted under Act of 1995. As we have earlier noticed with extracts from the decision, Ramesh Gobindram⁶ considered exhaustively as to what is the jurisdiction conferred on the Tribunal constituted under the Act of 1995. It found that the decision on the question raised as to whether a property is a waqf property or not would be under Section 6(1) and 7(1) of the Act, confined to properties specified in the list; which list includes the list under Section 5(2) and those in the register maintained under Section 37.

Section 6 (5) though provided for an ouster of jurisdiction insofar as the matters referred to in sub-section (1); it was found to be confined to such questions since there were other issues that could be raised before the Tribunal constituted under the Act, a few of which were illustrated in paragraphs 26 and 27, which we have extracted hereinabove. A more elaborate reference to the various powers is found in Rashid Wali Beg⁵ as available in paragraphs 54.1 to 54.16 and 54.20.

Section 85 was found to have brought a wider ouster of jurisdiction of Civil Court, due to the conferment of jurisdiction on the Tribunal by the other provisions noticed hereinabove. It was categorically held in paragraph 32 of Ramesh Gobindram⁶ that Section 83 does not push the exclusion of the jurisdiction of the Civil Court beyond what has been provided in Section 6, Section 7 and Section 85 of the Act; holding thereby unequivocally that Section 83 does not by itself confer any jurisdiction on the Tribunal and even according to us, it merely enables the constitution of the Tribunal by the State.

45. Rashid Wali Beg⁵ not only found that Section 83 conferred an expansive power on the Tribunal to decide every question/dispute arising with respect to a waqf or waqf property; but also held that such jurisdiction was available even before the amendment and especially so after the amendment. In the teeth of the above finding, we have to notice Section 83(1) before the amendment and after the amendment:

Before the amendment of 2013

"Section 83(1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination

of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals."

After the amendment of 2013 "Section 83(1):

The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals"

[underlining by us to emphasize the incorporation by amendment]

46. We cannot but notice that the decisions of this Court in Pritpal Singh⁹ and Rashid Wali Beg⁵ specifically dealing with Section 83(1) extracted only the words "for the determination of any dispute, question or other matter relating to a wakf or wakf property" and omitted the words "under this Act". The wakf or wakf properties should thus be having a status under the Act which is possible only by inclusion in the 'list of auqaf' which as of now includes a list published after a survey under Chapter II or a registration made under Chapter V. After the amendment, the words "eviction of a tenant or determination of rights or obligations of a lessor and the lessee of such property" was brought in between the words "wakf or wakf properties" and "under the Act".

This was only an abundant clarification of the powers conferred on the Tribunal, especially that of eviction of encroachments, which power according to us was not conferred under Section 83. It is Section 54 that confers the Tribunal with the power to dislodge encroachers, brought in by the Amendment Act of 2013. The amendment also incorporated a definition clause (ee), for encroachment, under Section 3, which meant unauthorized occupation of a wakf property including such occupation after the expiry or termination of a tenancy, lease or license. The specific power conferred on the Tribunal thus was under Section 54(3) & (4) and not under Section 83(1).

47. Section 85 remained as such after the amendment of 2013 only bringing in cosmetic changes as we noticed hereinabove. Section 83 does not confer any jurisdiction on the Tribunal, either/or an omnibus consideration of any dispute, question or other matter related to wakf or of wakf property, nor with respect to eviction of a tenant or determination of the rights and obligations of lessor and lessee of wakf property. It merely enables the constitution of the Tribunal and the mere recital of what the Tribunal could do, is not an expansive conferment of power especially considering the fact that the statute

confers such powers under specific provisions, yet again Section 85 restricts the ouster of jurisdiction of the Civil Court, Revenue Court or any other authority to those aspects which are required by or under that Act to be determined by the Tribunal.

There is hence no absolute and all-pervasive ouster of jurisdiction of the Civil Court even under Section 85 of the Act of 1995. The definition of 'waqf' under Section 85, 3(r) and the applicability of the Act of 1995 on all auqaf (Section 2) does not also determine jurisdiction which, in resolution to disputes with respect to a property being a waqf or not is expressly conferred on the Tribunal, only with respect to those properties specified in the 'list of Auqaf'. This is the statutory imprimatur which cannot be deviated from by Courts of law, especially when the statute could have provided merely for all disputes with respect to auqaf to be determined by the Tribunal; which it did not.

48. We cannot but also notice that the Tribunal, though conferred with the jurisdiction to remove encroachers, the power could be invoked only by the Chief Executive Officer of the Board as per Section 54(3) & (4), either suo motu or on a complaint. If the power to move directly before the Tribunal was available under section 83, even prior to the amendment of 2013, there was no reason to confer jurisdiction under Section 54 and much less reason to provide specifically for removal of encroachment.

49. We hence respectfully affirm the principle of jurisdiction conferred on the Tribunal under the Waqf Act, 1995 and the ouster of jurisdiction of the Civil Court under Section 85 of the said Act to be, as considered and declared in Ramesh Gobindram⁶. There could be instances where Ramesh Gobindram⁶ can be distinguished insofar as the eviction of encroachers, which jurisdiction has now been specifically conferred on the Tribunal by the amendment Act of 2013.

The amendment Act of 2013 removes the sub-stratum of the decision in Ramesh Gobindram⁶ only to the extent of the absence found, of the jurisdiction conferred on the Tribunal to remove encroachers and does not, in any other manner, interfere with the principle stated of the jurisdiction of the Tribunal under the Act of 1995 and the jurisdiction of the Civil Court having been ousted only to the extent of the specific power conferred on the Tribunal by and under the Act.

50. Now, looking at the facts of the present case, a bare reading of the plaint would indicate that neither is the property specified in the 'list of auqaf' as published in Chapter II nor registered under Chapter V and hence the decision as to whether the property is a waqf property or not cannot be decided by the

Tribunal since the property is not one specified in the 'list of auqaf', which is the mandatory requirement under Section 6(1) and Section 7(1) of the Waqf Act of 1995 to approach the Tribunal.

We will not consider the issue as to whether the property can be deemed to be a 'waqf by user' since the question is still at large. The injunction simpliciter sought for before the Tribunal does not fall within its jurisdiction and the plaint has to be rejected, which we do, allowing the application of the defendant under Order VII, Rule 11. The order of the Tribunal, ascertaining jurisdiction and that of the High Court, affirming it are set aside.

51. The Appeal is allowed, rejecting the suit filed before the Tribunal, leaving the question of whether the scheduled property is a waqf or not open to be agitated in accordance with law.

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

.....**J. (Sanjay Kumar)**

.....**J. (K. Vinod Chandran)**

New Delhi;

January 28, 2026.

1 for short, 'Act of 1995'

2 for short, 'the CPC'

3 (2017) 13 SCC 174

4 AIR 1956 SC 713

5 (2022) 4 SCC 414

6 (2010) 8 SCC 726

7 (2010) 14 SCC 588

8 (2014) 16 SCC 65

9 2013 SCC OnLine SC 1345

10 (1976) 4 SCC 780

11 (2020) 1 SCC 1

12 2023 INSC 949
13 (2014) 16 SCC 45
14 (2014) 16 SCC 51
15 (2019) 4 SCC 698
16 (2017) 16 SCC 680
17 (2009) 4 SCC 299
18 (2014) 16 SCC 38
19 (1989) 1 SCC 101
20 AIR 1968 SC 468
21 (2021) 9 SCC 179
22 (2021) 15 SCC 15
23 1957 SCC OnLine SC 28
24 1966 SCC OnLine SC 44
25 (1994) 4 SCC 602
26 (2004) 8 SCC 1

IN THE SUPREME COURT OF INDIA

M/S Aarsuday Projects and Infrastructure (P) Ltd.

Vs.

Jogen Chowdhury and Ors.

[Civil Appeal No(s). 2920 of 2018]

[Civil Appeal No(s). 2921 of 2018]

[Civil Appeal No(s). 2922-2923 of 2018]

Head Note – Any interference with privately owned property, including by way of demolition or deprivation of its beneficial use, must rest on a clear statutory foundation and be preceded by due consideration of all relevant factual and legal circumstances, which exercise, appears not to have been undertaken in the present case.

JUDGMENT

Mehta, J.

Table of Contents

I.	SUBJECT MATTER AND SCOPE OF THE PRESENT APPEALS
II.	BACKGROUND AND EVOLUTION OF THE CONTROVERSY:-
III.	FACTUAL MATRIX OF THE PRESENT CASE:-
IV.	SUBMISSIONS ON BEHALF OF AARSUDAY PROJECTS:-
V.	SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1- 7 (WRIT PETITIONERS BEFORE THE HIGH COURT):-
VI.	SUBMISSIONS ON BEHALF OF THE SSDA:-
VII.	SUBMISSIONS ON BEHALF OF VISVA-BHARATI UNIVERSITY:-
VIII.	ANALYSIS AND DISCUSSION:-
	A. ADMITTED FACTS EMERGING FROM THE RECORD
	B. FINDINGS RECORDED BY THE HIGH COURT
	REGULATORY APPROVALS, PERMISSIONS, AND
	C. FACTUAL CHRONOLOGY RELATING TO THE DISPUTED CONSTRUCTION
	D. ASSESSMENT OF THE HIGH COURT'S APPROACH ON

THE NATURE OF THE LAND AND REGULATORY
PERMISSIONS

BONA FIDES OF THE WRIT PETITIONERS (RESPONDENT
E. NOS. 1- 7) AND BURDEN OF PROOF IN PUBLIC
INTEREST LITIGATION

IX. CONCLUSION

1. Heard.

I. SUBJECT MATTER AND SCOPE OF THE PRESENT APPEALS

2. The instant appeals with special leave are directed against the judgment and order dated 21st & 22nd August, 2013 passed by the Division Bench of the High Court at Calcutta¹ in Writ Petition No. 8341(W) of 2012, whereby the said writ petition in the nature of public interest litigation preferred by respondent Nos. 1-72 came to be accepted and the High Court directed the demolition of the building constructed by the appellant-M/s. Aarsuday Projects & Infrastructure (P) Ltd.³ on the subject plot⁴ and also directed Aarsuday Projects to pay compensation to the tune of Rs.10,00,000/-, which was to be used for the purpose of restoration and preservation of the area in question. The High Court also saddled Aarsuday Projects with costs of Rs.25,000/- payable to the writ petitioners therein.

3. Simultaneously, the High Court also directed the initiation of appropriate proceedings against the officers of Sriniketan Santiniketan Development Authority⁵ who had issued the "No Objection Certificate" for conversion of land from "danga" to "bastu" and District Land & Land Reforms Officer, Birbhum (DL&LRO, Birbhum), as well as against the concerned officers of the Ruppur Gram Panchayat for alleged violation of the mandate of judgment rendered by this Court in the case of Sushanta Tagore and Ors. v. Union of India and Ors.⁶ For the sake of ready reference, the operative portion of the impugned judgment is reproduced hereinbelow:-

"In the instant case, the land in question is of immense public importance. Considering the environmental ambience and the international heritage, importance of Visva Bharati and Santiniketan, we find that the construction made for private gain in the land which has been converted to "khoai" a rare gift of nature, and/or in areas the inextricably connected to "khoai", is wholly impermissible and violative of principles laid down by the Hon'ble Supreme Court in the aforesaid decision of Susantha Tagore (supra). Private rights/interests have to give way to larger public interest.

It is apparent that there were various illegal encroachments, which have been made in the area of Santiniketan and Visva Bharati, though there are resolutions that such structures have to be demolished in accordance with law, but no steps have been taken by the respondents. Coming to yet another aspect, we find that the District Magistrate has ordered as the lodging of first information report against the builders for illegal construction by the builders and for taking steps against the Sriniketan Santiniketan Development Authority and DLLRO.

Though we appreciate report but we record the steps have to be taken to their logical conclusion implemented along with resolutions in true spirit and not allowed to remain as mere lip service to the cause of preservation of ecology and heritage. Since we find flagrant violation of the decision of the Hon'ble Supreme Court in Sushanta Tagore's case, we propose to initiate action against the responsible officer of Sriniketan Santiniketan Development Authority, who had issued the no objection, and the District Land & Land Reforms Officer as well as against the concerned officers of the gram panchayet as to why they should not be dealt with suitably for violating the mandate of the apex court in the manner in which they have done.

The officers, as aforesaid, should have first of all considered the decision of the Hon'ble Supreme Court and ought to have acted in accordance with it, but ignoring the mandate of the Hon'ble Supreme Court they had acted directly against the same. Thus, they are supposed to explain why they should not be hauled up for violating the decision of the Hon'ble Supreme Court. Let appropriate proceedings be separately registered against them and be placed before us for consideration.

We are, therefore, of the opinion that since the development plan prepared by the Sriniketan Santiniketan Development Authority was required to be modified in terms of the notification issued on January 25, 2010, no right can accrue to the respondent no. 6 therefrom so as to sustain a totally illegal and unauthorised act in raising a large scale multi-storied construction in an ecologically and culturally preserved area adjoining a wild life sanctuary and destroying "khoai" land. It is apparent that it was necessary to work out peripheral limits of buffer zone in and around Visva Bharati campus, which has not been done so far. it was also necessary to carry out changes in development plans mentioned in notification dated 25.04.2010 issued under the Act of 1979.

We restrain any kind of construction till such exercise is done and the development plan is modified by the Sriniketan-Santiniketan Development Authority in terms of the notification dated January 25, 2010 in mouzas covered in it issued under the West Bengal Town & Country (Planning and

Development) Act, 1979. We find that objection raised from time to time remain unheeded to. Prompt action ought to have been taken by the District Magistrate and the Superintendent of Police against the Sriniketan-Santiniketan Development Authority and other concerned bodies not only to stop the construction in question but to demolish it as the same is totally illegal. Resultantly, as the construction of the building is found to be wholly unauthorised and illegal for the reasons, as aforesaid, we direct demolition of the same.

The District Magistrate, Birbhum and the Superintendent of Police, Birbhum as also the Bolpur-Srinikektan Panchayet Samity shall take action for demolishing the building within a period of one month from date and to file their compliance report before this court. We direct the authorities, as aforesaid, not only to demolish the building in question in totality but to restore the land, as it was, as far as possible and to keep it as such. They are also directed to ensure that no constructional activity in the area covered by notification on 25/1/2010 of Santiniketan and Visva Bharati to be undertaken till the development plan is modified in accordance with law in terms of the notification dated January 25, 2010 and without prior approval of the Apex Advisory Committee constituted in terms of notification dated January 18, 2011 and without consultation with the West Bengal Pollution Control Board.

We further direct till consultation with the Archaeological Survey of India is completed, no permission for raising any construction to be accorded in future by any authority, such as, Sriniketan Santiniketan Development Authority, Bolpur-Srinikektan Panchayet and other local bodies, authorities such as municipality, etc. in Mouzas included in notification dated 25.1.2010 and in Visva Bharati/Santiniketan. As the construction had been raised by the respondent no. 6 in a wholly unauthorised manner and that too without providing any ingress and egress to the road and thereby creating disturbances to the.

Visva Bharati University and damage to Khoai land, we direct compensation of Rs. 10 lakhs to be paid by the respondent No. 6, which is to be used for the purpose of restoration of the land and preservation of the area in question. The amount of compensation is to be spent at the advice of the Apex Advisory Committee. The respondent No. 6 is further directed to pay costs of litigation Rs.25,000/- to the writ petitioners."

4. The aforesaid judgment of the High Court forms the subject matter of challenge in the present appeals by special leave. The particulars of the appeals are set out hereunder:-

- **Civil Appeal No. 2920 of 2018:** Preferred by Aarsuday Projects, the developer of the subject plot.
- **Civil Appeal No. 2921 of 2018:** Preferred by the SSDA, challenging the adverse observations made by the High Court against it and its officers, as well as the consequential directions for initiation of action against its officer(s).
- **Civil Appeal Nos. 2922-2923 of 2018:** Preferred by the subsequent purchasers of flats constructed by Aarsuday Projects on the subject plot.

5. It is apposite to note herein that this Court, vide order dated 6th September, 2013, while issuing notice in the appeal preferred by Aarsuday Projects, directed the parties to maintain status quo in all respects with regard to the subject building(s) as well as the subject land, in the following terms:

"In the meanwhile, the petitioner and respondents shall maintain status quo as obtaining today in all respects with regard to the subject building(s) as well as the subject land."

II. BACKGROUND AND EVOLUTION OF THE CONTROVERSY:-

6. The controversy in the case at hand revolves around the disputed construction raised by Aarsuday Projects on a plot of land admeasuring 0.39 acres, near the Visva-Bharati University, which, according to the High Court was in the nature of preserved land falling in the category of "khoai" land. There is no dispute amongst the parties that no category by the name of "khoai" land exists under the revenue laws of the State of West Bengal.

The said description appears to have been borrowed from the writings of the Nobel Laureate, Shri Rabindranath Tagore, who referred to a peculiar geological formation found in and around the Birbhum region, created by natural decay and erosion, by wind and water, of small hills comprising red laterite soil rich in iron, resulting in the formation of natural gullies and canyon-like terrain.

7. In judicial parlance, the existence of "khoai" land was recognised for the first time by the High Court at Calcutta and subsequently by this Court in the case of Sushanta Tagore (supra). In the said case, the Courts were concerned with the large-scale construction of residential-cum-commercial complexes within the territorial limits of Santiniketan, District Birbhum, West Bengal, which were alleged to have adversely impacted the ecological balance, cultural ethos, and environmental sanctity of the region.

8. The litigation originated from a public interest petition instituted before the High Court, inter alia, alleging that unregulated and indiscriminate

construction activity in and around Santiniketan had resulted in serious degradation of its cultural and environmental heritage, undermining the ideals and objectives underlying the establishment of Visva- Bharati University.

9. A Division Bench of the High Court vide judgment dated 20th August, 2004, dismissed the writ petition filed in the nature of public interest litigation, holding that since Visva-Bharati University was not the owner of the entire 3,000 hectares of land in question, the relief sought for by the PIL petitioner therein could not be granted. The High Court opined that, in the absence of any statutory restriction, the State was competent to deal with such land in accordance with law, and that the establishment of residential structures or other peaceful activities in the vicinity of a university could not, by itself, be termed illegal.

While acknowledging that increasing population and construction activity would inevitably alter the character of areas surrounding Santiniketan over a period of time, the High Court held that neither the Visva-Bharati Act, 1951 nor the ideals of Rabindranath Tagore mandated that the entire Santiniketan has to be preserved as an exclusive or static zone in perpetuity. It was further observed that regulating construction on the basis of the poet's ideals, in the absence of a clear statutory framework, would be impractical and unenforceable. The High Court concluded that although the proposed housing project therein would alter the local topography, no overriding public interest warranted restraint, particularly where development was planned, systematic, and in conformity with applicable laws.

10. The aforesaid judgment of the High Court was challenged before this Court in Sushanta Tagore (supra).

11. This Court, while adjudicating the matter, took cognizance of the fact that the West Bengal Pollution Control Board (WBPCB) had imposed restrictions upon municipal authorities, prohibiting the sanction of building plans for large housing complexes without prior environmental clearance. This Court also referred to and extracted relevant portions of the report submitted by the WBPCB. For ready reference, these observations from Sushanta Tagore (supra) are reproduced hereinbelow:-

"Report of the Pollution Control Board

20. From the report sent by the W.B. Pollution Control Board, it would appear that it had issued a direction restricting the municipal corporations, etc. from sanctioning any building plan of big housing complexes without obtaining its environmental clearance. Having regard to the peculiar features and the fact that SSDA's working area includes maintenance and preservation of cultural

heritage and natural environment of Sriniketan-Santiniketan and further in view of the increase in the price of the land of Khoai and as people visiting Santiniketan enjoy Khoai by seeing in different climatic and scenic conditions, it was stated:

"Increasing constructional activity in Sriniketan- Santiniketan area may cause serious disruption in natural drainage system. It is therefore necessary to examine the drainage pattern (both dry weather flow and storm water flow) in the area and document it as per field condition. It is suggested that SSDA could take up the job examining the drainage pattern and system and document them in a map (marked with contour). The coming rainy season (July-September) could be ideal for the field study. As Santiniketan is getting developed as tourist place, therefore, it is essential to preserve the natural beauty and heritage which people like to enjoy.

It is true that planned housing is one of the components of urbanisation. There is a great demand of housing not only from the local residents but also from people outside. Many want to keep a second home for use during weekends, holidays and festivals. Housing needs supporting infrastructures, also required to be constructed. Further, it will require adequate water supply, sanitation and drainage, solid waste management, etc. Urbanisation will have impact on ambient air quality unless problem-mitigation measures are taken properly.

The rapid EIA report submitted by BPHDCL though indicated that suspended particulate matters in ambient air at Sonar Taree area are below maximum permissible limit, but the same near Pearson Memorial Hospital was more than the permissible limit in December. Even on some days of December the SPM was more than the permissible limit at Sonar Taree area. However, other parameters of ambient air are well below the permissible limit."

It was opined:

"SSDA should follow land use and development control plan already prepared by Urban Development (T&CP) Department. In addition, SSDA must see to conservation of the natural heritage of the place as far as practicable. It is also true that when development of Santiniketan-Sriniketan area is a necessity due to promotion of tourism and urban pull, there must be certain changes in the land use pattern resulting in disappearance of Khoai landscape from certain places. Hence SSDA must look into this aspect while planning for development of area keeping changes of Khoai land formation minimal."

Among other things, the report recommended that:

- (i) no more housing projects be undertaken until SSDA's perspective plan 2025 including Visva- Bharati's special requirements was approved,
- (ii) ensure minimal damage to the remaining Khoai so as to preserve its natural beauty, heritage and natural drainage system,
- (iii) a satellite township be built at a suitable distance from the Visva-Bharati area."

12. Taking note of the aforesaid report, as well as the provisions of the Visva-Bharati Act, 1951, this Court proceeded to hold that while development and change are inevitable, Santiniketan, having regard to its unique cultural, educational, and ecological character, stands on a distinct footing. This Court emphasized that the statutory scheme underlying the Visva-Bharati Act, 1951 mandated preservation of the traditions, ethos, and environmental ambience of the institution and its surroundings, particularly the "khoai" landscape, which forms an integral part of Nobel Laureate, Shri Rabindranath Tagore's literary philosophy.

It was observed that indiscriminate and large-scale residential or commercial construction would not only alter the topography of Santiniketan but also defeat the very object and purpose of the enactment. This Court further held that development must be sustainable, planned, and in conformity with environmental and pollution control laws, and that there could be no parity/perpetuity of illegality merely because unauthorized constructions may have come up in the past.

13. Having held so, this Court addressed the prevailing equities and noted that the project in question had received approvals at various stages, that substantial investment had already been made, and that similar housing projects had already come into existence in the area. In those circumstances, while refraining from disrupting the construction already undertaken, this Court issued clear directions that, in future, the SSDA must scrupulously adhere to the statutory provisions, the objectives of the Visva-Bharati Act, 1951 and the recommendations of the WBPCB, recognizing that the SSDA bears a higher and distinct responsibility in view of the sui generis character of Santiniketan. Relevant findings from the said judgment are reproduced hereinbelow:-

"25. The Division Bench of the High Court, as noticed hereinbefore, arrived at a finding that the continued increase of building activities will slowly change the place almost beyond recognition of the poet and the activities of Bengal Ambuja Housing Complex Ltd. will to some extent change the topography of Santiniketan in the canal front. Despite holding so, the High

Court observed that such changes are necessary having regard to the continued increase in population of Santiniketan and, as the Act does not contain any provision Santiniketan was required to be made an exclusive spot forever and, furthermore, as allowing Santiniketan in its original form would be impractical, it can be permitted to become residential town or even industrial town provided the growth is planned, systematic and in accordance with the laws relating to freedom from population.

26. If by reason of any activity, the tradition and special features of Visva-Bharati are not preserved, the very purpose of the enactment would be defeated. It has not been denied or disputed that even now Visva-Bharati organises classes in open air and also on Khoai lands, particularly, drawing and painting classes.

29. The Division Bench of the High Court, in our opinion, was not correct in holding that in the event the building activity in the territorial area comprising Santiniketan as specified in the Act was to take place in accordance with the spirit and ideas of Rabindranath Tagore, such activity cannot be monitored in the practical world and, therefore, would constitute illegal and impractical way of thought and furthermore although the House Complex Project of Respondent 10 would change the topography of Santiniketan in the canal front, there was no public interest calling for restraint of such a change.

30. The West Bengal Pollution Control Board is a statutory body. The environmental impact assessment in terms of the provisions of the laws governing ecology of the area is imperative. The Pollution Control Board which has statutory duties to perform had issued certain directions for preservation and conservation for cultural, historical, archaeological, environmental and ecological purposes. Such directions are binding on the State as well as SSDA. If any construction is carried out on the Khoai, the same indisputably will destroy its unique natural and cultural heritage, as opined by the Board, and, thus, all constructional activities must abide by the same.

33. It may be true that the development of a town is the job of the Town Planning Authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the Rules and Regulations framed thereunder but also the provisions of other statutes enacted therefor and in particular those for protection and preservation of ecology and environment.

34. As Visva-Bharati has the unique distinction of being not only a university of national importance but also a unitary one, SSDA should be well advised to

keep in mind the provisions of the Act, the object and purpose for which it has been enacted as also the report of the West Bengal Pollution Control Board. It is sui generis.

35. It is idle to compare Santiniketan with any other university. Truism is that Santiniketan has unique features. Its environmental ambience, thus, must be maintained. There is no other university which having regard to the purport and object of the Act, as would appear from the objects and reasons thereof, can be compared with Visva-Bharati. Our attention has not been drawn to any other statute establishing any university which has such unique features as Visva-Bharati.

36. Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.

37. The Parliamentary Debates, some of which we have noticed hereinbefore, clearly go to show that the Act was enacted with particular objectives in view. Such statutory objects could not have been given a go-by. It is not suggested that Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub. For carrying out further constructional activities, it may not be necessary for a builder to apply to the University for seeking its permission but the local self-government which is responsible therefor must take into consideration the salutary principles laid down in the pollution control laws as well as the Act.

The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra burden to shoulder. It cannot shut its eyes to the provisions of the Act and the object and purport it seeks to achieve. It cannot ignore the environmental impact assessment made by the Board.

It is one thing to say that SSDA may permit small constructions to be made by the owners of the land or additions or allow alterations to the existing building for residential purposes but it is another thing to say that it would not consider the effect of the changes which may be brought about by turning

Santiniketan into a commercial and industrial hub. Conclusion 39. The question is what do we do in the instant case?

40. SSDA issued notices as regards adoption of the land use map as far back as in the years 1999 and 2000. The State Government had granted a longterm settlement in favour of SSDA with a further right to the residential flat owners for the unexpired period of lease by an order dated 25-4- 2003. In 2003 itself, the project had been given a green signal and it is stated before us that Respondent 10 has already spent about 1.5 crores of rupees.

41. Our attention has further been drawn by Mr Sanghi that the house project of Bengal Peerless has already come into being. In that view of the matter, we do not intend to stop the construction activities which are being carried out by Respondent 10 but direct that in future SSDA must keep in mind the statutory provisions referred to hereinbefore as also the observations made by us herein."

[Emphasis supplied]

14. The present litigation seems to be a sequel to the above judgment. The public interest litigation being Writ Petition No. 8341(W) of 2012 came to be filed in the High Court alleging inter alia that the permission granted to Aarsuday Projects to construct a residential building was illegal inasmuch as the permission for construction was not granted by the competent authority and that the construction was being raised on "khoai" land which was impermissible in view of the mandate of this Court in Sushanta Tagore (supra).

15. The High Court accepted the averments made in the writ petition as well as the inspection reports called by it during the course of adjudication and on that basis, by the impugned judgment, directed demolition of the building constructed by Aarsuday Projects for residential and commercial purposes and also gave ancillary directions reproduced (supra).

III. FACTUAL MATRIX OF THE PRESENT CASE:-

16. Before advertng to the submissions of learned counsel for the parties, it would be apposite, for the sake of convenience, to set out a chronological list of dates relevant and essential for the disposal of the present appeals.

2002: The Land Use and Development Control Plan in respect of Sriniketan Santiniketan Planning Area including the subject plot admeasuring 0.39 acres was published by the competent planning authority, wherein the subject plot was designated for "residential use".

11.08.2009: Aarsuday Projects, purchased the subject plot by way of a registered sale deed.

03.12.2009: The subject plot was recorded as danga (barren land) in the Record of Rights.

29.12.2009: The Ruppur Gram Panchayat issued a "No Objection Certificate" for residential construction on the subject plot, conditional upon procurement of conversion permission for the same.

25.10.2010: The Urban Development Department, Government of West Bengal, directed the SSDA to revise the Development Plan for eleven mouzas including Mouza Ballavpur, keeping in view the spirit of conservation and preservation.

30.06.2011: Aarsuday Projects started the development on the subject plot.
10.09.2011: SSDA constituted a three-member Sub- Committee, comprising representatives of the Visva-Bharati Anchal Abasik Samiti and Visva-Bharati University, for selection and implementation of the schemes approved by it.

21.10.2011: The building plan submitted by Aarsuday Projects proposed a plinth area of over 300 square metres. Consequently, the Ruppur Gram Panchayat forwarded the same to the Zilla Parishad, Birbhum, for vetting and approval in terms of the second proviso to Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

04.11.2011: The Zilla Parishad, Birbhum vetted the building plan and forwarded it to the Ruppur Gram Panchayat.

05.11.2011: The Ruppur Gram Panchayat treated the vetted plan as approved and communicated the same to Aarsuday Projects.

27.01.2012: SSDA directed inspection of the site and called for a report from the Sub-Committee prior to considering the grant of "No Objection Certificate" for construction on the subject plot.

08.02.2012: The Sub-Committee conducted inspection of the site and submitted its report, finding no impediment to the grant of "No Objection Certificate" for conversion of land for residential construction, i.e., from "danga" to "bastu".

28.02.2012: SSDA accorded "No Objection Certificate" for conversion of the land to bastu (residential use).

17.04.2012: The present writ petition being Writ Petition No. 8341(W) of 2012 in the nature of public interest litigation, was filed before the High Court seeking revocation of the sanction/permission granted to Aarsuday Projects for construction of the building, primarily on two grounds, (a) permission to construct granted to Aarsuday Projects was illegal inasmuch as the permission was not granted by the competent authority and (b) the construction was being raised on "khoai" land, which was impermissible in view of the mandate of this Court in Sushanta Tagore (supra). It is relevant to note that no interim stay on construction was granted by the High Court at the initial stage.

05.06.2012: SSDA recorded the grant of "No Objection Certificate" to Aarsuday Projects. The said action was taken in the presence of representatives of Visva-Bharati University.

09.01.2013: The District Land & Land Reforms Officer, Birbhum (DL&LRO, Birbhum), approved the conversion of the subject plot from "danga" to "bastu" for the purpose of setting up a commercial housing project, subject to completion within a period of six months.

July, 2013: Construction of the disputed building was completed by Aarsuday Projects.

11.07.2013: The High Court called for reports from the District Magistrate and the West Bengal Pollution Control Board (WBPCB) on the issue as to whether the subject plot was "khoai" land and whether due clearances/permissions had been taken by the builder, i.e., Aarsuday Projects for raising construction on the subject plot.

19.07.2013: WBPCB submitted its inspection report stating that the adjacent area to the subject plot was a low-lying area locally known as "khoai" land, and further observed that no clearance from the Board was required as the built-up area of the construction raised by Aarsuday Projects measured less than 20,000 square metres.

23.07.2013: The District Magistrate submitted a report without recording any specific finding on the nature of the land, stating that clarification had been sought from the SSDA regarding the basis for grant of "No Objection Certificate" for construction on the subject plot.

14.08.2013: SSDA filed its objections/exceptions to the District Magistrate's report, asserting that the "No Objection Certificate" was granted considering that the subject plot was earmarked for "residential use" in the Land Use and Development Control Plan, 2002 and that substantial human settlement already existed in the area.

21/22.08.2013: The High Court rendered the impugned judgment, holding that the Panchayat Samiti alone was the competent authority to grant the permission for construction and that no such permission had been obtained. It was further held that the officers of the SSDA, Gram Panchayat, and DL&LRO, Birbhum had acted in violation of the judgment in Sushanta Tagore (supra), and that the development plan ought to have been modified in compliance with the said judgment. Consequently, the construction carried out by Aarsuday Projects was declared to be illegal and directions were issued for demolition of the disputed construction.

The High Court also held that the construction had caused disturbance to Visva-Bharati University and damage to "khoai" land, and accordingly directed the developer, i.e., Aarsuday Projects, to pay compensation of Rs. 10,00,000/-. Further, costs of Rs. 25,000/- was imposed on Aarsuday Projects, payable to the writ petitioners. Liberty was granted to the purchasers to work out their equities with the builder/developer, i.e., Aarsuday Projects. The aforesaid judgment of the High court is the subject matter of challenge in the present appeals by special leave, preferred independently by Aarsuday Projects, the SSDA and the subsequent purchasers of flats built by Aarsuday Projects.

IV. SUBMISSIONS ON BEHALF OF AARSUDAY PROJECTS:-

17. Mr. Siddharth Bhatnagar, learned senior counsel appearing on behalf of Aarsuday Projects, assailed the impugned judgment of the High Court on the following counts:-

A. That the High Court completely glossed over the vital fact that the subject plot admeasuring 0.39 acres was privately owned property, lawfully acquired by Aarsuday Projects under a registered sale deed and that the entire area, including the subject plot, had been earmarked for residential and commercial use under the Land Use and Development Control Plan, 2002 notified by the SSDA, being the sole competent authority for landuse planning in the region.

B. That it was clearly demonstrated before the High Court that historically the Panchayat Samiti had not been according building permissions for several years and that applications for construction exceeding the jurisdiction of the Gram Panchayat were routinely forwarded to the Zilla Parishad for vetting. In the present case, the Aarsuday Projects' building plan was submitted to the Ruppur Gram Panchayat which forwarded the same to the Zilla Parishad, Birbhum, which in turn vetted the same in accordance with law. The vetted plan was returned to the Ruppur Gram Panchayat, which treated the plan to be approved, conveyed the said approval to Aarsuday Projects and only thereafter was the construction undertaken.

C. That even assuming, arguendo, that the Gram Panchayat was not the competent authority to accord approval to the building plan and that such authority vested exclusively in the Panchayat Samiti, the same constituted, at best, a minor procedural irregularity which was curable in nature. It was urged that such an alleged defect in the grant of approval could not have been treated as fatal so as to warrant demolition of the entire structure, especially when the building plan had been vetted by the Zilla Parishad, construction was undertaken bona fide, and no statutory framework mandated demolition as the sole consequence of such an irregularity.

D. That the SSDA had constituted a three-member Sub-Committee for the selection and implementation of the construction schemes in the Santiniketan area, which duly considered and approved Aarsuday Projects' application for conversion of the subject plot from "danga" to "bastu". The said Sub-Committee comprised of the representatives of Visva-Bharati Anchal Abasik Samiti and Visva-Bharati University, and at no stage of its deliberations was any objection raised regarding the subject plot being in the nature of "khoai" land. Furthermore, the conversion of land use of the subject plot from "danga" to "bastu" being permissible under the applicable rules, no mala fides or ill intention could be attributed to Aarsuday Projects in undertaking construction pursuant to the permission/sanction granted by the SSDA.

E. That the High Court completely glossed over the material placed on record demonstrating the existence of extensive construction of residential premises in the surrounding area, including on adjoining plots as well as on plots situated opposite the subject plot owned by Aarsuday Projects. In such circumstances, the decision to single out Aarsuday Projects for the extreme measure of demolition, which is both drastic and disproportionate, on the basis of unreliable material and unsubstantiated findings, is wholly arbitrary and unjustified.

F. Mr. Bhatnagar further submitted that the reliance placed by the High Court on the reports of the District Magistrate and the West Bengal Pollution Control Board (WBPCB) for concluding that the disputed construction was unauthorised and illegal is absolutely unjust and arbitrary. He pointed out that the report of the WBPCB clearly indicated that the subject plot was situated in a residential area; that the built-up area of the residential building raised by Aarsuday Projects measured less than 20,000 square metres and hence, no permission was required from the WBPCB and that the "khoai" like recess/depression existed adjacent to the subject plot.

He submitted that the report of the District Magistrate is also based on sheer conjectures and surmises, since no scientific survey, technical study, or contemporaneous land record was relied upon to substantiate the conclusion

that the land was of "khoai" nature or otherwise restricted for residential construction. It was urged that both the reports are conspicuously silent on the material aspect as to how several pre-existing buildings in the immediate vicinity of the construction raised by Aarsuday Projects had been permitted to be erected, a circumstance which had a direct bearing on the character of the area and the uniform application of the regulatory framework.

He, therefore, submitted that since the very foundation of the impugned judgment rests upon the reports of the WBPCB and the District Magistrate, which are unreliable and unsupported by cogent material, the judgment cannot be sustained either on facts or in law. On these grounds, learned senior counsel urged that the impugned judgment does not stand to scrutiny being founded on conjectures and surmises and rendered in complete disregard of admitted and unimpeachable documentary evidence available on record, and therefore, the same deserves to be set aside.

V. SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1-7 (WRIT PETITIONERS BEFORE THE HIGH COURT):-

18. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of Respondent Nos. 1-7 (Writ Petitioners before the High Court), supported the impugned judgment to the hilt and urged that the same calls for no interference by this Court, inter alia, on the following grounds:-

A. That the impugned judgment is unassailable both on facts and in law, inasmuch as the reports submitted by the WBPCB and the District Magistrate unequivocally establish that the disputed construction was raised by destroying "khoai" land and in clear violation of the judgment passed in Sushanta Tagore (supra). It was therefore contended that the High Court was justified in exercising its writ jurisdiction to direct demolition of what was found to be an illegal and unauthorised construction.

B. That the construction was undertaken without obtaining permission from the competent authority, namely, the Panchayat Samiti, and that the manner in which Aarsuday Projects assumed permission merely on the basis of a file vetted by the Zilla Parishad demonstrates clear connivance between Aarsuday Projects and the concerned authorities.

C. That the ex-post facto conversion of the land from "danga" to "bastu" was wholly unjustified and contrary to law, and consequently, the directions issued by the High Court quashing such permission and conversion, and holding the construction to be grossly illegal and unauthorised, cannot be faulted and should not be interfered with by this Court in exercise of its extraordinary jurisdiction under Article 136 of the Constitution of India.

D. That this Court, in Sushanta Tagore (supra), had as early as in the year 2005, emphasised the need for preservation of the Santiniketan area, including lands described as "khoai", and had cautioned against construction activities detrimental to its ecological and cultural character. It was therefore contended that the subsequent grant of permission to construct and the conversion of land in the present case were contrary to the spirit and mandate of the said judgment and amounted to a disregard of the directions issued by this Court.

E. That, in these circumstances, the High Court rightly entertained the challenge to such blatantly illegal actions and justly issued directions for demolition of the unauthorised structure as well as for initiation of appropriate proceedings against the erring officials, which were in the nature of restorative justice intended to undo the damage caused to the environment, cultural heritage and ethos of Visva-Bharati by the unlawful acts of the parties concerned. On these grounds, learned senior counsel implored this Court to dismiss the appeals with costs.

VI. SUBMISSIONS ON BEHALF OF THE SSDA:-

19. Mr. Abhrotosh Majumdar, learned senior counsel, appearing on behalf of the SSDA submitted that the role discharged by the SSDA in the present case was strictly within the confines of its statutory functions and in accordance with the prevailing legal framework. It was urged that the "No Objection Certificate" issued by the SSDA was confined only to the conversion of the land from "danga" to "bastu", which was permissible and within the statutory framework having regard to the fact that the subject plot was already earmarked as "residential" under the notified Land Use and Development Control Plan, 2002.

The SSDA was neither the sanctioning authority for the building plan nor did it grant any permission for construction, such authority admittedly vested with the local bodies under the applicable laws. The subsequent approval granted by the competent revenue authority further validates the conversion. In these circumstances, it was submitted that the construction undertaken pursuant to valid approvals from the competent authorities could not be characterized as illegal, nor could the SSDA be faulted for having acted within its limited statutory role.

20. It was further submitted that subsequent to the passing of the impugned judgment, the SSDA has taken several concrete, bona fide and consistent steps towards preservation of the ecological and cultural heritage of the Santiniketan-Sriniketan region balancing the objective of conservation and planned development of the area. It was pointed out that in pursuance of the order dated 6th September, 2013 passed by this Court directing maintenance

of status quo, SSDA immediately issued a public notice clarifying that no further "No Objection Certificate" would be issued for conversion of land or for development in the concerned mouzas, and thereafter, acted strictly in accordance with the orders passed by this Court from time to time.

21. Learned senior counsel appearing for the SSDA lastly submitted that the authority undertook a comprehensive exercise for revision of the Land Use and Development Control Plan, including appointment of IIT, Kharagpur as consultant, preparation of a revised plan covering 44 mouzas, inviting objections from the public, placing the revised plan before the Apex Advisory Committee, and obtaining approvals from the State Government under the provisions of the West Bengal Town & Country (Planning and Development) Act, 1979, followed by publication of the approved plan. It was, therefore, urged that in view of the subsequent actions taken by the SSDA in compliance with the directions of this Court and the statutory framework, the adverse remarks and consequential directions issued against the SSDA and its officers in the impugned judgment are liable to be expunged.

VII. SUBMISSIONS ON BEHALF OF VISVABHARATI UNIVERSITY:-

22. Mr. Rana Mukherjee, learned senior counsel, appearing on behalf of Visva-Bharati University, strenuously supported the impugned judgment. He submitted that the disputed construction was raised on "khoai" land, without securing permission from the competent authority, namely, the Panchayat Samiti and without obtaining due conversion from the SSDA, rendering the construction wholly unauthorized and illegal. It was, thus, contended that the impugned judgment is legally sound and does not call for interference by this Court. He accordingly urged that the appellants are not entitled to any relief and that the appeals deserve to be dismissed.

VIII. ANALYSIS AND DISCUSSION:-

23. We have heard and considered the submissions advanced by learned counsel for the parties and have carefully gone through the impugned judgment as well as the material placed on record.

a. Admitted Facts Emerging from the Record

24. We shall, at the outset, enumerate certain admitted and undisputed facts emerging from the record.

A. The entire parcel of land (admeasuring 28.12 acres) of which the subject plot admeasuring 0.39 acres forms a part is situated in District Birbhum and falls within the territorial jurisdiction of the Ruppur Gram Panchayat. The

said land was never a part of the land owned by Visva-Bharati University, though it is contiguous thereto, and had, much prior to the disputed construction, been notified as falling within the planning area of the SSDA.

B. The SSDA, being the designated planning authority, had published a Land Use and Development Control Plan, 2002, wherein the subject plot situated in Mouza Ballavpur, District Birbhum, admeasuring 0.39 acres and forming part of a larger tract of land admeasuring 28.12 acres, was included within the planning area as "residential" land.

C. The subject plot on which the disputed construction was raised is private land, lawfully acquired by Aarsuday Projects by way of a registered sale deed dated 11th August, 2009 from its erstwhile owners. The said sale deed has never been questioned or disputed before any forum.

D. The land in question stood recorded as "danga" [barren land] in the revenue records. There is no contemporaneous document or material on record indicating the existence of any "khoai" type recess or undulation either on the subject plot or on the adjoining plots.

E. Although deliberations had been ongoing for a considerable period regarding declaration of areas adjoining Visva-Bharati University as preserved land, no formal notification to that effect had been issued prior to the commencement or completion of the disputed construction.

F. The record further reflects that a substantial number of residential structures had already come into existence on the larger tract of land adjoining Visva-Bharati University, within which the disputed construction is situated. Some of these constructions exist adjacent to and opposite to the disputed construction. The entire area appears to be a systematically plotted landscape inhabited by a large number of people.

b. Findings Recorded by the High Court

25. We shall now advert to certain relevant findings recorded by the High Court in the impugned judgment. Relevant extracts from the impugned judgment are reproduced hereinbelow for ready reference:-

"Coming to the instant case when we gauge it in the perspective of directions issued by the Hon'ble Supreme Court in the case of Sushanta Tagore (supra), firstly we find it is the same area described as Deer Park where construction is being raised. SSDA while issuing N.O.C. has not at all consulted the Pollution Control Board. They have not taken into consideration the Notification dated 25th January, 2010 issued in Act of 1979. Nor it has consulted the Apex Advisory Committee constituted on 18th January, 2011. The Report

submitted before the Apex Court by the Pollution Control Board in 2005 itself mentions that there should not be any constructional activity in the area in question.

As per the decision of the Hon'ble Supreme Court in the case of Sushanta Tagore (supra), report was binding upon the SSDA and Panchayat/Zilla Parishad and could not have given a go-bye to it. It is not in dispute that SSDA while issuing N.O.C. in February, 2012 has not at all considered the decision of the Hon'ble Supreme Court in Sushanta's case, neither the District Land & Land Reform Officer considered the decision of the said case while ordering the conversion of land in January, 2013. As per the Pollution Control Board, no such activity is permissible in the area. The land had formed by natural process into 'khoai' land though the land is classified as Danga land. The same is contiguous to wildlife sanctuary also, which is 70 metres away.

The area is in Deer Park, thus, there is flagrant violation of the aforesaid directions issued by the Apex Court which were required to be observed while dealing with such N.O.C., conversion and the permission to raise construction. Now we propose to take up the question with respect to the competence of Gram Panchayat/Zilla Parishad to accord permission to raise the construction. The same is illegal and void for various reasons. Firstly it is uncontroverted fact that permission had been accorded on 5th November, 2011, whereas land had not been converted on aforesaid date from Danga to Bastu. N.O.C. had been issued by SSDA on 28th February, 2012 for proposed conversion of the plot at Mouza Bhallvapur from Danga to Bastu and it is not also in dispute that the District Land & Land Reforms Officer has passed the order of conversions on 9th January, 2013.

It is also not in dispute that construction had been completed by the middle of 2012. On query being made to the learned Senior Counsel appearing on behalf of the respondent No. 6, it was stated that the structure of building had been constructed by the middle of 2012. By that time the land had not been ordered to be converted from Danga to Bastu. Thus, it is apparent that even before the conversion of the land, construction activity of the building had been undertaken which was clearly an unauthorised act.

No such permission to raise building could have been granted before conversion of the land from Danga to Bastu. Danga land is not for the purpose of construction. Danga land is highly arable agricultural land. Thus, the permission granted by Gram Panchayat after being vetted by Zila Parishad on 5th November, 2011 was illegal and void. Before conversion of the land no such permission could have been accorded. Apart from that Gram Panchayat was not competent to accord the sanction for the reasons to follow.

A conjoint reading of the provisions contained in sections 23, 94, 114 and 114A of the Panchayat Act and Rules 17, 27 and 28 of the Rules of 2004 make it clear that when the area in question is governed by any authority under the Act of 1979 and since it is not in dispute that SSDA is one of such authority under the Act of 1979, obviously the Development Plan prepared by the SSDA under the Act of 1979 which is a law for the time being in force, the notification of such Development Plan is relevant for the purposes of section 114A of the Panchayat Act and when such Development Plan is there then the Panchayat would not be competent to deal with matters of sanction of buildings in such area and it has to be dealt with by a larger and different body, namely, Panchayat Samity constituted under section 94 of the Panchayat Act which has to consider various aspects for grant of sanction.

The condition precedent for attracting section 114A of the Panchayat Act is the notification of a development plan for the area either under the said provision of law or any other law for the time being in force, that is, the Act of 1979 in the instant case. Such plan being in existence in the facts of the instant case, we are unable to accept the submission of the learned Senior Counsel that the said section is inoperative as specifications have not been notified by the Samity in terms thereof for grant of sanction. No such case however has been made out by respondent No. 6 in its pleadings.

Nonetheless, we are of the opinion that notification of specifications for sanction is an exercise after power to grant sanction has vested in the Samity and not a condition precedent for vesting of such power in terms of section 114A of the Panchayat Act. Hence, such plea cannot be a valid ground to clothe the Panchayat with power to grant sanction in any area falling within a development area notified under the Act of 1979. Furthermore, the prayer for grant of sanction in the instant case was to be adjudged by the Samity in the light of the guidelines laid down by the Supreme Court in *Susanta Tagore* (supra) and the Government Notification dated 25/01/2010 dealing various Mouzas including Mouza - Ballavpur required preservation and conservation for historical, architectural, environmental & ecological purposes.

The Panchayat Samity has not been moved in the instant case which was required to consider the application for grant of sanction as per the procedure and provisions contained in Rule 28 of the Rules of 2004. The provision contained in Rule 28 of the Rules of 2004 cannot be said to be ultra vires and repugnant to the provisions contained in section 23 in any manner whatsoever. In view of the specific provision contained in Section 114A read with Rule 28, the Gram Panchayat was not competent authority to deal with the application at all. It is trite law when law prescribes mode of doing a thing that has to be done in that manner only.

Thus, the permission which had been accorded was illegal and void. Vetting of plan by engineer of Zila Parishad does not improve the case as sanction is a matter to be considered by Panchayat Samity. It has also been submitted by Mr. Saktinath Mukherjee, learned senior advocate appearing on behalf of the respondent No. 6, that there was no necessity to obtain conversion for the development plan from the Sriniketan Santiniketan Development Authority, in whose development plan the area has been shown for the residential purposes. We are of the opinion that when the land was admittedly recorded as Danga land, without its conversion to Bastu land the same could not have been used for raising building construction.

As a matter of fact, the conversion permission was accorded on January 9, 2013, whereas the construction has already been made in illegal and unauthorised manner be made in the year 2012 on the basis of the illegal permission granted in the year 2011. Not only the mandate of the aforesaid Notification issued under Act of 1979 has been violated by grant of permission in the aforesaid illegal manner. Even before prayer for conversion of the land, permission to raise construction had been granted. On the other hand, meetings were held and various resolutions have been passed by the concerned bodies which were attended by the authorities of SSDA as well as Panchayat, but reality is that they violated the mandates of the resolution and constitutional imperatives as projected by the Hon'ble Supreme Court in the case of Sushanta Tagore (supra).

As a matter of fact, they are required to work out buffer zone and no construction area. We have no iota of doubt that the building which has been constructed was wholly impermissible, alternatively, even if purported sanction had been accorded by the competent authority, construction on such land and area in question is illegal and unauthorized. Firstly, the land has been transformed to 'Khoai' which is a rare gift of Nature. It is not recorded in the revenue records as 'Khoai' land as admittedly, no such classification of land as 'Khoai' but as per reports of the District Magistrate as well as Pollution Control Board, same is 'Khoai' land.

Fact is that 'Danga' land has been converted into 'Khoai' land and we have no hesitation to accept the report of the District Magistrate as well as the report of the Pollution Control Board in this regard. The District Magistrate in his report has pointed out that permission for construction of three storied building was applied for, but one extra floor has been added using the natural undulating topography of "khoai" land. The following is the observation made by the District Magistrate in its report:

"Aarsuday Projects & Infrastructure Pvt. Ltd. applied to Ruppur Gram Panchayat for construction of III storied building but from the field

verification It appears that one extra floor has been added using the natural undulating topography of khoai land. From the front view it appears as III storied building but from back view It can be seen as IV storied building Photographs of building are enclosed as Annexure-V. Hence the construction of commercial housing Aarsuday Projects & Infrastructure Pvt. Ltd. Is unauthorised complex by and Illegal."

From the report of District Magistrate it is apparent that the building is four storied. Photographs have been filed with the Report to prove the fact that khoai land has been used for raising construction by the builder, the respondent No. 6. Besides, District Magistrate has pointed out that construction is illegal and SSDA had issued N.O.C. in illegal manner. The District Magistrate has rightly mentioned that before conversion of the land, no permission to raise construction could have been granted as has been done in the instant case. Even otherwise conversion was bad in law.

We find from the Report submitted by the West Bengal Pollution Control Board that the adjacent area of the alleged site is low lying area formed by partial erosion of laterite soil and colloquially known as 'khoai', as the Pollution Control Board had inspected after the construction has been raised. When the report of the Collector as well as the Pollution Control Board are read together, there is no room to doubt that 'khoai' land has been used for the building. Whatever could be seen is apparent from the report of the Pollution Control Board that adjacent area is low lying area known as 'khoai'. In fact low lying area has been used in construction of four storied building as apparent from the report of the District Magistrate."

26. On a perusal of the aforesaid findings, it becomes apparent that the conclusion of the High Court, declaring the disputed construction to be illegal, was primarily founded on the following considerations:-

A. That the disputed construction of Aarsuday Projects was raised on land treated as falling within a preserved category, i.e., "khoai" land.

B. That the reports submitted by the District Magistrate and the WBPCB were read to conclude that the subject plot was in the nature of "khoai" land.

C. That the Panchayat Samiti was the sole competent authority to grant permission for construction, and that no such permission had been obtained by Aarsuday Projects from the said authority. Instead, permission was purportedly obtained from the Gram Panchayat, which was held to be incompetent to grant such approval under the extant statutory provisions/framework.

D. That the SSDA committed a grave error in permitting conversion of the nature of the land from "danga" to "bastu" after the construction work had been commenced.

E. That no permission had been obtained from the WBPCB for raising the construction, rendering the structure wholly illegal.

c. Regulatory Approvals, Permissions, and Factual Chronology Relating to the Disputed Construction

27. Before appreciating the submissions advanced at the Bar and analysing the reasons assigned by the High Court in the impugned judgment, whereby it not only directed demolition of the disputed construction belonging to Aarsuday Projects but also imposed costs and ordered initiation of appropriate proceedings against the officers concerned, it would be apposite to advert to certain admitted documents and orders placed on record.

28. The SSDA, being the designated planning authority, had published a Land Use and Development Plan in the year 2002, wherein the subject plot situated in Mouza Ballavpur, District Birbhum, admeasuring 0.39 acres and forming part of a larger tract of land admeasuring 28.12 acres, was included within the planning area as "residential" land. The developer, i.e., Aarsuday Projects purchased the subject plot by way of a registered sale deed dated 11th August, 2009. Thereafter, an entry was made in the revenue records on 3rd December, 2009 recording the nature of the land as "danga" (barren land).

On 29th December, 2009, the Ruppur Gram Panchayat issued a "No Objection Certificate" in favour of Aarsuday Projects for construction on the subject plot, conditional upon the procurement of requisite land conversion for the same. Subsequently, by a communication dated 25th January, 2010, the Urban Development Department, Government of West Bengal, directed the SSDA to revise the development plan for eleven mouzas, including Mouza Ballavpur, keeping in view the spirit of conservation and preservation.

29. On 10th September, 2011, the SSDA constituted a three-member Sub-Committee comprising of representatives from the Visva-Bharati Anchal Abasik Samiti and Visva-Bharati University. It may be noted that since the building plan submitted by Aarsuday Projects proposed a plinth area exceeding 300 square metres, the Ruppur Gram Panchayat on 21st October, 2011, forwarded the same to the Zilla Parishad, Birbhum, for vetting and approval in terms of the second proviso to Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. The Zilla Parishad vetted the building plan and returned the same to the Gram Panchayat on 4th

November, 2011, whereupon, on 5th November, 2011, the Gram Panchayat communicated the approval to Aarsuday Projects.

Thereafter, on 27th January, 2012, the Director, SSDA, directed inspection of the site and called for a report from the Sub-Committee prior to considering the grant of "No Objection Certificate" for conversion of land from "danga" to "bastu". The Sub-Committee furnished its inspection report on 8th February, 2012, finding no impediment to the grant of "No Objection Certificate" and conversion of land for construction, pursuant to which the SSDA accorded its approval and issued a "No Objection Certificate" for conversion of the land from "danga" to "bastu" on 28th February, 2012.

30. On 17th April, 2012, the writ petition forming the basis of the present appeal, came to be filed before the High Court seeking revocation of the sanction granted to Aarsuday Projects primarily on the ground that the land in question was "khoai" land. Meanwhile, on 5th June, 2012, the SSDA endorsed the grant of "No Objection Certificate" in the presence of representatives of Visva-Bharati University. On 9th January, 2013, the DL&LRO, Birbhum, approved conversion of the subject plot from "danga" to "bastu" for setting up the commercial housing project.

By July, 2013, construction of the building stood completed and even possession of certain units was handed over to the respective buyers. In the same month, the High Court called for reports from the District Magistrate and the WBPCB. The WBPCB, submitted its report dated 19th July, 2013, wherein it noted that while the land adjacent to the subject plot was a low-lying tract locally known as "khoai", no "No Objection Certificate" was required from the WBPCB, as the built-up area of the construction raised by Aarsuday Projects measured less than 20,000 square metres.

31. The District Magistrate, submitted a report dated 23rd July, 2013, with no specific finding on the nature of the land and sought clarification from SSDA regarding the basis of the grant of "No Objection Certificate". SSDA filed its objections on 14th August, 2013, reiterating that the subject plot was earmarked for "residential use" as per the Land Use and Development Control Plan, 2002 and that substantial human settlement already existed in the adjoining areas. Thereafter, the High Court passed the impugned judgment dated 21st and 22nd August, 2013.

32. It is essential to note here that another writ petition, being Writ Petition No. 34241(W) of 2013 (Dharmendra Kumar Sharma v. State of West Bengal), raising identical issues was filed before the High Court in relation to a building situated on a plot adjacent to the subject plot. In the said proceedings, the District Magistrate submitted a report before the High Court

stating that the land in question was not in the nature of "khoai" and had been earmarked for "residential use" under the Land Use and Development Control Plan, 2002 prepared by the SSDA.

In the same writ petition, Visva-Bharati University filed an affidavit in opposition admitting that the plot therein was privately owned, accessible by a PWD road, situated outside the boundaries of Visva-Bharati, and not located on "khoai" land. The relevant extracts from the said report and affidavit are reproduced hereinbelow for ready reference:-

"Report of District Magistrate

It also appears from the said report that sanction for existing single storied building was given by the Sriniketan Santiniketan Development Authority vide memo no SSDA/707/13/B-5/157/74/92 dated 07/07/1992 and no sanction for the said double storied residential building was accorded by S.S.D.A. it is mentioned in the report that double storied building might have been constructed before inception of S.S.D.A on 14th December, 1989. The said plot is not of 'KHOAI' nature and is marked as residential area in the Land Use and Development Control Plan prepared by S.S.D.A. Report as submitted by Executive Officer, Sriniketan Santiniketan Development Authority along with enclosures are annexed herewith.

Affidavit of Visva-Bharati University

6. The house has been constructed on a private plot. The plot is not owned by Visva Bharati. No construction or extension activity is going on in this building. The house is outside the boundary of Visva Bharati and not on khoai land.

7. However, the house can be accessed from PWD road through the Visva Bharati premises only on Shyambati side, as also from the Siksha Bhavana side. Earlier Visa Bharati did not have a boundary wall and the old inhabitants used to access their houses through the PWD road within the Visva Bharati Campus. At present Visva Bharati has started constructing a boundary wall, all around the campus and has been car-marking one a two PWD to roads to provide access to the house in these localities.

8. The building is located within a few meters of the fencing of the Ballavpur Wildlife Sanctuary as well as Visva Bharati premises."

[Emphasis supplied]

These admissions and findings lend support to the contention that the subject plot owned by Aarsuday Projects, being similarly situated and adjacent the

said land, could not have been treated as "khoai" land in absence of credible and unimpeachable material, the burden of establishing which rested squarely upon the writ petitioners (respondent Nos. 1-7 herein).

33. Furthermore, in response to an application made under the Right to Information Act, 2005, the Panchayat Samiti replied vide communication dated 16th April, 2015, that it became competent to accord permission for grant of building construction only in the year 2006. However, the first such construction permission was granted by the Panchayat Samiti only on 5th March, 2012. It was further clarified that, prior thereto, permissions for construction were being routinely accorded by the Gram Panchayat.

The said response lends support to the submission of the Aarsuday Projects that, during the relevant period when Aarsuday Projects initiated the construction on the subject plot, the practice of granting permissions through the Gram Panchayat, with vetting by the Zilla Parishad as and when required, was being consistently followed. Consequently, the approval by the Ruppur Gram Panchayat to the building plan on 5th November, 2011 cannot be faulted and outrightly rejected.

34. Even if it is assumed, arguendo, that there was any infirmity in the timing or manner of conversion of the subject plot from "danga" to "bastu", such infirmity could not have the effect of invalidating the entire construction raised by Aarsuday Projects. At best, such an infirmity would warrant regulatory scrutiny or corrective measures in accordance with law. It would not, however, justify the extreme consequence of demolition of a completed structure, particularly when the land was earmarked for "residential use" as per the Land Use and Development Control Plan, 2002 and the conversion was subsequently approved by the competent authority and no statutory provision mandated demolition as an automatic or inevitable consequence of such a defect.

35. The classification of land as "danga" or "bastu" is essentially a revenue classification, and in the absence of a specific statutory prohibition, the mere fact that conversion was granted subsequent to the approval of the building plan could not, by itself, render the construction raised by Aarsuday Projects, illegal. The omission to address this issue is of relevance, particularly when the land was otherwise earmarked for "residential use" under the notified Land Use and Development Control Plan, 2002.

36. Likewise, even if it is assumed that the Gram Panchayat was not the competent authority to accord approval to the building plan and that such authority vested exclusively in the Panchayat Samiti, the same would constitute, at best, a procedural irregularity. Such an irregularity, especially

where the building plan had been duly vetted by the higher forum, i.e., the Zilla Parishad and construction was undertaken in a bona fide manner, was clearly curable in nature.

In the absence of any tangible evidence of fraud, misrepresentation, or deliberate circumvention of statutory requirements, such a procedural lapse, even if assumed to exist, for arguments sake, could not render the construction per se illegal, nor could it justify the issuance of a direction for demolition, which is an extremely draconian consequence reserved for cases of blatant and substantive illegalities and violation.

37. Another aspect which merits consideration is that the Sub-Committee constituted by the SSDA, which comprised of the representatives of the Visva- Bharati Anchal Abasik Samiti and Visva-Bharati University, was actively involved in examining the application seeking conversion of the subject plot from "danga" to "bastu". Upon inspection, the Sub- Committee submitted its report dated 8th February, 2012, wherein it specifically recorded that there was no impediment to the grant of a "No Objection Certificate" or to the conversion of the land for residential purposes.

The absence of any objection at this stage, particularly from representatives associated with Visva-Bharati, assumes significance, as it reinforces the bona fide manner in which Aarsuday Projects proceeded with the construction and detracts from the premise that the construction was undertaken in disregard of environmental considerations or institutional sensitivities.

38. At this stage, it would also be apposite to note some developments subsequent to the events in question. On 25th September, 2019, the Central Government issued Notification No. S.O. 3527 (E) providing for demarcation of Eco-Sensitive Zones around the Ballavpur Wildlife Sanctuary and preparation of Zonal Master Plans, wherein it was expressly provided that no alteration or restriction would be made in respect of existing infrastructure.

Additionally, in response to a query raised by Aarsuday Projects, the SSDA, by a letter dated 9th February, 2025, informed that the subject plot had been marked as "Retail Commercial & Business" in the 'Land Use Map' of the proposed Land Use and Development Control Plan prepared in the year 2017. The said communication also referred to the declaration of the Eco-Sensitive Zone adjoining the protected forest area and clarified that no new permanent structures would be permitted within the Eco-Sensitive Zone.

39. In the aforesaid factual backdrop, it is evident that Aarsuday Projects undertook and completed the construction after securing the requisite permissions and sanctions from the competent authorities and exercising

jurisdiction at the relevant point in time. The building plan was duly vetted by the Zilla Parishad and thereafter treated as approved by the Ruppur Gram Panchayat. The clarification furnished in response to the application made under the Right to Information Act, 2005, on 16th April, 2015, further establishes that, during the relevant period, the Gram Panchayat was exercising the authority to accord building permissions, with vetting by the Zilla Parishad, wherever required.

The SSDA and its duly constituted Sub-Committee examined in detail and accorded approval to the application filed by Aarsuday Projects for conversion of the land from "danga" to "bastu". This action was subsequently confirmed by the competent revenue authority, namely, the DL&LRO, Birbhum. Significantly, there was no contemporaneous material on record establishing that the subject plot was in the nature of "khoai" land.

On the contrary, the report submitted by the District Magistrate and the affidavit filed by Visva-Bharati University in a separate writ petition being Writ Petition No. 34241(W) of 2013, concerning the plot adjacent to the subject plot, categorically indicated that the land in the vicinity was not "khoai" and was recorded and treated as residential land. In these circumstances, no mala fides or deliberate mischief or wrongdoing can be attributed to the actions of Aarsuday Projects in undertaking and completing the disputed construction.

d. Assessment of the High Court's Approach on the Nature of the Land and Regulatory Permissions

40. The thrust of the impugned judgment of the High Court is essentially twofold. First, the High Court proceeded on the premise that the land on which the disputed construction was raised, was "khoai" land deserving preservation, drawing heavily from the judgment of this Court in *Sushanta Tagore* (supra) and with references to the writings of the Nobel Laureate, Shri Rabindranath Tagore, wherein "khoai" was described as a unique natural formation of aesthetic and visual significance, frequented by visitors to Santiniketan and serving as a source of artistic inspiration. Second, the High Court held that the construction was undertaken without obtaining due permission from the competent authority and prior to the grant of conversion of the land use by the SSDA and thus, the entire construction was illegal and liable to demolition.

41. However, upon a careful reading of the impugned judgment, we find no discussion or finding with respect to the fact that the subject plot on which the disputed construction was raised by Aarsuday Projects was privately owned land, nor is there any consideration of the fact that the larger tract of land of

which the subject plot forms a part had already witnessed substantial human settlement.

The judgment is also conspicuously silent on the crucial aspect that plots adjoining the subject plot had already been utilised for construction of residential buildings much prior to the disputed construction. In order to demonstrate this apparent anomaly, it would be apposite to extract and reproduce the site plan of larger tract of land admeasuring 28.12 acres bearing reference to existing construction. These documents are being extracted infra (see, Page No. 84-85).

The omission to advert to these vital aspects assumes considerable significance, particularly in view of the constitutional protection of the right to property guaranteed under Article 300A of the Constitution of India, which unequivocally provides that "no person shall be deprived of his property save by authority of law". Any interference with privately owned property, including by way of demolition or deprivation of its beneficial use, must therefore rest on a clear statutory foundation and be preceded by due consideration of all relevant factual and legal circumstances, which exercise, appears not to have been undertaken in the present case.

42. It is also evident that the writ petitioners (respondent Nos. 1-7) before the High Court did not place on record any contemporaneous documentary evidence or admissible material to establish that the disputed construction was, in fact, raised on "khoai" land. The assertion of the writ petitioners (respondent Nos. 1-7) that the entire tract of land was of "khoai" nature appears to have been premised on a broad and generalized assumption drawn from the judgment of this Court in *Sushanta Tagore* (supra), without any site-specific evidence. The High Court, in turn, appears to have proceeded on the same assumptions.

43. The absence of reliable and contemporaneous material conclusively establishing the nature of the subject plot is further evident from the fact that the High Court itself deemed it necessary to call for reports from the District Magistrate and the WBPCB to ascertain whether the land on which the disputed construction stood was, in fact, "khoai" land. This fact, in itself, indicates that the question regarding the nature of the land was not free from doubt and involved seriously disputed questions of facts emanating from the material placed before the High Court at the threshold. Thus, we feel that the writ petition ought not to have been entertained.

44. That threshold having been crossed, it becomes necessary for this Court to closely examine these two reports, both to assess their evidentiary value and to determine whether they furnish credible and cogent material sufficient to

sustain and affirm the conclusion that the subject plot was of "khoai" nature, so as to justify the directions issued by the High Court.

45. Relevant extracts from the report of the District Magistrate are reproduced hereinbelow:-

"2. Aarsuday Projects & Infrastructure Pvt. Ltd. having address at 26, Lake Avenue, Kolkata 700 026 has dubiously sought for sanction of plan & permission of construction from the Pradhan, Ruppur Gram Panchayat. As per proviso (7) for Rule 28 of the Amendment to Control of Building operations vide NO.4163/PN/O/I/3R-7/04, dated 9th of August, 2006 for Construction of Building Structure in Panchayat Areas under Development Authority. Panchayat Samity is the appropriate authority to sanction such plan but not the Gram Panchayat (copy enclosed as Annexure I). In this case, Aarsuday Projects & Infrastructure Pvt. Ltd. managed to get sanction of plan from Ruppur Gram Panchayat which has no authority to sanction building plan and give permission for construction (copy enclosed as Annexure II).

3. Executive Officer, SSDA through his office Memo NO.SSDA/35/B-2/2012 dated 28/02/2012 has given No Objection Certificate to Director, Aarsuday Projects & Infrastructure Pvt. Ltd. for conversion of land in question from Danga to Bastu (copy enclosed as Annexure III) and subsequently DLLRO, Birbhum has given permission for Conversion under sub section 2(c) of Section 4C of WBLR Act 1955 on 09/01/2013 (copy enclosed as Annexure IV).

4. It appears that Pradhan, Ruppur Gram Panchayat issued Sanction to Aarsuday Projects & Infrastructure Pvt. Ltd. on 05/11/2011 i.e. much before No Objection Certificate issued by Executive Officer, SSDA and permission for conversion of land issued by DLLRO, Birbhum.

5. Aarsuday Projects & Infrastructure Pvt. Ltd. applied to Ruppur Gram Panchayat for construction of III storied building but from the field verification it appears that one extra floor has been added using the natural undulating topography of khoai land. From the front view it appears as III storied building but from back view it can be seen as IV storied building. Photographs of building are enclosed as Annexure-V. Hence the construction of commercial housing complex by Aarsuday Projects & Infrastructure Pvt. Ltd. is unauthorised and illegal.

6. It appears that Aarsuday Projects & Infrastructure Pvt. Ltd. constructed commercial housing complex in Mouza Ballavpur in Ruppur Gram Panchayat of Bolopur P.S. illegally without valid sanction and permission from the

appropriate authority and SSDA has not taken appropriate action to stop illegal construction.

7. Clarification has been sought from the Executive Officer, SSDA by the undersigned vide memo No.833/1/XXI/Dev. Dated 09/07/2013 regarding the basis of issuance of No Objection Certificate to Aarsuday Projects & Infrastructure Pvt. Ltd. for illegal conversion of land from Danga to Bastu and direction was given for initiation of legal action against those persons who violated the law. (copy enclosed as Annexure VI)."

Observations: A careful perusal of the aforesaid report of the District Magistrate indicates that, while it levels serious allegations against the developer, i.e., Aarsuday Projects as well as against the officers of the Gram Panchayat and the SSDA in relation to the grant of permissions and conversion of land, the report does not refer to any contemporaneous site inspection by a Geologist or other scientific expert or to any objective assessment based on reference to revenue, planning, or land records to substantiate the conclusion that the subject plot itself was in the nature of "khoai" land.

The observations regarding utilization of natural undulating topography are not supported by any technical survey, demarcation, or documentary evidence identifying the subject plot as "khoai". In the absence of such material evidence, the report could not furnish a reliable basis for concluding that the disputed construction raised by Aarsuday Projects was on "khoai" land.

46. Relevant extracts from the report of the West Bengal Pollution Control Board (WBPCB) are reproduced hereinbelow:-

"Observations:

- The construction site in concern is situated at a distance of about seventy meters on the southern side of the boundary wall of the Ballavpur Wild Life Sanctuary (locally known as 'Deer Park'). During inspection it was observed that construction of boundary wall as well as basic construction of a four storied building has been completed. Masonry activities were in progress during inspection. No responsible representative of the concerned construction company was available at the site to deliver relevant information to the inspecting officials.
- The adjacent area of the alleged site is low lying area formed by partial erosion of laterite soil and colloquially known as "khoai". Number of privately owned houses has come up in the near vicinity of the site in concern on the northern side (away from the sanctuary). Considerable

human settlement has already come up in the near neighbourhood of the sanctuary.

- The inspecting officials were informed by the SSDA authority that the alleged construction company has not obtained any permission from SSDA for its construction activity; further the executive officer informed that a letter of denial was issued in 2010 to the concerned company by SSDA.
- It was known from the SDLLR office that as per the classification of lands of L&LR Department no classification named "khoai" exists.
- Birbhum Zilla Parishad issued approval of building plan to the alleged company for their construction work on the site in concern in 2011.
- The Forest Range Officer of Bolopur range informed the inspecting officers that the concerned company has not taken any permission from them for their construction activity.

Comments:

- For construction activities projects having total built up area more than 20000 square meter needs to obtain prior environmental clearance from the State Environmental Impact Assessment Authority (SEIAA) as per the Environmental Impact Assessment Notification of the Ministry of Environment and Forests, Government of India dated 14th September, 2006 and its amendments made thereafter.
- Physical observation suggests that the area of concern is very sensitive from ecological point of view. Indiscriminate construction activities and consequent development of human settlement may affect the ecological balance of the area. In fact this possibility has been explicitly expressed in the judgment of the Hon'ble Supreme Court. Also the municipal solid waste and effluent generated from the habitation in this ecosensitive area may create additional problems."

Observations: A careful perusal of the report of the WBPCB indicates that it does not record any finding to the effect that the subject plot on which the disputed construction was raised was itself "khoai" land. The report merely notes that the adjacent area to the site is a low-lying tract formed by partial erosion of laterite soil and colloquially referred to as "khoai", while at the same time acknowledging that, as per the classifications of land maintained by the Land & Land Reforms Department, no category of land described as "khoai" exists in the revenue records.

The report further records that a number of privately owned houses had already come up in the vicinity and that substantial human settlement existed in the surrounding area. Importantly, the report clarifies that prior environmental clearance from the State Environmental Impact Assessment

Authority is required only for construction projects having a total built-up area exceeding 20,000 square metres in terms of the Environmental Impact Assessment Notification and its subsequent amendments, a threshold which was not crossed by the disputed construction made by Aarsuday projects on the subject plot.

It is also pertinent to note that the WBPCB was not the authority vested with the jurisdiction to render a definitive opinion on the nature or classification of land, and any observations made by it in this regard can, at best, be of a general or incidental nature and cannot be treated as conclusive or determinative of the character of the subject plot.

47. Upon an overall consideration of the material placed on record, including the reports of the District Magistrate and the WBPCB, on which the impugned judgment heavily relies, it becomes evident that neither of the aforesaid reports furnishes any clear, contemporaneous, or objective material establishing that the subject plot on which the disputed construction was raised was itself "khoai" land or that construction was totally impermissible thereupon.

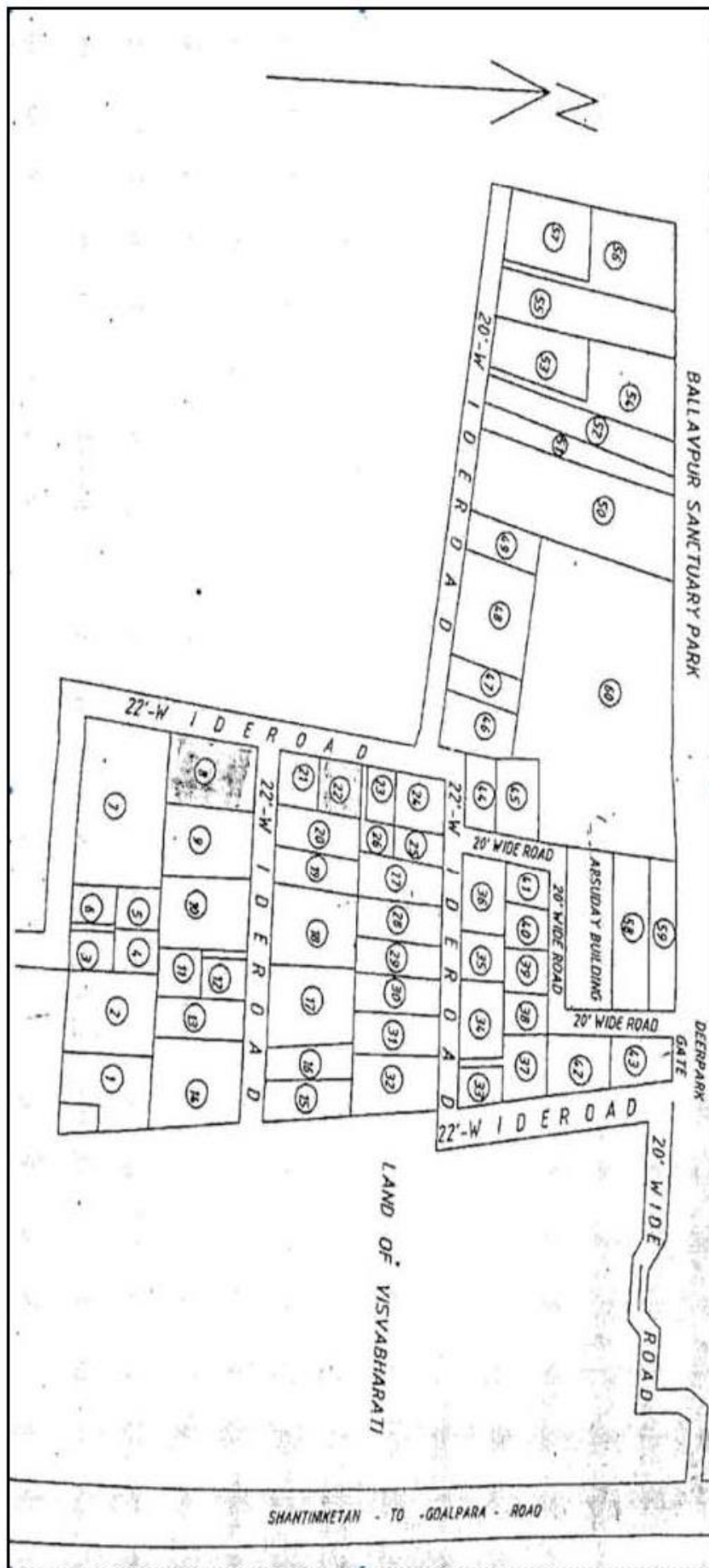
While both reports advert to emphasized concerns regarding environmental sensitivity and procedural irregularities, they stop short of identifying the subject plot as falling within any preserved or prohibited category of land, and in fact acknowledge that no classification of land described as "khoai" exists in the revenue records. The WBPCB's report, in particular, confines its observations to the nature of the adjacent area and clarifies that the subject construction did not attract the requirement of prior environmental clearance under the applicable statutory regime.

The District Magistrate's report is based merely on conjectures and surmises and was submitted without the concerned official even bothering to undertake a proper site inspection or getting a spot verification done through an expert. Hence, in the absence of reliable scientific material establishing the "khoai" character of the subject plot, the foundational premise on which the High Court proceeded to issue the directions cannot be said to be conclusively borne out from the record.

e. Bona Fides of the Writ Petitioners (Respondent Nos. 1-7) and Burden of Proof in Public Interest Litigation

48. Since the public interest litigation targeted construction on a single plot forming part of a larger tract admeasuring approximately 28.12 acres, it becomes necessary to examine the location of the subject plot in its proper spatial and factual context. For this purpose, reference may be made to the

layout plan of the entire tract of land, placed on record which presents a comparative visualization of the position of the plot owned by Aarsuday Projects vis-à-vis other plots comprised within the same parcel. For the sake of ready reference, the said layout plan, along with a chart detailing the ownership particulars, is reproduced hereinbelow:-



SITE PLAN OF LAND AT DIST-BIRBHUM, P.S-BOLPUR, MOUZA-BALLAVEPUR, JL NO-63, R.S&L.R PLOT NO-3644/3782.

- 1.- BUILDING
- 2.- HOUSE OF MOHAN SINGH
- 3.- HOUSE OF MANORANJAN SHINGA ROY
- 4.- BUILDING
- 5.- BUILDING
- 6.- BUILDING
- 7.- BUILDING
- 8.- VACANT LAND
- 9.- BUILDING
- 10.- HOUSE OF ASHIM KUMAR PANJA
- 11.- HOUSE OF ASHISH KUMAR PANJA
- 12.- BUILDING
- 13.- HOUSE OF SASODHAR RAHA
- 14.- HOUSE OF GEETASREE RAHA
- 15.- HOUSE OF PRANAB KUMAR MUKHOPADHAY
- 16.- HOUSE OF SWAPNA MUKHOPADHAY
- 17.- BUILDING
- 18.- HOUSE OF BIPLAB BHAWAL
- 19.- HOUSE OF SUBARNA PANDIT
- 20.- BUILDING
- 21.- BUILDING
- 22.- BUILDING
- 23.- BUILDING
- 24.- BUILDING
- 25.- HOUSE OF KALPANA ADHIKAREE
- 26.- BUILDING
- 27.- HOUSE OF PRASANTA KUMAR SAHU
- 28.- BUILDING
- 29.- HOUSE OF TARUN KUMAR GHOSH
- 30.- VACANT LAND

- 31.- BUILDING
- 32.- HOUSE OF SAILU KUMAR MAJUMDAR
- 33.- HOUSE OF SEEBALI CHACROBARTI
- 34.- BUILDING
- 35.- VACANT LAND
- 36.- BUILDING
- 37.- VACANT LAND
- 38.- VACANT LAND
- 39.- VACANT LAND
- 40.- HOUSE OF SUMANTA KUMAR BASU
- 41.- HOUSE OF BAISHALI DATTA
- 42.- HOUSE OF SHIBANI GOUDHARY
- 43.- HOUSE OF APARNA DAS NAYAKPATIKA
- 44.- VACANT LAND
- 45.- VACANT LAND OF TAPASH MALLIK
- 46.- VACANT LAND OF HIRNALA MALLIK
- 47.- VACANT LAND
- 48.- VACANT LAND
- 49.- VACANT LAND
- 50.- VACANT LAND
- 51.- VACANT LAND
- 52.- HOUSE OF DEBI PROSHANNA CHAUDHARY
- 53.- BUILDING
- 54.- BUILDING
- 55.- BUILDING
- 56.- HOUSE OF BULBUL BASU
- 57.- HOUSE OF ASIMANDU SEN
- 58.- VACANT LAND OF ABHILIT SARKAR
- 59.- VACANT LAND
- 60.- VACANT LAND OF NILA BAGCHI

Mozammel Hoque
SURVEYOR
MOZAMMEL HOQUE

49. A perusal of the ownership details reflected in the aforesaid layout plan reveals that residential houses belonging to certain writ petitioners (respondents herein) themselves, including Respondent No. 2-Mohan Singh (House No. 2); Respondent No. 3-Prasanta Sahu (House No. 27) and Respondent No. 4-Bulbul Basu (House No. 56), are situated within this very tract of land. It is also not in dispute that, on the date when approval for construction was granted and the conversion order in respect of the subject plot was issued, there was no contemporaneous document or credible material on record establishing that the subject plot was in the nature "khoai" land. The situation remains the same even today.

50. As a matter of fact, even the reports submitted pursuant to the directions of the High Court, including those of the District Magistrate and the WBPCB, do not specifically identify the subject plot as "khoai" land. On the contrary, a pertinent finding emerging from the survey material collected by WBPCB is that "khoai" formations were noticed on the land adjacent to the subject plot on which Aarsuday Projects has raised the disputed construction. This finding assumes significance, as it clearly negates the assumption that the subject plot itself was of "khoai" nature.

51. During the course of hearing, learned counsel representing Aarsuday Projects placed on record photographs depicting the disputed construction/building and the adjoining structures. The said photographs, which deserve reference in the judgment are superimposed hereinbelow:-



A perusal of the photographs clearly shows that preexisting residential structures stood directly opposite the disputed construction/building, separated merely by a road, and were also located within the same larger tract of land. It is difficult to perceive that "khoai" indentations could solely and exclusively exist on the single plot of land owned by Aarsuday Projects, while the nature of the land on which the adjoining and opposite constructions stood unremarkable. The omission to question the validity of these constructions before the writ court, despite them being located within the same parcel of land, raises a serious doubt as to the bona fides of the writ petitioners (respondent Nos. 1-7 herein) and lends credence to the contention that the writ petition selectively targeted the newly raised construction of Aarsuday Projects.

52. Equally significant is the principle governing the exercise of jurisdiction in public interest litigation (PIL). While writ jurisdiction serves an important constitutional purpose, the burden squarely lies on the writ petitioners to place clear, cogent, and reliable material on record in support of the allegations made. Courts exercising writ jurisdiction must remain circumspect while entertaining petitions that hinge upon disputed questions of fact, particularly where such disputes require detailed examination of evidence or adjudication of rival factual claims. Public interest litigation cannot be permitted to

become a vehicle for selective or targeted challenges, nor can it be invoked to resolve contested factual issues which are not capable of determination on affidavits alone.

53. Reference in this regard may be made to the decisions of this Court in Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) v. Sukamani Das⁷ and Shubhas Jain v. Rajeshwari Shivam⁸.

54. Applying the aforesaid principles to the case at hand, it becomes evident that, in the absence of unimpeachable material conclusively establishing the "khoai" character of the subject plot, the High Court ought to have exercised greater restraint in invoking its writ jurisdiction to grant far-reaching reliefs on the basis of assumptions or inferential reasoning.

55. Viewed cumulatively, the material placed on record does not support the foundational assumptions on which the writ petition proceeded. In the absence of clear, specific, and contemporaneous scientific evidence establishing that the subject plot was of "khoai" nature, the invocation of public interest jurisdiction to assail the construction undertaken by Aarsuday Projects cannot be sustained, particularly where similarly situated constructions within the same tract of land were left unchallenged.

IX. CONCLUSION

56. As an upshot of the foregoing discussion and for the reasons recorded hereinabove, the judgment and order dated 21st & 22nd August, 2013 passed by the Division Bench of the High Court at Calcutta in Writ Petition No. 8341(W) of 2012 does not stand to scrutiny and deserves to be set aside.

57. Hence, the instant appeals are decided in the following terms:

- **Civil Appeal No. 2920 of 2018**, preferred by Aarsuday Projects, the developer of the subject plot, is allowed and the judgment and order dated 21st & 22nd August, 2013 passed by the Division Bench of the High Court is hereby set aside.
- **Civil Appeal No. 2921 of 2018**, preferred by the Sriniketan Santiniketan Development Authority (SSDA) challenging the adverse observations made against it and its officers, as well as the consequential directions for initiation of proceedings, is allowed in view of the findings recorded in Civil Appeal No. 2920 of 2018 preferred by Aarsuday Projects and the subsequent actions taken by the SSDA. The adverse remarks and consequential directions issued against the SSDA and its officers in the impugned judgment shall, accordingly, stand expunged.

- **Civil Appeal Nos. 2922-2923 of 2018**, preferred by the subsequent purchasers of flats constructed by Aarsuday Projects on the subject plot, are disposed of in terms of the judgment rendered in Civil Appeal No. 2920 of 2018.

58. In the course of the discussion made hereinabove, we have found that the writ petition instituted before the High Court lacked bona fides, inasmuch as certain among respondent Nos. 1-7 (writ petitioners before the High Court) admittedly had existing residential structures in the immediate vicinity and within the same tract of land as the disputed construction raised by Aarsuday Projects. The said material fact was not disclosed while invoking the extraordinary jurisdiction of the High Court by way of public interest litigation.

In view thereof, we deem it appropriate to impose costs quantified at Rs.1,00,000/- (Rupees One Lakhs only) to be paid by the writ petitioners, i.e., respondent Nos. 1-7 in Civil Appeal No. 2920 of 2018. The said amount shall be deposited with the West Bengal Legal Services Authority within a period of two months from today. Proof of such deposit shall be filed before the Registry of this Court within two weeks thereafter.

59. Pending application(s), if any, shall stand disposed of.

.....**J. (Vikram Nath)**

.....**J. (Sandeep Mehta)**

New Delhi;

January 29, 2026.

1 Hereinafter, being referred to as the "High Court".

2 Before the High Court, there were 8 writ petitioners, and all were made party-respondents in Civil Appeal No. 2920 of 2018. However, the name of Shri Sushanta Tagore was deleted from the array of parties vide this Court's order dated 27th July, 2015 owing to his death.

3 Hereinafter, being referred to as the "Aarsuday Projects".

4 Plot No. 3644/3782 admeasuring 0.39 acres in Mouza Ballavpur, J.L. No. 63, District Birbhum.

5 Hereinafter, being referred to as the "SSDA".

6 (2005) 3 SCC 16.

7 (1999) 7 SCC 298.

8 (2021) 20 SCC 454.

IN THE SUPREME COURT OF INDIA

Dr. Jaya Thakur
Vs.
Government of India & Ors.

[Writ Petition (C) No. 1000 of 2022]

Head Note – Right to menstrual health is part of the right to life under Article 21 of the Constitution. Issued directions to schools to provide biodegradable sanitary napkins free of cost to adolescent girls.

Issued directions to ensure that schools are equipped with functional and hygienic gender-segregated toilets. Directed the pan-India implementation of the Union's national policy, 'Menstrual Hygiene Policy for School-going Girls' in schools for adolescent girl children from Classes 6-12.

Directions

1. All States/UT must ensure that every school, whether government-run or privately managed, in both urban and rural areas, is provided with functional gender segregated toilets with usable water connectivity.
2. All existing or newly constructed toilets in schools shall be designed, constructed and maintained to ensure privacy and accessibility, including by catering to needs of children with disabilities.
3. All school toilets must be equipped with functional washing facilities and soap and water available at all times.
4. All states/UTs must ensure that every school, whether government-run or privately managed, in both urban and rural areas, provide oxo-biodegradable sanitary napkins manufactured in compliance with the ASTM D-6954 standards free of cost. Such sanitary napkins must be made readily accessible to girl students, preferably within toilet premises through sanitary napkin vending machines or, where not visible, at a designated place.
5. All States/UTs must ensure that every school, whether government-run or privately managed, in both urban and rural areas establish menstrual hygiene management corners. It must be equipped with spare innerwears, uniforms, disposable pads and other necessary materials to address menstrual urgency.

Directions for the disposal of sanitary waste

1. All States and Union Territories shall ensure that every school, whether Government-run or privately managed, in both urban and rural areas, is equipped with a safe, hygienic, and environmentally compliant mechanism

for the disposal of sanitary napkins, in accordance with the latest Solid Waste Management Rules.

2. Each toilet unit shall be equipped with a covered wastebin for the collection of sanitary material, and cleanliness and regular maintenance of such bins shall be ensured at all times.

This pronouncement is not just for stakeholders of the legal system. It is also meant for classrooms where girls hesitate to ask for help. It is for teachers who want to help but are restrained due to a lack of resources. And it is for parents who may not realise the impact of their silence and for society to establish its progress as a measure in how we protect the most vulnerable. We wish to communicate to every girlchild who may have become a victim of absenteeism because her body was perceived as a burden when the fault is not hers.

The bench formed four questions:

1. Whether the unavailability of gender-segregated toilets and non-access to menstrual absorbent would be said to be in violation of the right to equality for adolescent girlchildren under Article 14?

Answer: The substantive approach to equality under Article 14 demands that treatment be accorded with due regard to the individual, institutional, systemic, and contextual barriers that impede the translation of rights in reality. At the same time, the State, as a benefactor, is under an obligation to remedy such structural disadvantage.

For a menstruating girl child who cannot afford menstrual absorbents, the disadvantage is two-fold.

First, vis-à-vis menstruating girl children who can afford menstrual absorbents.

Secondly, vis-à-vis male counterparts or nonmenstruating counterparts.

Further, when the menstruating girl child is also a child with disability, she is not merely facing disadvantages arising from menstrual poverty, but is additionally subjected to other disadvantageous consequences flowing from the intersection of gender and disability.

From the perspective of substantive equality, the absence of menstrual hygiene measures entrenches gendered disadvantage by converting a biological reality into a structural exclusion. The denial of basic enabling conditions, i.e., lack of clean and functional washrooms, menstrual products, disposal mechanism, and awareness about MHM measures, impedes not only

a girl child's right to participate in education, but also her right to opportunity to compete, to advance, and to realize her potential throughout her life. It is crucial to address these deficiencies to prevent temporary exclusion from turning it into permanent inequality.

2. Whether the right to dignified menstrual health could be said to be a part of Article 21 of the Constitution?

Answer: The inaccessibility of menstrual hygiene management measures undermines the dignity of a girl child as dignity finds its impression in conditions that enable individuals to live in a condition without humiliation, exclusion or avoidable suffering. Privacy is inextricably linked with dignity as the collateral it entails a duty on the State to not only refrain from violating privacy but also an obligation on the State to take necessary measures to protect privacy. The right to life under Article 21 of the Constitution includes the right to menstrual health.

The absence of safe and hygienic menstrual management measures undermines dignified existence by compelling the adolescent female students to either resort to absenteeism or adopt unsafe practices, or both, which violates the bodily autonomy of the menstruating girl children.

Access to effective and affordable menstrual hygiene management measures helps a girl child attain the highest level of sexual and reproductive health. The right to a healthy reproductive life embraces the right to access education and information about sexual health.

Using unhygienic absorbents leads to various diseases in girls, which in turn violates their right to bodily autonomy.

It is limpid that when a girl child cannot access menstrual absorbents, she may resort to natural materials, newspaper, cloth, tissue, cotton wool, or any other unhygienic absorbent. In case of a lack of adequate clean water and soap, she may also struggle to properly clean and dry herself. It is not unknown that poor menstrual hygiene may cause reproductive tract infections such as bacterial vaginosis, which may in turn lead to infertility.

3. Whether the unavailability of gender-segregated toilets and non-access to menstrual absorbent could be said to be a violation of the right to participation and equality of opportunity as constitutional guarantees enshrined under Article 14 of the Constitution?

Answer: The right to equality is expressed through the right to participate on equal terms, and at the same time, the equality of opportunity necessitates that

everybody has a fair chance to acquire the skills necessary to access benefits. Inaccessibility of menstrual hygiene management measures strips away the right to participate on equal terms in schools. The domino effect of the absence of education is the inability to participate in all walks of life in future.

In the absence of clean and functional washrooms, girl children would be unable to manage menstruation with privacy and dignity in school. This will put her in constant anxiety of leakage, staining clothes, and exposure to embarrassment. It is this fear which discourages her from attending school altogether. Similarly, lack of access to menstrual absorbents affects participation by making it practically unfeasible for girls to remain in school for long hours or actively participate.

4. Whether the unavailability of gender-segregated toilets and non-access to menstrual absorbent could be said to be in violation of the right to education under Article 21A and the Right to Free and Compulsory Education under the 2009 Act?

Answer: The right to education is termed as a multiplier right as it enables the exercise of other human rights. The right to education forms a part of the broader framework of the right to life and human dignity, which can't be realised without access to education. The substantive approach to equality demands that the treatment be accorded with due regard to institutional, systematic and contextual barriers that impede the translation of rights in reality. The State as a benefactor is under an obligation to remedy such structural disadvantages.

The fundamental right to education under Article 21A and the RTE Act comprises free, compulsory and quality education. Free education includes all kinds of charges or expenses which would prevent a child from pursuing and completing elementary education.

To enable a child's participation in school by way of affirmative measures reflects commitment to the substantive approach to equality, which goes beyond formal access to schooling. Such affirmative measures mandate State action to ensure all children are placed equally to avail educational opportunities.

All schools, whether run by the appropriate government or privately managed, must act in accordance with the norms and standards laid down in Section 19. In case a school is not controlled by appropriate government, or authority the found to be in contravention with the RTE Act, it would be derecognised. Insofar as school established or controlled by the appropriate government or

local authorities is found to be in contravention of the provisions of the RTE Act, the State would be held accountable.

The right to education as a human right does not merely demand parity between genders but further requires equality of opportunity in the enjoyment of that right for all. Inaccessibility of MHM measures perpetuates a systemic exclusion and discrimination that impacts the admission or continuation of girl children in school.

JUDGMENT

J.B. Pardiwala & R. Mahadevan, JJ.:

For the convenience of exposition, this judgment is divided into the following parts:-

Index

- I. THE CONTEXT
- II. THE BASICS
- III. SUBMISSIONS ON BEHALF OF THE PARTIES....
 - i. Submissions on behalf of the Union of India - Respondent Nos. 1 to 3 respectively ...
 - ii. Submissions on behalf of the States - Respondent Nos. 4 to 39 respectively ...
- IV. ISSUES FOR CONSIDERATION
- V. ANALYSIS
- A. The right to access education: A fundamental human right
 - i. Education - an essential human right in the International Human Rights Law framework
 - ii. Judicial recognition of education as a human right
- B. Substantive approach to right to equality in education under Article 14 of the Constitution
 - i. Menstruation as a barrier to the right to access education
 - a. Intersectionality of disability, gender, and access to education
- C. The right to dignified menstrual health a part of Article 21
 - i. The right to human dignity as a concomitant of the right to life ...

- ii. The right to privacy and decisional autonomy
- iii. The right to menstrual health as a facet of the right to life
- D. The right to participation and the equality of opportunity respectively as constitutional guarantees under Article 14
 - i. Lack of menstrual hygiene measures as a barrier in exercising the right to participate in school
 - ii. Lack of menstrual hygiene management measures impede the equality of opportunity
 - a. Accessibility of menstrual hygiene management measures - a step towards Social Justice
- E. The fundamental right to education under Article 21A
 - i. Right to free and compulsory education under the RTE Act
 - a. Management of menstrual hygiene as a financial barrier under Section 3 of the RTE Act
 - b. Menstrual management measures as mandatory "norms and standards" for schools under Section 19 of the RTE Act
- F. Role of Men in Menstruation
- VI. CONCLUSION
- VII. DIRECTIONS

"A period should end a sentence - not a girl's education."

1. We are tempted to preface our judgment with the words of Melissa Berton, an American educator, social activist, and producer. The statement articulated above resonate with an undiminishing force in the present petition as well. The issues that have unfolded before us echo the very same judicial disquiet. Even with the passage of time, the challenges that beset a girl child's education persist in much the same form.

I. THE CONTEXT

2. The petitioner, who is a social worker, has filed the present petition under Article 32 of the Constitution in public interest seeking appropriate directions to the respondents - the Union of India, the States and Union Territories respectively to ensure providing of (i) free sanitary pads to every female child studying between classes 6 & 12; and (ii) a separate toilet for females in all government aided and residential schools. Apart from this, certain other

consequential reliefs have also been sought for in public interest including the maintenance of toilets and the spread of awareness programmes. The prayer in the petition reads thus:-

- "a. issue a writ order or directions in the nature of Mandamus to the Respondents to provide the free sanitary pads to girl child who are studying from 6th to 12th class and;
- b. issue a writ order or directions in the nature of Mandamus to the Respondents to provide the separate girl toilet in all Government, Aided and residential schools;
- c. issue a writ order or directions in the nature of Mandamus to the Respondents to provide one cleaner in all Government, Aided and residential schools to clean the toilets and;
- d. issue a writ order or directions in the nature of Mandamus to the Respondents to provide three-stage awareness programme i.e. Firstly, the spreading of awareness about menstrual health and unboxing the taboos that surround it; Secondly, providing adequate sanitation facilities and subsidized or free sanitary products to women and young students, especially in disadvantaged areas; Thirdly, to ensure an efficient and sanitary manner of menstrual waste disposal and;
- e. pass such other or further order/s as this Hon'ble Court may deem it fit in the facts and circumstances of this case."

II. THE BASICS

3. Menstruation refers to the regular discharge of blood and mucosal tissue from the inner lining of the uterus through the cervix, which passes out of the body through the vagina at approximately monthly intervals. It occurs when the egg released during ovulation is not fertilized, leading to the breakdown and shedding of the uterine lining. Menarche (the first menstrual period) occurs after the onset of pubertal growth. The average age of a female at the time of menarche is between 8 and 15 years, and it usually occurs at intervals of about 28 days.

4. The Ministry of Drinking Water and Sanitation in the National Guidelines for Menstrual Hygiene Management defines menstrual hygiene management (hereinafter referred to as "MHM") as, "(i) articulation, awareness, information and confidence to manage menstruation with safety and dignity using safe hygienic materials together with (ii) adequate water and agents and spaces for washing and bathing with soap and (iii) disposal of used menstrual absorbents with privacy and dignity." Further, water, sanitation and hygiene

(hereinafter referred to as "WASH") facilities include clean water, sex-separated washrooms, handwashing facilities and MHM.¹

5. According to the 2012 Joint Monitoring Programme of the World Health Organization, MHM is defined as thus;

"Women and adolescent girls are using a clean menstrual management material to absorb or collect menstrual blood, that can be changed in privacy as often as necessary, using soap and water for washing the body as required, and having access to safe and convenient facilities to dispose of used menstrual management materials. They understand the basic facts linked to the menstrual cycle and how to manage it with dignity and without discomfort or fear."

6. In the aforesaid context, we may discuss what menstrual poverty or period poverty means. Menstrual poverty, also known as period poverty, refers to the financial burden and obstacles that women face in affording menstrual hygiene, or sanitary products because they are unable to maintain such expenditure. It extends beyond the lack of sanitary products and includes inadequate WASH facilities.

7. The present writ petition seeks to address this issue of lack of menstrual hygiene management in schools across the country. The problem identified is two-fold, first, absenteeism; and secondly, completely dropping out of school due to lack of MHM measures.²

8. In such circumstances referred to above, the petitioner is here before this Court with the present writ petition.

III. SUBMISSIONS ON BEHALF OF THE PARTIES

i. Submissions on behalf of the Union of India - Respondent Nos. 1 to 3 respectively

9. We have perused the affidavit filed by the Union of India and the concerned Ministries in pursuance of the order dated 24.07.2023 passed by this Court. The respondent nos. 1 to 3 respectively admitted that menstruation and menstrual practices are clouded by taboos and socio-cultural restrictions for women as well as adolescent girls. It was acknowledged that there is a limited access to sanitary products and lack of safe sanitary facilities. It was recognized that unhealthy practices like using old clothes, ash, straw as menstrual absorbent which not only affect menstrual hygiene but also have long-lasting implication on the reproductive health.

10. In pursuance of order dated 06.11.2023, the Union of India through the respondent nos. 1 to 3 respectively, has placed the Menstrual Hygiene Policy for School Going Girls. It is stated that the said policy has been approved by the Ministry of Health & Family Welfare. The policy aims to mainstream menstrual hygiene within the Government and Government-aided schools to bolster change in knowledge, attitudes, and behaviour among schoolgirls.

11. The policy intends to provide access to safe and low-cost menstrual hygiene products, environmentally safe disposal methods for menstrual waste, promote clean and gendersegregated sanitation facilities, and incorporate menstrual hygiene education into school curriculum to raise awareness and reduce stigma.

12. In the aforesaid context, the respondent nos. 1 to 3 have undertaken a number of policy initiatives and programmes which are summarized hereinbelow:-

Schemes	Target	Features
Union of India		
Jan Aushadhi Kendras	Sanitary napkins	Biodegradable sanitary pads at Re 1.
Scheme for Promotion of Menstrual Hygiene	Awareness + sanitary napkins + disposal	Financial assistance to States to increase awareness among adolescent girls on menstrual hygiene; increase access to and use of sanitary napkins by adolescent girls; ensure safe disposal of sanitary napkins. Capacity building and training of teachers, field level health workers - auxillary nurse midwives, ASHA workers and Anganwadi workers. Sanitary napkins are provided to adolescent girls at subsidized rate.
Samagra Shiksha	Sanitary napkins + toilets	Ensures that students have access to equitable and inclusive classroom through:- a. Installation of sanitary napkin vending machine; b. Composite School Grant for maintenance and upkeep of toilets and WASH infrastructure.
Promotion of MHM and Pad Kranti	Sanitary napkins + disposal	Makes sanitary napkin vending machine and incinerators available.
Swachh Bharat Mission -	Disposal + Awareness	Funds from 15th Finance Commission utilized to ensure availability of Central Pollution Control Board/State Pollution

Gramin		Control Board approved incinerators. Specific funds earmarked for creating awareness on MHM.
Swachhh Vidyalaya Initiative	Toilets	Funds through Centrally Sponsored Schemes in association with PSUs and private corporations for separate toilets.
Ministry of Jal Shakti	Awareness + disposal	Shared Information, Education, Communication (IEC) materials for menstrual hygiene awareness. Installation of incinerators by utilizing grants.

ii. Submissions on behalf of the States - Respondent Nos. 4 to 39 respectively

13. The following States have undertaken a number of policy initiatives and programmes which are summarized hereinbelow:-

Schemes	Target	Features
States		
Respondent no. 5 - Assam		
Samagra Shiksha	Sanitary napkins + Awareness	Installs sanitary napkins vending machines and incinerators in schools. One-day training organized to make handmade sanitary pads. Schools are encouraged to keep napkins in collaboration through NGOs. Adolescent girls, boys, teachers, officials at district level trained on MHM.
State initiative	Toilets	Maintenance through annual maintenance grant.
State initiative	Sanitary napkins + Awareness	Routine supply of sanitary napkins to girls in upper-primary and secondary grades through vending machines along with IEC on MHM.
State initiative	Disposal	Incinerators and deep burial methods.
Respondent no. 6 - Bihar		
Mukhyamantri Kishori Swasthya Karyakram	Sanitary napkins + Awareness	Train girls about menstrual health and hygiene, impart proper understanding of use of sanitary napkins.
Department of Education	Sanitary napkins	Free sanitary napkins to girl students between the age 12-18 years.
Respondent no. 8 - Andhra Pradesh		
YSR Swechha	Sanitary	Monthly entitlements of 10

	napkins	freebiodegradable pads per girl student. District level monitoring teams are constituted to monitor the distribution.
Family Doctor Programme	Awareness	Periodical visits to provide clinical counselling and referral services to adolescent girls and family.
School Health & Wellness Programme	Awareness	Teachers (Health Ambassadors) trained to create awareness on menstrual hygiene and safe disposal of napkins.
Peer Education Programme	Awareness	Peer educators trained to create awareness amongst adolescent girls.
Mana Badi Nadu-Nedu	Toilets	Provides funds for construction and retrofitting of toilets with regular water supply and other infrastructure.
Toilet Maintenance Fund	Toilets	Provides funds annually for routine cleaning, minor repairs, and maintenance of toilets.
Respondent no. 9 - Arunachal Pradesh		
Sanitary-Pad Incentive Scheme, 2013	Sanitary napkins	Monthly cash incentive of Rs. 50 per girl students in Classes IX-XII, an alternative to in-kind sanitary napkin distribution.
Respondent no. 10 - Gujarat		
Samagra Shiksha Abhiyan	Toilets + Sanitary napkins	Gender-segregated sanitation toilets with sufficient water closets. Installation of sanitary napkins vending machines for low cost napkins.
Swachhta Complex Support Scheme	Maintenance of toilets	Monthly grants to schools for maintaining cleanliness.
State initiative	Awareness	Menstrual corners are established for barrier-free access to knowledge about menstruation. Orientation on MHM through DIKSHA portal. Curriculum on MHM introduced in standard VIII.
Respondent no. 13 - Himanchal Pradesh		
Samagra Shiksha	Sanitary napkins	Installation of sanitary napkin vending machine and incinerators; establishes MHM corners which comprises basic information on menstrual care.
Respondent no. 14 - Jharkhand		
School Health & Wellness Programme	Awareness	Awareness among girl students on menstrual hygiene.

State initiative	Sanitary napkins	Supply of sanitary napkins to schools three months in advance.
State initiative	Disposal	Multi-option disposal mechanism - incinerators, deep burial, pit disposal, manual incinerators chulha.
Information, Education & Communication (IEC) Strategy	Awareness	Promotion of sanitary pads through leaders and MHM training.
Respondent no. 16 - Kerala		
Samagra Shiksha Kerala	Sanitary napkins	Funds for installation of sanitary pad vending machines and incinerators.
She-Pad Project, 2017	Sanitary napkins	Supply of sanitary napkins and installation of disposal mechanism, and storage facilities.
Kerala State Women's Development Corporation	Awareness	Awareness about menstrual hygiene and reproductive health.
Respondent no. 18 - Maharashtra		
Samagra Shiksha	Sanitary napkins	Installation of sanitary napkin vending machine and incinerators.
School Adoption Scheme	Toilets	CSR contribution towards MHM materials and construction of separate toilets.
National Health Mission Project	Sanitary napkins	Sanitary napkins provided by ASHA workers at Rs. 6 per pack.
Rashtriya Kishore Swasthya Karyakram	Awareness	Establishes Adolescent Friendly Health Clinics to impart counselling about MHM. Conduct outreach session at school and community level.
Respondent no. 19 - Manipur		
National Health Mission Project	Sanitary napkins	Sanitary napkins at Rs. 6 per packet for rural adolescent girls.
School Fagathansi Mission	Sanitary napkins + Awareness	Installation of vending machine and incinerators. Teachers are trained to spread awareness on menstrual hygiene once a month.
State Level Master Training Programme	Awareness	Sensitise teachers about need of adolescent girls, create awareness about MHM and school sanitation. Samagra Shiksha Sanitary napkins + Toilets Separate toilets in secondary

		and higher-secondary schools. Sanitary vending machines and incinerators installed.
Respondent no. 20 - Meghalaya		
Ayushman Bharat Scheme	Sanitary napkins + Awareness + Toilets	Promotes safe menstrual hygiene through education. Separate toilets being made available. Awareness and sensitization on menstrual health, hygiene, cleanliness.
Samagra Shiksha Abhiyan	Sanitary napkins	Installation of sanitary vending machine along with incinerators.
Respondent no. 21 - Mizoram		
Rashtriya Kishore Swasthya Karyakram	Awareness	Awareness among adolescent girls on menstrual hygiene through Adolescent Health Counsellors and RMNCH+A Counsels. Weekly counselling services regarding menstrual hygiene. Training for disposal of sanitary pads.
Respondent no. 22 - Nagaland		
State initiative	Awareness	Talk on menstrual health and hygiene was aired in regional language through AIR radio.
Respondent no. 24 - Punjab		
Education Development Secondary-42	Sanitary napkins	Free sanitary napkins to all girls in standards VI-XII. Installation of vending machines and incinerators.
State initiative	Awareness	ASHA workers promote use and distribution of sanitary napkins.
State Education Dept.	Awareness	Teachers sensitized on menstrual hygiene.
Project Udaan	Sanitary napkins	Supply of free sanitary napkins to dropout girls.
Respondent no. 27 - Uttarakhand		
Menstrual Hygiene Awareness Programme	Sanitary napkins + Awareness	Awareness about menstrual hygiene, misconceptions surrounding menstruation. Distribution of sanitary napkins through schools, ASHA workers at Rs. 6 per pack.
Rashtriya Kishore Swasthya Programme	Awareness	Peer educators have been trained to educate adolescent about menstruation.
Respondent no. 28 - Tamil Nadu		
Menstrual Hygiene	Sanitary	Distribution of free sanitary napkins in

Programme	napkins	rural and urban areas through teachers.
Respondent no. 29 - Telangana		
State initiative	Awareness	Distribution of 6 sanitary napkins per month to girl students free of cost in standards VIII-XII.
Respondent no. 31 - West Bengal		
Rashtriya Kishore Swasthya Karyakram, SAATHI	Sanitary napkins + Disposal	Sanitary napkins sold door-to-door in rural areas to girls aged 10-19 years at Rs. 6 per pack. Used sanitary napkins are disposed of through incinerators.
State Education Dept.	Toilets	Toilets under construction.
Union Territory		
Respondent no. 39 - Leh & Ladakh		
Samagra Shiksha Abhiyan	Sanitary napkins	Installation of sanitary pad vending machine and incinerators. Distributed pads to students. Building separate toilets for girls.
State initiative with NGO	Awareness	Encouraged girls to use menstrual cups.
Adolescent & Self Defence Programme	Awareness	By MHM experts on menstruation, hygiene for girls as well as boys.

14. At the same time, the States of Uttar Pradesh, Chhattisgarh, Goa, Haryana, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Sikkim, Tripura, respectively, and the Union Territories of Delhi, Lakshadweep, Daman & Diu, Dadra & Nagar Haveli, Andaman & Nicobar Islands, Puducherry, Chandigarh, and Jammu & Kashmir respectively have found it convenient to not file their affidavits.

15. Undoubtedly, there is no dearth of policies, schemes, programmes aimed at addressing the issue. However, what seems to be lacking is effective and consistent implementation.

IV. ISSUES FOR CONSIDERATION

16. Having heard the learned counsel appearing for the parties and having gone through the materials placed on record, the following questions fall for our consideration:-

a. Whether unavailability of gender-segregated toilets and nonaccess to menstrual absorbents could be said to be in violation of the right to equality for adolescent girl students under Article 14 of the Constitution?

b. Whether the right to dignified menstrual health could be said to be part of Article 21 of the Constitution?

c. Whether unavailability of gender-segregated toilets and nonaccess to menstrual absorbents could be said to be in violation of the right of participation and equality of opportunity as constitutional guarantees enshrined under Article 14 of the Constitution?

d. Whether unavailability of gender-segregated toilets and nonaccess to menstrual absorbents could be said to be in violation of the right to education under Article 21A, and the right to free and compulsory education under the Right of Children to Free and Compulsory Education Act, 2009?

V. ANALYSIS

A. The right to access education: A fundamental human right

17. Education is a fundamental human right, as it ensures full and holistic development of a human being. It is a stepping stone towards realizing other human rights. Education is an integral part of dignity of a child. It is a right, not a charitable concession. It promotes the physical and cognitive development of a child. It also contributes to the realization of the full potential of an individual. Most importantly, it shapes a person's sense of identity and affiliation.

18. A child's identity, knowledge, values, and skills are largely formed through social relationships. In other words, active participation in community life strengthens their ability to relate to others, promotes inclusivity and harmonious social relations, and facilitates learning through experiences and interactions. To put it briefly, to be educated is to be empowered.

19. It is apposite to understand that the right to education does not exist in a vacuum. Education has a direct impact on an individual's civil and political rights, cultural rights, and physical and emotional well-being. It influences a person's ability to make healthier life choices, more particularly, to access and navigate the healthcare system, and to seek timely medical assistance. The right assumes importance in the case of girls, who occupy a comparatively disadvantaged position within familial and societal structures. Undeniably, the way our society perceives women directly translates into prejudice against the girl child, and this perpetuates an endless cycle of discrimination.

20. In the aforesaid context, absence of education limits a girl child's opportunities for participation and representation in society, restricts her from challenging social hierarchies, and impedes her growth and development. A

girl child is often burdened with the weight of social prejudice, stereotypes, and structural oppression that are foisted upon her from an early age. Education serves as a counterweight to these factors by equipping her with knowledge and awareness. In its absence, inequality is not merely sustained but normalized.

i. Education - an essential human right in the International Human Rights Law framework

21. Article 26 of the Universal Declaration of Human Rights (UDHR) recognizes education as a universally protected fundamental human right. It stipulates that everyone has the right to education, and elementary education shall be compulsory. Further, Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes the right to education for everyone. The General Comment on Article 13 of the ICESCR states that the article envisages non-discrimination and equal treatment in imparting education.³ To this end, the ICESCR states that State Parties must include policies, programmes, and other practices to identify and take measures to redress any de facto discrimination.

22. Similarly, the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) states that the purpose of the Organization is to further respect for human rights and promote equality of educational opportunity. It calls upon the member States to formulate policies aimed at ensuring equality of opportunity and equality of treatment in education. It encourages making primary education free and compulsory, the availability and accessibility of secondary education to all, and the promotion of educational opportunities for persons who have either not received primary education or have been unable to complete it.

23. The UNESCO highlights that the primary purpose of education is to enrich and empower an individual. Education helps shape a person's understanding of the world, values, and identity. The Organization underscored that education provides for the development of knowledge and skills that helps one negotiate life and achieve goals. It is crucial to interact and shape the world around them. It was referred to as a 'multiplier right', meaning that it opens the gate to the enjoyment of other rights.⁴

24. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) mandates that State Parties take appropriate measures to eliminate discrimination against women in the field of education. It requires that equality must be ensured in access to pre-school, general, technical, professional and higher technical education. The Convention further obligates the State Parties to take effective steps to reduce female

student drop-out rates, and actively work towards improving access to educational information necessary to safeguard the health and well-being of families.

25. Similarly, Article 28 of the Convention on the Rights of the Child (CRC) stipulates that State Parties recognize the right of every child to education. To give meaning to this right, the State Parties are obligated to encourage regular attendance at schools and to reduce drop-out rates. The Convention further mandates that the administration of the school must be in a manner that is consistent with the dignity of the child. In this regard, the State Parties affirm that education must be directed towards the holistic development of the child's personality, more particularly, mental and physical abilities.

26. The Committee on the Rights of the Child states that discrimination in education violates the human dignity of a child and undermines the capability of a child to benefit from educational opportunities. It states that discriminatory practices include circumstances that limit a girl child's participation in educational opportunities. It emphasizes that such practices impair a child's growth to its fullest potential.⁵

27. What flows from the aforesaid discussion is that while interpreting domestic laws it is important to keep in mind the commitments under various international treaties and interpret laws in a manner consistent with the international human rights standards. Article 51 of the Constitution envisages that the State shall give due regard to international law and treaty obligations.

28. This Court has, time and again, affirmed India's obligation with regard to international laws and conventions.⁶ We shall discuss the application of the aforementioned treaties and conventions insofar as the Right of Children to Free and Compulsory Education Act, 2009 (for short, "the RTE Act"), is concerned in the latter part of this judgment.

ii. Judicial recognition of education as a human right

29. It is necessary for us to look into as to how the courts across the world have recognized the right to education as a basic human right. In *Brown v. Board of Education of Topeka Shawnee County Kan* Briggs, reported in 1954 SCC OnLine US SC 44, the Supreme Court of the United States was considering whether segregation of children in schools solely based on race meant depriving the minority group of equal educational opportunities. In this context, the Court highlighted the importance of education. The relevant observations read thus:-

"13. Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great

expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

(Emphasis supplied)

30. In *Plyler v. J R Doe Texas*, reported in 1982 SCC OnLine US SC 118, the issue before the Supreme Court of the United States was whether free public education could be denied to undocumented school-age children. Although access to education was not a constitutional guarantee yet the Court held that the State cannot prevent children from attending public schools unless a substantial state interest is involved. While underscoring the importance of education, it observed that "children denied an education are placed at a permanent and insurmountable competitive disadvantage, for an uneducated child is denied even the opportunity to achieve". The relevant observations read thus:-

"26. Public education is not a "right" granted to individuals by the Constitution. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35, 93 S.Ct. 1278, 1298, 36 L.Ed.2d 16 (1973). But neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction. The "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance." *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S.Ct. 625, 627, 67 L.Ed. 1042 (1923).

We have recognized "the public schools as a most vital civic institution for the preservation of a democratic system of government," *Abington School District v. Schempp*, 374 U.S. 203, 230, 83 S.Ct. 1560, 1575, 10 L.Ed.2d 844 (1963) (BRENNAN, J., concurring), and as the primary vehicle for transmitting "the values on which our society rests." *Ambach v. Norwick*, 441 U.S. 68, 76, 99 S.Ct. 1589, 1594, 60 L.Ed.2d 49 (1979). "[A]s pointed out early in our History, some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." *Wisconsin v. Yoder*, 406 U.S. 205, 221, 92 S.Ct. 1526, 1536, 32 L.Ed.2d 15 (1972).

And these historic "perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists." *Ambach v. Norwick*, supra, 411 U.S., at 77, 99 S.Ct., at 1594. In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.

27. In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit. Paradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. But more directly, "education prepares individuals to be self-reliant and self-sufficient participants in society." *Wisconsin v. Yoder*, supra, 406 U.S., at 221, 92 S.Ct., at 1536. Illiteracy is an enduring disability.

The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause. [Because the State does not afford noncitizens the right to vote, and may bar noncitizens from participating in activities at the heart of its political community, appellants argue that denial of a basic education to these children is of less significance than the denial to some other group.

Whatever the current status of these children, the courts below concluded that many will remain here permanently and that some indeterminate number will eventually become citizens. The fact that many will not is not decisive, even with respect to the importance of education to participation in core political institutions. "[T]he benefits of education are not reserved to those whose productive utilization of them is a certainty." 458 F.Supp., at 581, n. 14.

In addition, although a noncitizen "may be barred from full involvement in the political arena, he may play a role perhaps even a leadership role-in other areas of import to the community." *Nyquist v. Mauclet*, 432 U.S. 1, 12, 97 S.Ct. 2120, 2126, 53 L.Ed.2d 63 (1977). Moreover, the significance of education to our society is not limited to its political and cultural fruits. The

public schools are an important socializing institution, imparting those shared values through which social order and stability are maintained.]

41. Justice MARSHALL, concurring.

42. While I join the Court's opinion, I do so without in any way retreating from my opinion in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 70-133, 93 S.Ct. 1278, 1315-1348, 36 L.Ed.2d 16 (1973) (dissenting opinion). I continue to believe that an individual's interest in education is fundamental, and that this view is amply supported "by the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values." *Id.*, at 111, 93 S.Ct., at 1336.

Furthermore, I believe that the facts of these cases demonstrate the wisdom of rejecting a rigidified approach to equal protection analysis, and of employing an approach that allows for varying levels of scrutiny depending upon "the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn." *Id.*, at 99, 93 S.Ct., at 1330. See also *Dandridge v. Williams*, 397 U.S. 471, 519-521, 90 S.Ct. 1153, 1178-1180, 25 L.Ed.2d 491 (1970) (MARSHALL, J., dissenting). It continues to be my view that a class-based denial of public education is utterly incompatible with the Equal Protection Clause of the Fourteenth Amendment."

(Emphasis supplied)

31. In *Bandhua Mukti Morcha v. Union of India*, reported in (1984) 3 SCC 161, a three Judge Bench of this Court held that the right to live with dignity under Article 21 is inspired by the Directive Principles of State Policy which includes, inter alia, educational facilities.

32. We may also refer to the decision in *Mohini Jain (Miss) v. State of Karnataka*, reported in (1992) 3 SCC 666, wherein this Court held that the right to education forms part of the broader framework of the right to life and human dignity under Article 21 of the Constitution. As the right to life includes the right to live with dignity, such dignity cannot be realized without access to education. While recognizing that denial of education directly impacts the exercise of fundamental rights, the Court observed that social justice cannot be achieved in the absence of education. It observed that education is foundational to the realization of other fundamental rights. The relevant observations read thus:-

"8. The Preamble promises to secure justice "social, economic and political" for the citizens. A peculiar feature of the Indian Constitution is that it

combines social and economic rights along with political and justiciable legal rights. The Preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has been so prominently pronounced in the Preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate.

The objectives flowing from the Preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three-pronged justice promised by the Preamble is only an illusion to the teeming millions who are illiterate. It is only education which equips a citizen to participate in achieving the objectives enshrined in the Preamble. The Preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The Directive Principles in Part IV of the Constitution are also with the same objective.

The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises:

"Education shall be directed to the full development of the human personality.". Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to education". Although a citizen cannot enforce the Directive Principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. We may quote the words of Dr Ambedkar in that respect:

"In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both

the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country." (C.A.D. Vol. VII, p. 476)"

(Emphasis supplied)

33. A Constitution Bench in *Unni Krishnan, J.P. v. State of A.P.*, reported in (1993) 1 SCC 645, affirmed the abovementioned observations in *Mohini Jain* (supra) to the extent that the right to education has always been regarded as fundamentally important to human life. The Court observed that the country would be unable to achieve the objectives set forth in the Preamble without education. The relevant observations read thus:-

"Article 21 and Right to Education:

166. In *Bandhua Mukti Morcha* [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] this Court held that the right to life guaranteed by Article 21 does take in "educational facilities". (The relevant portion has been quoted hereinbefore.) Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in *Bandhua Mukti Morcha* [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] that right to education is implicit in and flows from the right to life guaranteed by Article 21.

That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Mohini Jain* [*Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666] the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words."

(Emphasis supplied)

34. Although the 11 judge Bench in *T.M.A Pai Foundation v. State of Karnataka*, reported in (2002) 8 SCC 481, overruled the decision in *Unni Krishnan* (supra) insofar as the framing of the scheme qua grant of admission and the fixation of the fee, yet the observation that primary education is a fundamental right was affirmed.

35. We may also look into the decision in the case of Minister of Health v. Treatment Action Campaign, reported in 2002 SCC OnLine ZACC 17, wherein the Constitutional Court of South Africa recognized the concept of "minimum core" developed by the ICESR. The minimum core concept ensures that certain essential levels of each right, such as access to basic education, primary healthcare, food, shelter, and dignity, must be guaranteed immediately. The ICESR recognizes that although realization of rights may be subject to resources, yet it obligates State Parties to secure the minimum essential content of the rights.

36. In R.D. Upadhyay v. State of A.P., reported in (2007) 15 SCC 337, a fervent appeal was made to this Court to issue directions for the development of children of those mothers who were either undertrial prisoners or convicts. In such circumstances, this Court directed that adequate arrangements shall be made available in all jails to impart education to children of female prisoners. What has been conveyed by this Court in so many words is the understanding of education as a continuing and non-derogable right that cannot be denied even within the confines of a prison.

37. The Constitutional Court of South Africa in Governing Body of the Juma Musjid Primary School v. Ahmed Asruff Essay N.O., reported in 2011 SCC OnLine ZACC 13, underscored the importance of education in an appeal assailing an order authorizing the eviction of a public school from a private property. To put it in simple words, the Court was addressing a conflict between the right to education and the right to property. While holding that the government has a positive obligation to provide access to schools in fulfilling the right to basic education, the other non-State actors have a negative obligation not to infringe that right under the Constitution. The Court held that any limitation on the right to education must be reasonable and justifiable. The relevant observations read thus:-

"42. The significance of education, in particular basic education [As enshrined in section 29(1) of the Constitution.] for individual and societal development in our democratic dispensation in the light of the legacy of apartheid, [As pointed out by Berger in 'The Rights to Education under the South African Constitution' (Apr 2003) vol 103, No 3 Columbia Law Review, 616, the separatist national education policy under apartheid, manifested in the Bantu Education Act 47 of 1953, was an integral part of apartheid's segregationist objective.] cannot be overlooked.

The inadequacy of schooling facilities, particularly for many blacks [Blacks here also denoting Indians and Coloureds.] was entrenched by the formal institution of apartheid, after 1948, when segregation even in education and schools in South Africa was codified. Today, the lasting effects of the

educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners.

43. Indeed, basic education is an important socioeconomic right directed, among other things, at promoting and developing a child's personality, talents and mental and physical abilities to his or her fullest potential. [See also Article 29(1) of the Child Rights Convention, which provides-"States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment."]

Basic education also provides a foundation for a child's lifetime learning and work opportunities. To this end, access to school - an important component of the right to a basic education guaranteed to everyone by section 29(1)(a) of the Constitution - is a necessary condition for the achievement of this right."

(Emphasis supplied)

38. In the aforesaid context, if a State Party under the ICESR fails to discharge this minimum core obligation, it is considered to be in breach of the Covenant. Moreover, States could justify non-fulfilment of the obligations only by exhibiting that it made every possible effort to utilize all resources at its disposal to fulfil these obligations. Thus, failure to meet the minimum core threshold deprives the right of its substantive meaning and reduces the right to dead letters.

39. What appears from the aforesaid discussion is that the right to education is not confined to the physical existence or formal availability of schools. It

extends to the ability of a child to participate in education in a meaningful, continuous, and nondiscriminatory manner. In other words, mere enrolment does not fulfil the right if structural or practical barriers prevent regular participation, engagement, or progression within the educational system.

40. To enable a child's participation in school by way of affirmative measures reflects commitment to the substantive approach to equality, which goes beyond formal access to schooling. Such affirmative measures mandate State action to ensure all children are placed equally to avail educational opportunities.

B. Substantive approach to right to equality in education under Article 14 of the Constitution

41. The exercise of the right to education requires the removal of impediments that obstruct its enjoyment. In the present case, these impediments include the lack of MHM measures, such as non-access to toilets, non-availability of menstrual absorbents, and absence of a safe disposal mechanism. These barriers disproportionately affect the right to education of adolescent female students. As a result, the State is under an obligation to address them through appropriate measures.

42. There is no doubt that the right to education loses its spirit if such conditions exist that exclude menstruating girl children from the educational process. As stated aforesaid, addressing the impediments through affirmative actions would be consistent with the substantive approach to equality embodied in Article 14 of the Constitution. In order to place a menstruating girl child on an equal footing with others, mere equal treatment would not suffice.

43. We shall now look into and discuss the substantive approach to the right to equality under Article 14 of the Constitution. Article 14, in its traditional understanding, envisaged formal equality and guaranteed that likes would be treated alike. Under this formal conception of equality, although equality before the law and equal protection of the laws were guaranteed to all, yet inequality in the realization of other rights continued to persist.

44. The principle of substantive equality recognizes that once two individuals are placed in unequal positions because of social, economic, or cultural factors, mere equal "treatment" becomes inadequate. If two individuals are treated alike, without regard to their religion, race, caste, sex, or similar characteristics, the right to equality cannot be given its true effect. In other words, it cannot be given its true effect in the absence of taking into consideration the position of the individual, which may be profoundly shaped

by historical and structural disadvantages. Equal treatment afforded in isolation, or rather without accounting for such disadvantage, may perpetuate inequality.

45. Equality is not an abstract concept. It is embedded in social reality and must be responsive to those who are disadvantaged and marginalized. Equality entails not merely formal conferral of rights, but also the adoption of measures necessary to translate those rights into equality.⁷ Substantive equality is brought into action through policies aiming to redress these systemic, direct or indirect disadvantages, by addressing the structural and contextual barriers that impede genuine equality. To put it briefly, it seeks to reduce the gap between disadvantages and the effective realization of rights.

46. There is no gainsaying that equality cannot be restricted to a mere duty of restraint on the State. Substantive equality can be meaningfully realized only when it is supported by positive overt actions aimed at remedying existing structural disadvantages. In other words, such positive duties require the State to take proactive measures to address patterns of discrimination and exclusion. In the absence of the aforementioned affirmative obligations, structural inequalities are merely preserved, and the promise of equality will be reduced to a paper provision.

47. In such circumstances referred to above, differential treatment may be indispensable to achieve equality in practice. As has been aptly observed by Amartya Sen, "Equal consideration for all may demand very unequal treatment in favour of the disadvantaged."⁸ As a result, unequal treatment may be constitutionally permissible when it is directed towards securing equal outcomes.⁹ In other words, substantive equality focuses on the extent to which an individual is able to meaningfully exercise choices, rather than merely possessing a formal right to do so. It recognizes that access to opportunities shall not be constrained by social, economic, or physical factors.

i. Menstruation as a barrier to the right to access education

48. In a research¹⁰ conducted on whether schools across the territory of India are menstrual-hygiene friendly, the researchers found that more than half of the girls did not have information about menstruation prior to menarche. The research revealed that the lack of sanitation facilities in schools hindered the ability of girls to manage menstruation healthily, safely, and with dignity.

49. Similarly, the Clean India: Clean Schools Handbook reported that although the number of schools providing drinking water and toilets have increased yet poor maintenance has left them inaccessible. The inaccessibility was attributed to factors such as absence of dedicated funds for operation and

maintenance, weak management, poor quality of construction, and the lack of availability of water within toilets.

50. We are disheartened to note that the availability of water for cleaning and flushing of toilets still remains a major concern. The Handbook further reported that MHM is absent in a majority of schools, including the lack of gender-specific infrastructure, access to sanitary napkins, and a disposal mechanism.

51. In another research¹¹ conducted to study school absenteeism during menstruation amongst adolescent school girls in North India, the researchers found that nearly one-third of girls were absent from school due to issues related to menstrual health, restrictive societal norms, and inadequate menstrual hygiene management. Out of approximately 500 students, 29.2% of the participants were reported to be absent from school during menstruation.

52. In the aforesaid study, among the reported reasons for absence, dysmenorrhea¹² was the most prevalent, followed by restrictions at home, fear of staining clothes and difficulty in changing sanitary pads at school. The findings of the study revealed that students in government schools were more likely to be absent as compared to those in private schools. Notably, girls using hygienic methods reported lower absenteeism as compared to others. To address the aforesaid issues, the researchers recommended integrating comprehensive menstrual health education into school curricula and improving access to hygienic menstrual products.

53. Accessibility of MHM measures provides the same opportunities for all students in school, while recognizing unequal distribution of resources with the objective to attain equal access to human rights. In other words, it levels the playing field by addressing unequal starting points.

54. The right to education as a human right does not merely demand parity between genders but further requires equality of opportunity in the enjoyment of that right for all. Inaccessibility of MHM measures perpetuates a systemic exclusion and discrimination that impacts the admission or continuation of girl children in school.

55. The observations of this Court in *Joseph Shine v. Union of India*, reported in (2019) 3 SCC 39, succinctly capture the understanding of the substantive approach to equality. It held that substantive equality is aimed at eliminating all sorts of discrimination that undermine social, economic, and political participation in society. It was further held that Article 15(3) of the Constitution is intended to bring out substantive equality by remedying the disadvantage. It reads thus:-

"171. Section 497 amounts to a denial of substantive equality. The decisions in Sowmithri [Sowmithri Vishnu v. Union of India, 1985 Supp SCC 137 : 1985 SCC (Cri) 325] and Revathi [V. Revathi v. Union of India, (1988) 2 SCC 72 : 1988 SCC (Cri) 308] espoused a formal notion of equality, which is contrary to the constitutional vision of a just social order. Justness postulates equality.

In consonance with constitutional morality, substantive equality is "directed at eliminating individual, institutional and systemic discrimination against disadvantaged groups which effectively undermines their full and equal social, economic, political and cultural participation in society" [S. Martin and K. Mahoney (Eds.), Kathy Lahey, Feminist Theories of (In)equality, in Equality and Judicial Neutrality (1987).]. To move away from a formalistic notion of equality which disregards social realities, the Court must take into account the impact of the rule or provision in the lives of citizens.

172. The primary enquiry to be undertaken by the Court towards the realisation of substantive equality is to determine whether the provision contributes to the subordination of a disadvantaged group of individuals. [Nivedita Menon (Ed.), Ratna Kapur and Benda Cossman "On Women, Equality and the Constitution: Through the Looking Glass of Feminism in Gender and Politics in India" (1993).] The disadvantage must be addressed not by treating a woman as "weak" but by construing her entitlement to an equal citizenship.

The former legitimises patronising attitudes towards women. The latter links true equality to the realisation of dignity. The focus of such an approach is not simply on equal treatment under the law, but rather on the real impact of the legislation. [Maureen Maloney, "An Analysis of Direct Taxes in India: A Feminist Perspective", Journal of the Indian Law Institute (1988).] Thus, Section 497 has to be examined in the light of existing social structures which enforce the position of a woman as an unequal participant in a marriage."

(Emphasis supplied)

56. By yet another Constitution Bench of this Court in Janhit Abhiyan v. Union of India (EWS Reservation), reported in (2023) 5 SCC 1, it was held that when substantive equality is asserted as a constitutional mandate, the State is tasked to place the concerned individuals on an equal footing. This Court, in so many words, held that substantive equality can take various forms, as per the requirements of the disadvantaged person or group. It was also observed that social justice cannot be achieved without substantive equality which means taking affirmative actions. The relevant observations read thus:-

"87. Indian constitutional jurisprudence has consistently held the guarantee of equality to be substantive and not a mere formalistic requirement. Equality is at the nucleus of the unified goals of social and economic justice. In *Minerva Mills* [*Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625] it was observed : (SCC p. 709, para 111)

"111. the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and economic justice. The dynamic principle of egalitarianism fertilises the concept of social and economic justice; it is one of its essential elements and there can be no real social and economic justice where there is a breach of the egalitarian principle."

(emphasis supplied)

88. Thus, equality is a feature fundamental to our Constitution but, in true sense of terms, equality envisaged by our Constitution as a component of social, economic and political justice is real and substantive equality, which is to organically and dynamically operate against all forms of inequalities. This process of striking at inequalities, by its very nature, calls for reasonable classifications so that equals are treated equally while unequals are treated differently and as per their requirements.

99. Thus, it could reasonably be summarised that for the socio-economic structure which the law in our democracy seeks to build up, the requirements of real and substantive equality call for affirmative actions; and reservation is recognised as one such affirmative action, which is permissible under the Constitution; and its operation is defined by a large number of decisions of this Court, running up to the detailed expositions in *Jaishri Patil* [*Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 8 SCC 1]."

(Emphasis supplied)

57. We may refer with profit the decision in *Gaurav Kumar v. Union of India*, reported in (2025) 1 SCC 641, wherein one of us, J.B. Pardiwala, J., was a part of the Bench, this Court reiterated that the substantive approach to equality aims to eliminate individual, institutional, and systemic discrimination against the disadvantaged. To put it briefly, substantive equality can be achieved through affirmative actions aimed towards eliminating discriminatory factors.

58. Recently, in *Jane Kaushik v. Union of India*, reported in (2026) 1 SCC 336, this Bench held that redressal of a disadvantage cannot be devoid of an

understanding of the other impediments that an individual may face on account of other identity markers that may cause such an individual to be stigmatized and marginalized. The principle of reasonable accommodation was put into application as a means for achieving substantive equality.

a. Intersectionality of disability, gender, and access to education

59. The responsibility of the State is further heightened in the case of a child with disability, as the intersection of disability with gender compounds the disadvantage faced during menstruation. In case of children with disabilities, accessibility of washrooms is even more essential for inclusion and for enabling meaningful participation in school. Needless to say, the absence of such accessibility results in exclusion from education and reinforces the social and economic marginalization.

60. In *Rajiv Raturi v. Union of India*, reported in (2024) 16 SCC 654, wherein one of us, J. B. Pardiwala, J., was a part of the Bench, held that the right to accessibility is an integral part of the existing human right framework, more particularly, of Articles 14, 19, and 21 respectively. It was observed that accessibility enables the exercise of other rights, one of which forms part of the right to live a meaningful life under Article 21. The Court further held that to enable such a right the State is required to implement accessibility measures proactively. The relevant observations read thus:-

"22. Accessibility is not merely a convenience, but a fundamental requirement for enabling individuals, particularly those with disabilities, to exercise their rights fully and equally. Without accessibility, individuals are effectively excluded from many aspects of society, whether that be education, employment, healthcare, or participation in cultural and civic activities. Accessibility ensures that persons with disabilities are not marginalised but are instead able to enjoy the same opportunities as everyone else, making it an integral part of ensuring equality, freedom, and human dignity. By embedding accessibility as a human right within existing legal frameworks, it becomes clear that it is an essential prerequisite for the exercise of other rights.

26. Similarly, A.K. Sikri, J. in the 2017 judgment [*Rajive Raturi v. Union of India*, (2018) 2 SCC 413 : (2018) 1 SCC (L&S) 404] grounded the right to accessibility in the fundamental rights chapter of the Constitution, emphasizing that access to public spaces and services is an essential aspect of the right to life and dignity. This Court observed: (SCC p. 426, para 12)

"12. The vitality of the issue of "accessibility" vis-à-vis visually disabled person's right to life can be gauged clearly by the [Supreme] Court's judgment in *State of H.P. v. Umed Ram Sharma* [*State of H.P. v. Umed Ram Sharma*,

(1986) 2 SCC 68] where the right to life under Article 21 has been held broad enough to incorporate the right to accessibility."

27. The inclusion of accessibility within the fundamental rights framework ensures that PWDs are entitled to full participation in society under Articles 14, 19 and 21 of the Constitution. Article 14 upholds equal access to spaces, services, and information; Article 19 guarantees the freedom to move and express oneself; and Article 21 ensures the right to live with dignity. Together, these provisions guarantee not only formal equality but also substantive equality, which requires the State to take positive steps to ensure that individuals can enjoy their rights fully, irrespective of disabilities.

This Court in a plethora of judgments has repeatedly recognised that the right to dignity and the right to a meaningful life under Article 21 necessitate conditions that enable PWDs to enjoy the same freedoms and choices as others. [See *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 : (2016) 3 SCC (Civ) 551 : 2016 INSC 412; *Rajive Raturi v. Union of India*, (2018) 2 SCC 413 : (2018) 1 SCC (L&S) 404 : 2017 INSC 1243; *Ravinder Kumar Dhariwal v. Union of India*, (2023) 2 SCC 209 : (2023) 1 SCC (L&S) 181 : 2021 INSC 916; *Vikash Kumar v. UPSC*, (2021) 5 SCC 370 : (2021) 2 SCC (L&S) 1 : 2021 INSC 78.] Thus, the right to accessibility is foundational, enabling PWDs to exercise and benefit from other rights enshrined in Part III of the Constitution."

(Emphasis supplied)

61. We would like to refer to the observations of this Court in *Om Rathod v. Director General of Health Services*, reported in 2024 SCC OnLine SC 3130, to further elaborate upon the principles of law on substantive equality in disability rights. It was observed that Section 3 of the Rights of Persons with Disabilities Act, 2016, casts a positive obligation on the State as well as private entities to ensure that no person with disability faces discrimination. The Court held that reasonable accommodation is a facet of substantive equality and failure to reasonably accommodate constitutes discrimination. The relevant observations read thus:-

"29. The principle of reasonable accommodation is not only statutorily prescribed but also rooted in the fundamental rights guaranteed to persons with disabilities under Part III of the Constitution. Reasonable accommodation is a fundamental right. It is a gateway right for persons with disabilities to enjoy all the other rights enshrined in the Constitution and the law. Without the gateway right of reasonable accommodation, a person with disability is forced to navigate in a world which excludes them by design. It strikes a fatal blow to their ability to make life choices and pursue

opportunities. From mundane tasks of daily life to actions undertaken to realise personal and professional aspirations - all are throttled when reasonable accommodations are denied. Reasonable accommodation is a facet of substantive equality and its failure constitutes discrimination."

30. Section 3 of the RPWD Act affords persons with disabilities a right to equality and non-discrimination. In *Vikash Kumar* (supra) this Court held that Section 3 casts an affirmative obligation on the Government and private entities to take steps to ensure reasonable accommodation and utilize the capacity of persons with disabilities by providing an appropriate environment. There is a positive obligation to realise the inclusive premise in the concept of reasonable accommodation. This includes the duty to create an environment conducive for the development of persons with disabilities. This Court has held that:

"The accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

48. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional."

(emphasis supplied)"

(Emphasis supplied)

62. Although accessibility and reasonable accommodation are distinct concepts, as already recognized in *Rajive Raturi v. Union of India*, reported in (2024) 16 SCC 654, yet the foundation for both is a substantive approach to equality and removal of barriers that impede the effective realization of rights. To put this in context, a commitment to accessibility would reflect in making the washrooms at school accessible for children with disabilities. However, this is not enough, reasonably accommodating a girl child with disability would also mean making menstrual absorbents available and educating all the students about menstruation and MHM measures.

63. Thus, we have no hesitation in saying that inaccessibility means not only depriving a girl child with disability of education but also violating her right to equality, freedom, and dignity. To reasonably accommodate means actively creating a conducive environment for children with disabilities.

64. What can be discerned from the above discussion is that the steps towards substantive equality are, first, the identification and recognition of disadvantage; and secondly, actions taken towards redressing that disadvantage. This Court is mindful that constitutional guarantees do not attain their true meaning by mere textual inclusion in statute books but through their realization in reality.

65. For a menstruating girl child who cannot afford menstrual absorbents, the disadvantage is two-fold. First, vis-à-vis menstruating girl children who can afford menstrual absorbents. Secondly, vis-à-vis male counterparts or non-menstruating counterparts. Further, when the menstruating girl child is also a child with disability, she is not merely facing disadvantages arising from menstrual poverty, but is additionally subjected to other disadvantageous consequences flowing from the intersection of gender and disability.

66. The aforesaid disadvantages can be redressed by ensuring access to clean gender-segregated washrooms, sanitary napkins, or other suitable menstrual absorbents, hygienic and safe disposal mechanisms; and spreading awareness and imparting education on menstruation and MHM measures.

67. The right to education is a universally recognized human right, which, in circumstances referred to above, stands compromised and undermined for girl children. Menstrual poverty hinders menstruating girls from exercising their right to education with dignity equal to that of their male counterparts, or students who can afford sanitary products. There is no gainsaying that impairment of primary or secondary education has grave and lasting consequences, not only for individual development but also for long-term social and economic participation.

68. Many girls choose to absent themselves during menstruation due to lack of access to, or inability to afford, menstrual hygiene products, unavailability of gender-segregated washrooms, and absence of disposal mechanisms. This establishes a clear causal relationship between menstrual poverty and girls' lower attendance in school. The absence of such measures lead many girls to absent themselves, or rather drop-out of school, leaving a lasting adverse impact on their education.

C. The right to dignified menstrual health a part of Article 21

i. The right to human dignity as a concomitant of the right to life

69. The right to life under Article 21 means a life with dignity. This Court, in a catena of decisions, has consistently recognized that dignity is an essential and inseparable facet of the right to life and liberty. The right to life means more than mere survival. Every human possesses inherent dignity by virtue of being human, which enables the individual to make self-determining choices. This Court has recognized dignity to be intrinsic and inalienable continuing beyond biological existence.¹³

70. When we recognize dignity as forming a significant part of human existence, we acknowledge the value of life. Dignity makes life livable. There is no gainsaying to the fact that the right to a dignified existence secures decisional autonomy, enabling an individual to transform life from mere subsistence into a meaningful endeavour. Dignity inheres in every stage and every aspect of human existence. As a result, the Constitution protects an individual's expectation that dignity will be preserved and respected throughout their life.

71. In this regard, we shall refer to the decision in *K.S. Puttaswamy (Privacy-9 J.) v. Union of India*, reported in (2017) 10 SCC 1, wherein this Court categorically held that dignity is an integral part of the Constitution, and its reflections are found in Articles 14, 19, and 21, respectively. This Court noted that dignity can neither be given nor taken away. It held that there is a positive obligation on the State to not only protect one's dignity but also take steps to facilitate it. It was observed that dignity ties all the fundamental rights together. The relevant observations read thus:-

"Jurisprudence on dignity

108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual).

These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective wellbeing of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).

113. Human dignity was construed in *M. Nagaraj v. Union of India* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] by a Constitution Bench of this Court to be intrinsic to and inseparable from human existence. Dignity, the Court held, is not something which is conferred and which can be taken away, because it is inalienable : (SCC pp. 243 & 247-48, paras 26 & 42)

"26. The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it. It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot give (sic be given). It simply is. Every human being has dignity by virtue of his existence.

42. India is constituted into a sovereign, democratic republic to secure to all its citizens, fraternity assuring the dignity of the individual and the unity of the nation. The sovereign, democratic republic exists to promote fraternity and the dignity of the individual citizen and to secure to the citizens certain rights. This is because the objectives of the State can be realised only in and through the individuals. Therefore, rights conferred on citizens and non-citizens are not merely individual or personal rights. They have a large social and political content, because the objectives of the Constitution cannot be otherwise realised."

(emphasis supplied)

119. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve."

(Emphasis supplied)

72. In *Common Cause v. Union of India*, reported in (2018) 5 SCC 1, Chandrachud, J., opined that the Constitution protects the legitimate expectation of a person to live a life with dignity. The relevant observations read thus:-

"437. Under our Constitution, the inherent value which sanctifies life is the dignity of existence. Recognising human dignity is intrinsic to preserving the sanctity of life. Life is truly sanctified when it is lived with dignity. There exists a close relationship between dignity and the quality of life. For, it is only when life can be lived with a true sense of quality that the dignity of human existence is fully realised. Hence, there should be no antagonism between the sanctity of human life on the one hand and the dignity and quality of life on the other hand. Quality of life ensures dignity of living and dignity is but a process in realising the sanctity of life.

438. Human dignity is an essential element of a meaningful existence. A life of dignity comprehends all stages of living including the final stage which leads to the end of life. Liberty and autonomy are essential attributes of a life of substance. It is liberty which enables an individual to decide upon those matters which are central to the pursuit of a meaningful existence.

The expectation that the individual should not be deprived of his or her dignity in the final stage of life gives expression to the central expectation of a fading life : control over pain and suffering and the ability to determine the treatment which the individual should receive. When society assures to each individual a protection against being subjected to degrading treatment in the process of dying, it seeks to assure basic human dignity. Dignity ensures the sanctity of life. The recognition afforded to the autonomy of the individual in matters relating to end-of-life decisions is ultimately a step towards ensuring that life does not despair of dignity as it ebbs away.

518. Constitutional recognition of the dignity of existence as an inseparable element of the right to life necessarily means that dignity attaches throughout the life of the individual. Every individual has a constitutionally protected expectation that the dignity which attaches to life must subsist even in the culminating phase of human existence. Dignity of life must encompass dignity in the stages of living which lead up to the end of life. Dignity in the process of dying is as much a part of the right to life under Article 21. To deprive an individual of dignity towards the end of life is to deprive the individual of a meaningful existence. Hence, the Constitution protects the legitimate expectation of every person to lead a life of dignity until death occurs;"

(Emphasis supplied)

73. Recently, in *Gaurav Kumar v. Union of India*, reported in (2025) 1 SCC 641, wherein one of us, J.B. Pardiwala, J., was a part of the Bench, this Court elucidated the importance of dignity in achieving substantive equality. This

Court held that dignity encompasses the right of the individual to develop their potential to the fullest. The relevant observations read thus:-

"99. Dignity is crucial to substantive equality. The dignity of an individual encompasses the right of the individual to develop their potential to the fullest. [K.S. Puttaswamy (Privacy-9 J.) v. Union of India, (2017) 10 SCC 1, para 525] The right to pursue a profession of one's choice and earn livelihood is integral to the dignity of an individual. Charging exorbitant enrolment fees and miscellaneous fees as a precondition for enrolment creates a barrier to entry into the legal profession.

The levy of exorbitant fees as a precondition to enrolment serves to denigrate the dignity of those who face social and economic barriers in the advancement of their legal careers. [See Neil Aurelio Nunes (OBC Reservation) v. Union of India, (2022) 4 SCC 1, para 35] This effectively perpetuates systemic discrimination against persons from marginalised and economically weaker sections by undermining their equal participation in the legal profession. Therefore, the current enrolment fee structure charged by SBCs is contrary to the principle of substantive equality."

(Emphasis supplied)

74. In our considered view, MHM measures are inseparable from the right to live with dignity under Article 21. We say so because dignity cannot be reduced to an abstract ideal, it must find expression in conditions that enable individuals to live without humiliation, exclusion, or avoidable suffering. For menstruating girl children, the inaccessibility of MHM measures subjects them to stigma, stereotyping, and humiliation.

75. The absence of safe and hygienic menstrual management measures undermines dignified existence by compelling the adolescent female students to either resort to absenteeism or adopt unsafe practices, or both, which violates the bodily autonomy of the menstruating girl children.

ii. The right to privacy and decisional autonomy

76. Dignity cannot be assured without privacy. Privacy is one of the rights that are inherent in a human being by virtue of mere existence. Being a natural right, it inures every individual irrespective of their caste, class, gender, or any other similar differentiating ground. Privacy enables each individual to make choices and take decisions in respect of intimate and personal matters, free from interference. It is this conception of natural and inalienable right that secures the autonomy of human being.

77. In Puttaswamy (supra), this Court held the right to privacy to be a constitutionally protected right under Article 21. It recognized privacy as a natural right which is inherent in a human and not bestowed by the State. It was observed that privacy ensures the fulfilment of dignity and is a core value which protection of life and liberty has intended to achieve. In furtherance of this constitutional protection, the Court held that it is the duty of the State to safeguard the autonomy of an individual. The relevant observations read thus:-

"G. Natural and inalienable rights

42. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Locke had in his Second Treatise of Government observed that the lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve.

The idea of a private preserve was to create barriers from outside interference. In 1765, William Blackstone in his Commentaries on the Laws of England spoke of a "natural liberty". There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual.

46. Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation.

118. Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to take decisions - the autonomy of the individual - and not to dictate those decisions. "Life" within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life.

320. Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the

Constitution. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III."

(Emphasis supplied)

78. Bobde, J., in his concurring opinion in Puttaswamy (supra), stated that privacy is a prerequisite for the exercise of liberty and the freedom to perform any activity. Consequently, the absence of privacy denies an individual the freedom to exercise that particular liberty or to undertake such activity. Similarly, Nariman, J., recognized the privacy of choice as an individual's autonomy over fundamental choices.

79. As a sequitur, autonomy is a concomitant of privacy. We say so because privacy is founded on the autonomy of an individual. At the same time, dignity cannot exist without privacy. In Puttaswamy (supra), this Court defined autonomy as "the ability to make decision on vital matters of concern to life". While lucidly elucidating facets of privacy, this Court recognized an individual's authority to make decisions as regards their body and mind. Further, while identifying the various facets of privacy, the Court recognized decisional privacy to mean the ability of an individual to make intimate decisions, including those relating to sexual autonomy. The relevant observations read thus:-

"297. What, then, does privacy postulate? Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private.

These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognising a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself.

Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude.

Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.

298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind.

The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised.

Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the

sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination."

(Emphasis supplied)

80. In this regard, in *Common Cause* (supra), this Court held thus:-

"441. The protective mantle of privacy covers certain decisions that fundamentally affect the human life cycle. [Richard Delgado, "Euthanasia Reconsidered- The Choice of Death as an Aspect of the Right of Privacy", *Arizona Law Review* (1975), Vol. 17, at p. 474.] It protects the most personal and intimate decisions of individuals that affect their life and development. [Ibid.] Thus, choices and decisions on matters such as procreation, contraception and marriage have been held to be protected.

While death is an inevitable end in the trajectory of the cycle of human life of individuals are often faced with choices and decisions relating to death. Decisions relating to death, like those relating to birth, sex, and marriage, are protected by the Constitution by virtue of the right of privacy. The right to privacy resides in the right to liberty and in the respect of autonomy. [T.L. Beauchamp, "The Right to Privacy and the Right to Die", *Social Philosophy and Policy* (2000), Vol. 17, at p. 276.] The right to privacy protects autonomy in making decisions related to the intimate domain of death as well as bodily integrity."

(Emphasis supplied)

81. As explained in the aforementioned paragraphs of this judgment, the right to equality does not merely mandate that the State refrains from discrimination but also obliges it to adopt positive and affirmative measures aimed at remedying existing structural disadvantage. Likewise, in *Puttaswamy* (supra), this Court recognized that privacy has both positive and negative dimensions. In its positive aspect, it imposes an obligation on the State to take all necessary measures to protect the privacy of the individual.

82. What emerges from the foregoing discussion is that a girl child's expectation to manage her menstruation in privacy with dignity is legitimate. In such circumstances, the lack of resources cannot be permitted to govern her autonomy over her own body. There is no doubt that she possesses the right to decide how and where menstrual care is carried out, and the liberty to exercise such care, free from coercive practices and social restrictions.

83. It is apposite to understand that menstrual hygiene management is not confined to sanitation, it includes bodily autonomy and decisional freedom.

The denial of adequate facilities, appropriate sanitary products, or privacy effectively compels a girl child to manage her body in a manner dictated by circumstance rather than choice. Autonomy can be meaningfully exercised only when girl children have access to functional toilets, adequate menstrual products, availability of water, and hygienic mechanisms for disposal.

iii. The right to menstrual health as a facet of the right to life

84. The aforesaid may be looked at from one another angle. Article 21 recognizes the right to health. Health is defined as a state of physical, mental, and social well-being and not merely the absence of disease or infirmity. By necessary implication, this right will impliedly extend to the right of a menstruating girl child to access MHM practices to attain the highest standard of sexual and reproductive health. They are intertwined in such a manner that one cannot survive without the other. The right to reproductive health implies that an adolescent female student should have access to safe, effective, and affordable MHM measures.

85. There is a legion of decisions of this Court which lays down that the right to health is an integral facet of the meaningful right to life under Article 21 of the Constitution, and obligations of the State in this regard. We need not discuss all the decisions, but rather intend to refer and rely upon only a few of them.

86. We may refer with profit the decision in *Lakshmi Kant Pandey v. Union of India*, reported in (1984) 2 SCC 244, wherein this Court highlighted the centrality of children to the nation's growth and development. It was observed that the framers of the Constitution were conscious of the inherent vulnerability of children and hence, reflected in Article 15(3). The relevant observations read thus:-

"6. It is obvious that in a civilized society the importance of child welfare cannot be overemphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a "supremely important national asset" and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said:

"Child shows the man as morning shows the day" and the Study Team on Social Welfare said much to the same effect when it observed that "the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages". The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost

breath, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves.

That is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire selfconfidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process.

In India this consciousness is reflected in the provisions enacted in the Constitution. clause (3) of Article 15 enables the State to make special provisions inter alia for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented preambulatory introduction:

"The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice."

The National Policy sets out the measures which the Government of India proposes to adopt towards attainment of the objectives set out in the

preambulatory introduction and they include measures designed to protect children against neglect, cruelty and exploitation and to strengthen family ties "so that full potentialities of growth of children are realised within the normal family neighbourhood and community environment". The National Policy also lays down priority in programme formation and it gives fairly high priority to maintenance, education and training of orphan and destitute children.

There is also provision made in the National Policy for constitution of a National Children's Board and pursuant to this provision, the Government of India has constituted the National Children's Board with the Prime Minister as the chair-person. It is the function of the National Children's Board to provide a focus for planning and review and proper co-ordination of the multiplicity of services striving to meet the needs of children and to ensure at different levels continuous planning, review and co-ordination of all the essential services. The National Policy also stresses the vital role which the voluntary organisations have to play in the field of education, health, recreation and social welfare services for children and declares that it shall be the endeavour of State to encourage and strengthen such voluntary organisations."

(Emphasis supplied)

87. In a petition filed under Article 32, issues arising from occupational health hazards and diseases affecting workmen employed in asbestos industries fell for consideration before this Court in *Consumer Education & Research Centre v. Union of India*, reported in (1995) 3 SCC 42. A three Judge Bench of this Court held that the right to health of a workman is an integral facet of the meaningful right to life. It encompasses not only healthy existence but also a robust and healthy lifestyle. This Court held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution respectively, insofar as the life of the workman is considered to make it meaningful and dignified. It was further held that the State is under an obligation to promote health of a workman. The relevant observations read thus:-

"20. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Charter of the United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of human person envisaged in the Directive Principles of State Policy as part of the Constitution. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full

blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality.

23. In *Sunil Batra v. Delhi Admn.* [(1978) 4 SCC 494 : 1979 SCC (Cri) 155], considering the effect of solitary confinement of a prisoner sentenced to death and the meaning of the word 'life' enshrined under Article 21, the Constitution Bench held that the quality of life covered by Article 21 is something more than the dynamic meaning attached to life and liberty. The same view was reiterated in *Board of Trustees of the Port of Bombay v. D.R. Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61], *Vikram Deo Singh Tomar v. State of Bihar* [1988 Supp SCC 734 : 1989 SCC (Cri) 66], *Ramsharan Autyanuprasi v. Union of India* [1989 Supp (1) SCC 251].

In *Charles Sobraj v. Supdt., Central Jail, Tihar* [(1978) 4 SCC 104 : 1978 SCC (Cri) 542 : AIR 1978 SC 1514] this Court held that the right to life includes right to human dignity. The right against torture, cruel or unusual punishment or degraded treatment was held to violate the right to life. In *Bandhua Mukti Morcha v. Union of India* [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] at pp. 183-84 this Court held that the right to live with human dignity, enshrined in Article 21, derives its life-breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42.

In *C.E.S.C. Ltd. v. Subhash Chandra Bose* [(1992) 1 SCC 441 : 1992 SCC (L&S) 313] this Court considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held that the right to social justice are fundamental rights. Right to free legal aid to the poor and indigent worker was held to be a fundamental right in *Khatri (II) v. State of Bihar* [(1981) 1 SCC 627 : 1981 SCC (Cri) 228]. Right to education was held to be a fundamental right vide *Maharashtra State Board of Secondary & Higher Secondary Education v. K.S. Gandhi* [(1991) 2 SCC 716] and *Unni Krishnan, J.P. v. State of A.P.* [(1993) 1 SCC 645]

24. The right to health to a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependants, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman.

Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in

service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity.

The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution.

Facilities for medical care and health to prevent sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruits of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

25. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

(Emphasis supplied)

88. In *Devika Biswas v. Union of India*, reported in (2016) 10 SCC 726, a petition before this Court raised issues, inter alia, regarding the conduct and management of sterilization procedures, more particularly, the death occurring therefrom. In this regard, the Court held that the right to reproductive health encompasses the right to make all allied decisions and to attain the highest standards of reproductive health. The relevant observations read thus:-

"(i) Right to health 107. It is well established that the right to life under Article 21 of the Constitution includes the right to lead a dignified and meaningful life and the right to health is an integral facet of this right. In CESC Ltd. v. Subhash Chandra Bose [CESC Ltd. v. Subhash Chandra Bose, (1992) 1 SCC 441 : 1992 SCC (L&S) 313] dealing with the right to health of workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to which India is a party. Similarly, the bare minimum obligations of the State to ensure the preservation of the right to life and health were enunciated in Paschim Banga Khet Mazdoor Samity v. State of W.B. [Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37]

108. In Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389] this Court underlined the obligation of the State to ensure that the fundamental rights of weaker sections of society are not exploited owing to their position in society.

(ii) Right to reproductive health

110. Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person. Reproductive health has been defined as "the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour". [WHO, Sexual Health, Human Rights and the Law (2015) cited from Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 2-5-2016, E/C.12/GC/22 at para 6 <<https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/089/32/PDF/G1608932.pdf?OpenElement>>.]

The Committee on Economic, Social and Cultural Rights in General Comment No. 22 on the Right to Sexual and Reproductive Health under Article 12 of the International Covenant on Economic, Social and Cultural Rights [India ratified this Convention on 10-4- 1979.] observed that "The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health." [General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22 <<https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/089/32/PDF/G1608932.pdf?OpenElement>>.]

111. This Court recognised reproductive rights as an aspect of personal liberty under Article 21 of the Constitution in *Suchita Srivastava v. Chandigarh Admn.* [*Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] The freedom to exercise these reproductive rights would include the right to make a choice regarding sterilisation on the basis of informed consent and free from any form of coercion.

112. It is necessary to reconsider the impact that policies such as the setting of informal targets and provision of incentives by the Government can have on the reproductive freedoms of the most vulnerable groups of society whose economic and social conditions leave them with no meaningful choice in the matter and also render them the easiest targets of coercion.

The cases of *Paschim Banga Khet Mazdoor Samity* [*Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37] and *Bandhua Mukti Morcha* [*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389] have emphasised that the State's obligation in respect of fundamental rights must extend to ensuring that the rights of the weaker sections of the community are not exploited by virtue of their position. Thus, the policies of the Government must not mirror the systemic discrimination prevalent in society but must be aimed at remedying this discrimination and ensuring substantive equality. In this regard, it is necessary that the policies and incentive schemes are made gender neutral and the unnecessary focus on female sterilisation is discontinued."

(Emphasis supplied)

89. The views expressed by this Court in *Independent Thought v. Union of India*, reported in (2017) 10 SCC 800, are commendable. It held that the concept of good health is not limited to physical well-being but rather a girl child's right to grow into a healthy woman, to exercise choice, and to pursue education. It was observed that when a girl child is deprived of the opportunity to study further, her right to live a dignified life as a woman is also violated. The Court further emphasized that a girl child must not only be afforded equality of opportunity with a male child, but must also be provided with additional support, so as to enable her empowerment physically, mentally, and economically. The relevant observations read as under:-

"179. There can be no dispute that every citizen of this country has the right to get good healthcare. Every citizen can expect that the State shall make best endeavours for ensuring that the health of the citizen is not adversely affected. By now it is well settled by a catena of judgments of this Court that the "right to life" envisaged in Article 21 of the Constitution of India is not merely a right to live an animal existence. This Court has repeatedly held that right to

life means a right to live with human dignity. Life should be meaningful and worth living. Life has many shades. Good health is the *raison d'être* of a good life.

Without good health there cannot be a good life. In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health. The girl child must be encouraged to bloom into a healthy woman. The girl child must not be deprived of her right of choice. The girl child must not be deprived of her right to study further. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop into a mature woman, who can earn independently and live as a self-sufficient independent woman.

In the modern age, when we talk of gender equality, the girl child must be given equal opportunity to develop like a male child. In fact, in my view, because of the patriarchal nature of our society, some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self-sufficient female adult."

(Emphasis supplied)

90. A three Judge Bench of this Court in *X2 v. State* (NCT of Delhi), reported in (2023) 9 SCC 433, wherein one of us, J.B. Pardiwala, J., was part of the Bench, held that the right to decide on all matters relating to sexual and reproductive health is one flower in the bouquet of reproductive rights. It held that reproductive rights include the right to access education and information about sexual health. The relevant observations read thus:-

"101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence."

(Emphasis supplied)

91. It is limpid that when a girl child cannot access menstrual absorbents, she may resort to natural materials, newspaper, cloth, tissue, cotton wool, or any other unhygienic absorbent. In case of a lack of adequate clean water and

soap, she may also struggle to properly clean and dry herself. It is not unknown that poor menstrual hygiene may cause reproductive tract infections such as bacterial vaginosis, which may in turn lead to infertility.¹⁴

92. Lack of knowledge about menstruation may lead to unhygienic and negative practices. This lack of body literacy contributes to a feeling of lack of bodily autonomy, more particularly, with regards to reproductive choices.

93. The above conspectus of cases reveals that the State bears a positive obligation under Article 21 to protect the right to health, more particularly, the menstrual health of girl children. The State is required to undertake effective measures to ensure the availability of, and enhance access to MHM products. We say so because the lack of access to such products impedes the physical well-being, dignity, and overall development of menstruating girl children.

94. It is an admitted position that the lack of access to MHM violates the right to reproductive health, as it compels girl children to resort to unhygienic alternatives such as rags or cloth, or use of menstrual absorbents for prolonged periods, all of which have demonstrably adverse consequences for their health. In schools where there are no separate washrooms for girl students, they would have to use male washrooms or the one which is used by all the students, where they are prone to harassment or sexual assault.

95. In such circumstances referred to above, it is the duty of the State to ensure the availability of MHM measures flows from the positive obligation embodied in Article 15(3) of the Constitution. The Constitution expressly contemplates discrimination in favour of women and children, having due regard to their vulnerability, in order to safeguard their welfare and interests. This constitutional intent is also reflected in Articles 24 and 39(e) and (f) of the Constitution, respectively.¹⁵

96. It would be worthwhile to refer to the observations made by this Court in *State of A.P. v. P.B. Vijaykumar*, reported in (1995) 4 SCC 520, wherein this Court had the occasion to interpret the expression "any special provision for women" in Article 15(3) of the Constitution. In such circumstances, it was observed that the object of the clause is to strengthen and improve the status of women. The Court held that the special provision referred in Article 15(3) could be either in the form of affirmative action or reservation.

"7. The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of

women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women.

8. What then is meant by "any special provision for women" in Article 15(3)? This "special provision", which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. It is interesting to note that the same phraseology finds a place in Article 15(4) which deals with any special provision for the advancement of any socially or educationally backward class of citizens or Scheduled Castes or Scheduled Tribes.

This Court has, therefore, clearly considered the scope of Article 15(4) as wider than Article 16(4) covering within it several kinds of positive action programmes in addition to reservations. It has, however, added a word of caution by reiterating M.R. Balaji [1963 Supp 1 SCR 439 : AIR 1963 SC 649] to the effect that a special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. These limits of reservation have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15(3) which is worded similarly.

(Emphasis supplied)

97. The State's obligation is heightened insofar as a girl child belonging to economically weaker sections is concerned. We say so because such students are placed in a position of coalesced vulnerability. The economic burden of sanitary products compounds the existing disadvantage of, first, being a girl in a structurally unequal society; secondly, having a biological process that requires management; and thirdly, lacking the financial means to manage that process in a safe and hygienic manner.

98. Furthermore, to secure the right to health is not merely a right enshrined under Article 21 but also a duty on the State under Article 47 of the Constitution. Article 47 enjoins the State to improve public health as its primary duty. No doubt the Government is rendering this obligation by providing MHM measures but in order to make it meaningful, it has to be reach of the beneficiaries. Thus, it is only then the objectives of the State can be realized. As is always said, the rights conferred on citizens and non-citizens are not merely individual or personal rights. They have a large social and political content, because the objectives of the Constitution cannot be otherwise realized.¹⁶

D. The right to participation and the equality of opportunity respectively as constitutional guarantees under Article 14

99. The opening declaration of the Constitution, "We, the People", illustrates that the Constitution and its principles thrive on participation. Equality is not confined to the recognition of individual dignity, it encompasses the assurance of equal opportunity for every individual to advance their human potential and pursue their social, economic, and legal interests.

i. Lack of menstrual hygiene measures as a barrier in exercising the right to participate in school

100. The right to equality includes, or rather is expressed through the right to be able to participate on equal terms in community and society. Substantive equality requires that voice and participation is enhanced in order to counter exclusion. We say so because providing equal opportunities equalizes the starting point so that all participants can compete on the same terms. As a sequitur, deprivation of opportunities to pursue one's valued choices puts one at a disadvantageous position. Thus, without affording participation on equal footing, equality would be nothing more than lip service.

101. Equality demands that it is not just recognized but reverberated throughout society. Articles 15 and 16 of the Constitution respectively constitute a substantive framework of equality that goes beyond formal non-discrimination. It seeks to ensure meaningful participation of disadvantaged and marginalized communities in social, educational, and public life.

102. In the aforesaid context, the Constitution recognizes that entrenched disadvantage cannot be dismantled by mere neutrality on the part of the State. Hence, it imposed a positive constitutional duty upon the State to adopt affirmative measures aimed at redressing inequalities. Articles 14, 15 and 16 respectively reflect the constitutional commitment to uplift those placed at systemic disadvantage and to secure their effective participation on equal terms in the nation's opportunities and institutions.

103. Over the years, this Court has recognized the right to participate as an essential expression of the right to equality. A Constitution Bench in *Navtej Singh Johar v. Union of India*, reported in (2018) 10 SCC 1, held Section 377 of the Indian Penal Code, 1860, unconstitutional to the extent it was discriminatory, being premised on stereotypes and stigma about genders. It denied full and equal participation of certain individuals as citizens and equal enjoyment of life. This Court held that equitable justice can be achieved only by "inclusion of all and exclusion of none". It was noted that the ideals of the

Constitution can be achieved only when each and every individual is able to participate in all walks of life. The relevant observations read thus:-

"264. The very existence of Section 377 IPC criminalising transgenders casts a great stigma on an already oppressed and discriminated class of people. This stigma, oppression and prejudice has to be eradicated and the transgenders have to progress from their narrow claustrophobic spaces of mere survival in hiding with their isolation and fears to enjoying the richness of living out of the shadows with full realisation of their potential and equal opportunities in all walks of life.

The ideals and objectives enshrined in our benevolent Constitution can be achieved only when each and every individual is empowered and enabled to participate in the social mainstream and in the journey towards achieving equality in all spheres, equality of opportunities in all walks of life, equal freedoms and rights and, above all, equitable justice. This can be achieved only by inclusion of all and exclusion of none from the mainstream.

602. The flourishing of a constitutional order requires not only the institutional leadership of constitutional courts, but also the responsive participation of the citizenry. [Marc Galanter, "Fifty Years on", in B.N. Kirpal et al, Supreme but Not Infallible: Essays in Honour of the Supreme Court of India, Oxford University Press (2000), at p. 57.] Constitutional morality is a pursuit of this responsive participation. The Supreme Court cannot afford to denude itself of its leadership as an institution in expounding constitutional values. Any loss of its authority will imperil democracy itself."

(Emphasis supplied)

104. In Jane Kaushik (supra), this Court held that elimination of structural and institutional discrimination is necessary for participation in society. The decision in Jane Kaushik (supra) relied on Vikash Kumar v. UPSC, reported in (2021) 5 SCC 370, to highlight that reasonable accommodation flows from positive obligations on State to facilitate participation of persons with disability in society. The Court held that Articles 14, 15, and 16 of the Constitution respectively provide a framework for equality that translates into participation. Further, it was noted that the right to participate traces itself to the right to freedom of expression and the right to life, in order to make life meaningful. The relevant observations read thus:-

"97. A fundamental requirement of substantive equality is the elimination of structural and institutional discrimination to achieve true participation in social settings by the community being discriminated against. Articles 14, 15 and 16 of the Constitution respectively provide a framework for equality that

translates into participation of communities situated at the fringes of society and mandate that the constitutional vision of inclusion of different and diverse voices be achieved.

Such a constitutional mandate flows not only from the equality provisions contained in Articles 14, 15 and 16 respectively but also from the broader themes of freedom of speech, expression and participation enshrined in Article 19 along with the right to a dignified social life contained in Article 21. The fundamental right to equality, fundamental freedoms and the right to life together ensure and aspire for meaningful participation and expression of the minorities."

105. What is discernible from the aforesaid judgments is that though the courts have not expressly carved out a right to public participation, yet they have emphasized on the constitutional value of the same by associating it with the right to freedom of expression and the right to life. In our considered opinion, participation in public life is an important facet of the right to equality as well. The Constitution considers all the people to be equal citizens. The ability and choice to participate in public and social life without any fear of discrimination and ridicule, is a reflection of the same.

109. The aforesaid expositions leave no manner of doubt in our minds that the right to participation is an embodiment of the constitutional vision of equal opportunity and dignity for all. The said right finds its roots in the right to freedom of expression and is shaped by the constitutional mandate of substantive equality with the end goal of affording the marginalized sections of the society a meaningful life in terms of Article 21 of the Constitution."

(Emphasis supplied)

105. We may also look into the decision in *Nipun Malhotra v. Sony Pictures Films India (P) Ltd.*, reported in 2024 SCC OnLine SC 1639, wherein this Court recognized that stereotype exacerbates systemic inequalities, and inhibits dignified participation in education or employment. What has been conveyed in so many words by this Court is that stereotype stem from a lack of familiarity, and this lack arises due to inadequate representation and participation. Again, in *Sukanya Shantha v. Union of India*, reported in (2024) 15 SCC 535, this Court reiterated that meaningful participation in social life is obstructed when treatment is based on stereotype.

106. The aforesaid expositions leave no manner of doubt in our minds that the right to participation recognizes that individuals are inherently social, and for a dignified life, one shall have the ability to participate on equal terms in community. Juxtaposing this logic, the absence of access to education restricts

an individual from participating fully and effectively in democratic, social, and economic life.

107. In a study¹⁷ conducted among students of classes sixth to eighth belonging to low-income households, the participants were given an opportunity to ask questions relating to menstruation. The study found that 18% of the participants raised questions concerning menstrual symptoms, while more than 17% of the questions pertained to myths and taboos surrounding menstruation. These questions were related to restrictions on bathing, touching objects, leaving the house, visiting temples, and performing daily chores during menstruation. The students were seeking to understand the rationale behind such restrictions.

108. The researchers observed that adolescent girls lacked adequate awareness regarding menstruation, including the proper use and disposal of sanitary pads. The study revealed that of all the questions asked concerning the treatment of menstrual abnormalities, only one related to seeking medical assistance from a professional, while the remaining questions reflected reliance on home-based remedies. It concluded that illiteracy together with poverty was as a key factor contributing to taboos, unhealthy and harmful practices, leading to adverse health outcomes.

109. In our considered opinion, the study demonstrates a serious deficit in menstrual health knowledge among adolescent girls, particularly those from economically weaker sections. The prevalence and reliance on myths and taboos reflects not merely lack of information but the persistence of structural barriers which arise from stigma and stereotype.

110. The lack of MHM measures acts as a significant barrier to girls' participation in school. Even within educational institutions, menstruation is beset by stigma, stereotype, and neglect. When schools fail to provide clean washrooms, required menstrual absorbents, safe disposal mechanisms, girl children would be compelled to either absent themselves or drop-out from school. In both scenarios, her right to participate in schooling, sports, extra-curricular activities are jeopardized.

111. As a result, lack of these measures directly impairs her participation in school. Such conditions ultimately affect her regular attendance and equal involvement in schooling. Needless to say, participation in education is not limited to physical presence in the classroom, it encompasses the ability to attend school, more particularly, having the choice to attend the school, concentrate during lessons, and take part in academic and co-curricular activities on an equal footing with peers.

112. In the absence of clean and functional washrooms, girl children would be unable to manage menstruation with privacy and dignity in school. This will put her in constant anxiety of leakage, staining clothes, and exposure to embarrassment. It is this fear which discourages her from attending school altogether. Similarly, lack of access to menstrual absorbents affects participation by making it practically unfeasible for girls to remain in school for long hours or actively participate.

113. Further, when schools fail in providing appropriate disposal facilities, girls would be forced to carry used menstrual products with them, or dispose of them in unsafe or undignified ways. The fear of being ridiculed lingers and creates a disincentive to attend school during this time. The lack of awareness and education regarding menstruation exacerbates these barriers by fostering stigma and silence within school spaces. Where menstruation is not openly acknowledged or discussed, girls are less likely to seek support from teachers or peers.

114. Awareness not only reduces the act of teasing, passing insensitive remarks, or promoting stereotypical practices but also prevents self-exclusion by girls from schooling. This way, the participation becomes continuous and equal rather than conditional and irregular. These structural deficiencies are a cause for inconvenience to menstruating girl children. Moreover, it curtails their participation in school and defeats the human right of education, which includes inclusive education.

ii. Lack of menstrual hygiene management measures impede the equality of opportunity

115. It is in the same breath that we say that equality of opportunity entails removal of obstacles that impede the advancement of disadvantaged, more particularly in the present case, the women. The concept of substantive equality seeks to work on the factors causing discrimination. It intends to provide uniform opportunities to develop the desired skills to stand on an equal footing. It aims to equalize the starting point rather than the end result.¹⁸ To illustrate, when schools evaluate performance through written examinations, equality of opportunity would ensure that students with visual or learning disabilities are provided appropriate assistive devices, scribes, or additional time.

116. What is discernable from the aforesaid is that equality of opportunity necessitates that everyone has a fair chance to acquire the skills necessary for accessing benefits. This can be achieved only when structural impediments in acquiring such skills are eliminated. Equality of opportunity would help persons at a disadvantageous position to overcome structural discrimination.

When equal opportunities are given, we recognize her right to choose and capability to choose. Hence, affording equal opportunity is an expression of treating a girl child equally.

117. The idea behind equal opportunities is to stimulate her potential, and provide her with more choice and space to develop. The principle of equality of opportunity is an essential part of social justice. In a monograph on social justice, equal opportunity has been categorized as thus:-19

i. First, having an equal start, i.e., those with identical potential should be given the opportunity to survive and develop. In this regard, John Rawls study states that expectations of those with identical abilities shall not be influenced by one's social class.

ii. Secondly, realizing equal opportunities, i.e., it is not sufficient to acknowledge that the starting point shall be same; the process of being able to access the opportunities is equally important. In this regard, any impediment that might interfere with the process should be eliminated.

iii. Thirdly, recognizing and respecting people's potential, i.e., natural differences must be respected as normal and reasonable. This seeks to addresses social and historical constraints.

118. We may aptly refer to the decision in *State of Karnataka v. Appa Balu Ingale*, reported in 1995 Supp (4) SCC 469, wherein this Court observed that dignity of a person is acknowledged by providing them equality of status and opportunity. It recognized that denial of equal opportunities in any aspect of life is denial of equal status and is reflective of inhibiting equal participation. The relevant observations read thus:-

"10. The Preamble of the Indian Constitution imbued its people with pride of being its citizens in an integrated Bharat with fraternity, dignity of person and equality of status. But casteism; sectional and religious diversities and parochialism are disintegrating the people. Social stratification needs restructure. Democracy meant fundamental changes in the social and economic life of the people, absence of inequitous conditions, inequalities and discrimination. There can be no dignity of person without equality of status and opportunity.

Denial of equal opportunities in any walk of social life is denial of equal status and amounts to preventing equal participation in social intercourse and deprivation of equal access to social means. Human relations based on equality, equal protection of laws without discrimination would alone generate amity and affinity among the heterogenous sections of the Indian society and a feeling of equal participants in the democratic polity. Adoption

of new ethos and environment are, therefore, imperatives to transform the diffracted society into high degree of mobility for establishing an egalitarian social order in Secular Socialist Democratic Bharat Republic."

(Emphasis supplied)

119. The absence of MHM measures does not merely disrupt a girl child's presence in school. It impairs her access to opportunities both during schooling and later in life. As stated aforesaid, equality of opportunity is concerned with conditions that enable an individual to participate and compete on equal terms. When such conditions are absent, naturally, an individual is put at a disadvantageous position.

120. The absence of MHM measures at school would lead to recurrent absenteeism which would result in gap in learning. Over the period of time, these gaps would translate into lower academic performance, and reduced participation in classroom. Opportunities for academic development, such as participation in competitions, sports or leadership roles, inevitably get disturbed.

121. The resultant effect of frequent and prolonged absenteeism is dropping out. At this age, dropping out forecloses future opportunities, eventually limiting access to higher education, employment, social participations, to name a few. In other words, the consequence is not merely economic deprivation, but narrowing life chances as well. Thus, the impairment of educational opportunity during formative years has a cascading effect later in life. Furthermore, it restricts a woman's ability to make informed choices regarding health, family, and civic participation.

a. Accessibility of menstrual hygiene management measures - a step towards Social Justice

122. The aforesaid may be looked at from one another angle. Social justice seeks not merely absence of discrimination, but the creation of conditions through which substantive equality can be attained. These conditions are opportunities, more particularly, access to education for those who have been disadvantaged due to inherent factors.

123. Social justice would be achieved through continuous removal of injustice and inequity in society. It requires efforts to correct structural and historical disadvantages that prevent participating on equal terms. Any effort towards social justice is an act towards inclusion. The acts by the State adopting affirmative measures, namely, welfare schemes, beneficial legislations, are attributable to promoting social justice. Thus, social justice is not a static idea but a continuous process towards achieving a just and equitable society.

124. The concept of social justice requires that everyone's life to be meaningful and livable with human dignity. This Court in Consumer Education (supra), has recognized social justice to be species of broad idea of justice. In other words, social justice mitigates inherent disadvantages and elevates the disadvantaged to the level of equality to live a life with dignity. The observations read thus:-

"18. The Preamble and Article 38 of the Constitution of India - the supreme law, envisions social justice as its arch to ensure life to be meaningful and liveable with human dignity. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept "social justice", which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of 'justice' in the generic sense.

Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large.

In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity; the State should provide facilities and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage.

19. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven practical content of 'life'. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results."

(Emphasis supplied)

125. Equality of status and opportunity flows from the constitutional principles on equality code. In *M. Nagaraj v. Union of India*, reported in (2006) 8 SCC 212, this Court recognized that there can be no justice without equality of status and of opportunity. In *Indian Medical Assn. v. Union of India*, reported in (2011) 7 SCC 179, this Court observed that aspects of socially just and equitable society are an essential component of the basic equality code itself. The Court further observed that the policies of the State must be in consonance with the principles of equity and justice inherent in Articles 14, 19, and 21 of the Constitution respectively. The relevant observations read thus:-

"165. It is now a well-settled principle of our constitutional jurisprudence that Article 14 does not merely aspire to provide for our citizens mere formal equality, but also equality of status and of opportunity. The goals of the nation State are the securing for all of its citizens a fraternity assuring the dignity of the individual and the unity of the nation. While justice- social, economic and political is mentioned in only Article 38, it was also recognised that there can be no justice without equality of status and of opportunity (see *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]).

As recognised by Babasaheb Ambedkar, at the moment that our Constitution just set sail, that while the first rule of the ship, in the form of formal equality, was guaranteed, inequality in terms of access to social and economic resources was rampant and on a massive scale, and that so long as they individually, and the social groups they were a part of, continue to not access to social and economic resources that affords them dignity, they would always be on the margins of the ship, with the ever present danger of falling off that ship and thereby never partaking of the promised goals of that ship. Babasaheb Ambedkar with great foresight remarked that unless such more fundamental inequalities, that foster conditions of injustice, and limit liberty of thought and of conscience, are eradicated at the earliest, the ship itself would be torn apart.

168. An important and particular aspect of our Constitution that should always be kept in mind is that various aspects of social justice, and an egalitarian social order, were also inscribed, not as exceptions to the formal content of equality but as intrinsic, vital and necessary components of the basic equality code itself. To the extent there was to be a conflict, on account of scarcity, it was certainly envisaged that the State would step in to ensure an equitable distribution in a manner that would be conducive to common good; nevertheless, if the State was to transgress beyond a certain limit, whereby the

formal content of equality was likely to be drastically abridged or truncated, the power of judicial review was to curtail it.

However, as long as the policy initiatives of the State were in consonance with principles of equity and justice inherent within the equality code, and indeed even the freedom code, via Article 21's guarantee of the right to life, and for promotion of freedom of expression and thought, especially to promote excellence in our debates and arguments in the political sphere so that democratic richness could be better served, or were framed in pursuance of the directive principles of State policy, that were based on reasonable and intelligible classifications, the courts were to have no further place in entering the field of policy choices. The courts could of course, also, impose positive constitutional obligations on the State, where the abnegation of those positive and affirmative obligations, encoded within fundamental rights itself, were so gross as to constitute a fraud on the face of the Constitution."

(Emphasis supplied)

126. From the perspective of substantive equality, the absence of menstrual hygiene measures entrenches gendered disadvantage by converting a biological reality into a structural exclusion. The denial of basic enabling conditions, i.e., lack of clean and functional washrooms, menstrual products, disposal mechanism, and awareness about MHM measures, impedes not only a girl child's right to participate in education, but also her right to opportunity to compete, to advance, and to realize her potential throughout her life. It is crucial to address these deficiencies to prevent temporary exclusion from turning it into permanent inequality.

E. The fundamental right to education under Article 21A "Education is what survives when what has been learned has been forgotten."

127. We wish to preface this part of our judgment with the enlightening words of B. F. Skinner emphasizing on the lasting impact of education. It seeks to convey that even when specific details are forgotten, the intellectual and moral development nurtured by education stays.

128. In *Anjuman Ishaat-e-Taleem Trust v. State of Maharashtra*, reported in 2025 SCC OnLine SC 1912, Dipankar Datta, J., succinctly highlighted the constitutional journey of Article 21A and the right to elementary education in India. The decision traces the relevant judicial pronouncements, discussed in the earlier parts of this judgment, which recognized education as an essential part of the right to life, and contributed towards insertion of Article 21A in the Constitution. The relevant observations read thus:-

"72. The right to elementary education in India did not begin its journey as a fundamental right. In the Constitution, as originally drafted, elementary education was initially recognized only as a Directive Principle of State Policy under Article 45, which provided:

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

73. Article 45 seems to be the only directive principle framed with a specific time frame, reflecting the urgency and significance that the framers of the Constitution placed on its implementation. This directive, though aspirational, was unfortunately not judicially enforceable and depended heavily on the discretion and capacity of the State. The framers of the Constitution consciously placed 'EDUCATION' in Part IV, recognizing its criticality but also acknowledging the financial and administrative limitations of the newly independent nation.

80. These judicial efforts culminated in the Constitution (Eighty-sixth Amendment) Act, 2002, which introduced Article 21A into the Constitution.

81. Alongside Article 21A, the amendment also substituted Article 45 to focus on early childhood care and education and introduced a corresponding fundamental duty under Article 51A(k), requiring parents and guardians to ensure educational opportunities for their children between the ages of 6 and 14.

82. Article 21A, thus, marked a constitutional transformation by elevating the child's right to free and compulsory elementary education to the status of an enforceable fundamental right."

(Emphasis supplied)

129. Thereafter, Article 21A came into effect on 01.04.2010 along with the RTE Act with the avowed objective to provide free and compulsory education to all children of the age six to fourteen years.

130. In light of the aforesaid, *Devesh Sharma v. Union of India*, reported in (2023) 18 SCC 339, held that the fundamental right to education must be meaningful, and of good "quality". This Court traced the country's progress in making the right to education a justiciable and enforceable right. The relevant observations read thus:-

"14. The 1986 National Policy on Education, modified in the year 1992, declared that free and compulsory elementary education of "satisfactory

quality" be given to all children up to the age of fourteen years, before the nation enters the next century i.e. 21st Century.

15. Later, in the seminal judgment of this Court in *Unni Krishnan, J.P. v. State of A.P.* [*Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645 : 1 SCEC 523 : AIR 1993 SC 2178], it was held that children have a fundamental right to free education, till they complete the age of fourteen years.

16. In the year 1997, in order to make free and compulsory education a fundamental right the 83rd Constitutional Amendment Bill was introduced in Parliament, to insert a new Article in Part III of the Constitution of India, which was to be Article 21-A. The Bill was sent for the scrutiny of the Parliamentary Standing Committee on Human Resources Development. The Standing Committee not only welcomed the amendment but in addition emphasises on the "quality of elementary education". This is what it said:

"The eminent educationists felt that the Bill is silent on the "Quality" of Education. They suggested that there should be a reference to "quality" of education in the Bill. The Secretary, Education agreed that the "quality" aspect also has to be seen. Education definitely must mean "quality" education and anything less than that should not be called education. Therefore, the emphasis would be through strengthening the teacher education content, the Secretary stated." [Para 13 of the Report of the Parliamentary Standing Committee on Human Resource Development.]

17. Finally, by way of the Constitution (86th Amendment) Act, 2002, Article 21-A, was inserted as a fundamental right in Part III of the Constitution, and made effective from 1-4-2010. Article 21-A of the Constitution reads as under:

"21-A. Right to education.-The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

18. In order to fulfil the above mandate the Right to Education Act, 2009, was passed by Parliament on 20- 8-2009, which became effective from 1-4-2010. The Object and Reasons of the Act declared loud and clear that what the Act seeks to achieve is not merely "free" and "compulsory" elementary education, but equally important would be the "Quality" of this education! The Preamble to the Act states "that every child has a right to be provided full-time elementary education of satisfactory and equitable "quality" in a formal school which satisfies certain essential norms and standards".

(Emphasis supplied)

131. In *Avinash Mehrotra v. Union of India*, reported in (2009) 6 SCC 398, a PIL sought safer school conditions in order to protect the right to life and the right to education under Articles 21 and 21A respectively. The petitioner approached this Court pursuant to an incident when a fire broke out in a private school's kitchen while the mid-day meal was being prepared leading to death of several students. In such circumstances, this Court held that the right to education includes the right to a safe school. It observed that the right to education is an inalienable human right, and is, as essential to the life of an individual as health and dignity. It further observed that the Government shall make an endeavour to implement Article 21A in its letter and spirit. The relevant observations read thus:-

"35. The Constitution likewise provides meaning to the word "education" beyond its dictionary meaning. Parents should not be compelled to send their children to dangerous schools, nor should children suffer compulsory education in unsound buildings. 36. Likewise, the State's reciprocal duty to parents begins with the provision of a free education, and it extends to the State's regulatory power. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civic duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.

38. This Court in *Ashoka Kumar Thakur* case⁶ observed as under: (SCC p. 660, para 482)

"482. It has become necessary that the Government set a realistic target within which it must fully implement Article 21-A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21-A, which, in the larger interest of the nation, must be fully implemented. Without Article 21-A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee the Government spending on free and compulsory education."

39. In view of the importance of Article 21-A, it is imperative that the education which is provided to children in the primary schools should be in the environment of safety."

(Emphasis supplied)

132. A three Judge Bench in State of T.N. v. K. Shyam Sunder, reported in (2011) 8 SCC 737, while dealing with the challenge relating to implementation of uniform system of education in Tamil Nadu observed that there shall be no discrimination in quality of education. It was observed that the right to education shall not be restricted only to free and compulsory education but also encompasses quality education. The quality of education disseminated shall be uniform irrespective of social, economic, and cultural background. Education is not merely access to school but an active process of developing the knowledge, skill, mind by formal schooling. The relevant observations read thus:-

"20. The right to education is a fundamental right under Article 21-A inserted by the Eighty-sixth Amendment of the Constitution. Even before the said amendment, this Court has treated the right to education as a fundamental right. (Vide Mohini Jain v. State of Karnataka [(1992) 3 SCC 666 : AIR 1992 SC 1858] ; Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645 : AIR 1993 SC 2178] and T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481].)

21. There has been a campaign that right to education under Article 21-A of our Constitution be read in conformity with Articles 14 and 15 of the Constitution and there must be no discrimination in quality of education. Thus, a common syllabus and a common curriculum is required. The right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of its economic, social and cultural background.

Arguments of the propagators of this movement draw support from the judgment of the US Supreme Court in Brown v. Board of Education [98 L Ed 873 : 347 US 483 (1953)] overruling its earlier judgment in Plessy v. Ferguson [41 L Ed 256 : 163 US 537 (1895)] where it has been held that "separate education facilities are inherently unequal" and thus, violate the doctrine of equality.

24. In State of Orissa v. Mamata Mohanty [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83], this Court emphasised the importance of education observing that education connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The Court further relied upon the earlier judgment in Osmania University Teachers' Assn. v. State of A.P. [(1987) 4 SCC 671 : AIR 1987 SC 2034], wherein it has been held as under : (Osmania University Teachers' Assn. case [(1987) 4 SCC 671 : AIR 1987 SC 2034], SCC p. 685, para 30)

"30. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs." The case at hand is to be proceeded with keeping this ethical backdrop in mind."

(Emphasis supplied)

133. A Constitution Bench in *Pramati Educational & Cultural Trust v. Union of India*, reported in (2014) 8 SCC 1, upheld the constitutional validity of the Constitution (Eighty-sixth Amendment) Act, 2002, and categorically held that the insertion of Article 21A in the Constitution does not violate the basic structure of the Constitution. However, Article 21A is not selfexecuting. It finds its concrete expression through the RTE Act.

i. Right to free and compulsory education under the RTE Act

134. The focus of the RTE Act is to make education accessible by providing elementary education of satisfactory and equitable quality. The Act casts an obligation on the Government to provide and ensure admission, attendance and completion of elementary education. It envisages that no child shall be made to pay any kind of fee or expenses which may prevent it from pursuing and completing elementary education.

135. The decision in *Anjuman Ishaat-e-Taleem Trust (supra)*, pithily expresses the core objectives of the RTE Act and captures the vista of Article 21A. The relevant observations read thus:-

"86. As outlined in the Statement of Objects and Reasons accompanying the Right of Children to Free and Compulsory Education Bill, 2008⁶⁵, the objectives of the RTE Bill read:

"The Right of Children to Free and Compulsory Education Bill, 2008, is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."

87. Viewed holistically, the RTE Act-contrary to the commonly held belief-does not impose an onerous or excessive regulatory burden; rather, it lays down the bare minimum core obligations and standards that all schools [as defined in Section 2(n)] must follow to ensure that the constitutional promise

envisioned by Article 21A is not rendered meaningless. They include requirements such as trained teachers, student-teacher ratio, adequate infrastructure, inclusive admission policies, age-appropriate common curriculum, etc. All these are indispensable to deliver quality elementary education.

88. At its heart, the RTE Act is an instrument for universalisation of education, which is rooted in the values of social inclusion, national development, and child-centric growth. It is aimed at bridging the gap between privileged and disadvantaged, and it ensures that every child, regardless of caste, creed, class, or community, is given a fair and equal opportunity to learn, grow, and thrive. The RTE Act is designed not to stifle institutional autonomy but to uphold a threshold of dignity, safety, equity, and universality in the learning environment for a child.

89. Born of Article 21A, the RTE Act is not merely another addition to the statute books. It is the living expression of a long-deferred promise. When the Constitution was first adopted, the right to education could find place only among the Directive Principles, tempered by the economic and institutional limitations of a newly independent nation; yet, the vision was never abandoned but merely postponed. It took the nation over half a century of democratic maturity, social awakening, and judicial insistence for this vision to be shaped into a fundamental right.

90. In this sense, Article 21A stands, perhaps, a shade taller than many other rights, not merely by hierarchy but by the weight of the journey it carries—a journey of struggle, consensus, and above all, a reaffirmation that right to elementary education is not charity, but justice."

(Emphasis supplied)

136. It would be apposite to refer to the decision in *Devesh Sharma v. Union of India*, reported in (2023) 18 SCC 339, wherein this Court was dealing with the question, whether the National Council for Teacher Education was right in including BEd qualification for appointment to the post of primary school teacher. In other words, the Court assessed whether BEd candidates were trained to teach in primary classes. In this context, the Court held that free and compulsory education would be meaningless if it is not quality education. The quality of education is influenced by many factors, one of them being the qualifications of teachers. The Court held that any compromise on "quality" of education would be a violation of Article 21A.

137. It can be safely concluded that quality of education goes beyond textbooks, teachers, or classrooms. It includes all the conditions that enable

effective learning and continuity of schooling. Inaccessibility of MHM disrupts attendance, hinders concentration, and consequently, breaks the continuity of schooling.

138. In *Society for Unaided Private Schools of Rajasthan v. Union of India*²⁰, reported in (2012) 6 SCC 1, the Court held that the word "free" in the title of the RTE Act indicates removal of any financial barrier that prevents a child from elementary education. It was observed that the provisions of the RTE Act envisaged imparting quality education which comprises providing required infrastructure and complying with standards specified by the RTE Act. The relevant observations read thus:-

"7. The word "free" in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word "compulsory" in that title stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21-A of the Constitution, Parliament has enacted the 2009 Act.

8. The 2009 Act received the assent of the President on 26-8-2009. It came into force w.e.f. 1-4-2010. The provisions of this Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of quality education by providing required infrastructure and compliance with specified norms and standards in the schools. The Preamble states that the 2009 Act stands enacted inter alia to provide for free and compulsory education to all children of the age 6 to 14 years. The said Act has been enacted to give effect to Article 21-A of the Constitution."

(Emphasis supplied)

a. Management of menstrual hygiene as a financial barrier under Section 3 of the RTE Act

139. Section 3 of the RTE Act stipulates that every child of the ages of six to fourteen years shall have the right to free and compulsory education. The section aims to remove financial barriers which prevent a child from exercising its right to education. It reads thus:-

"3. Right of child to free and compulsory education.-

[(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

[(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.]"

(Emphasis is ours)

140. The word expression "to pay any kind of fee or charges or expenses" in Section 3(2) is not only restricted to school fees but also includes all kinds of charges or expenses that would prevent a child from pursuing as well as completing elementary education. For instance, expenses relating to washroom facilities, uniform charges, maintenance of the bus service, electricity charges, medical assistance²¹, books and school essential charges.

141. In *Society for Unaided Private Schools of Rajasthan* (supra), the object of Section 3(2) was identified as removing a financial barrier which prevents a child from accessing education. Thus, it was held that no child shall be asked to pay any kind of fee or charges which may prevent him or her from pursuing elementary education.

142. In *Justice for All v. State* (NCT of Delhi), reported in 2020 SCC OnLine Del 1217, the Delhi High Court was dealing with a PIL seeking the supply of free devices to children belonging to EWS/DG in order to enable them to attend classes by way of video conferencing. While interpreting the statute through the 'always speaking' rule of interpretation, the Court held that, in furtherance of Section 3 of the RTE Act, private unaided schools are required to provide necessary devices to the 25% EWS/DG students free of cost, as such devices are indispensable for accessing education. The schools under the RTE Act must ensure that the students are able to access the mode of teaching opted by the respective schools. The Court observed that by not providing the

equipment, the schools are creating a financial barrier qua such students. The relevant observations read thus:-

"150. Upon a holistic reading of Sections 3, 8 and 12(1)(c), it is apparent that the obligations of the State as well as private unaided schools under the RTE Act, 2009 are to the students studying in government schools and 25% EWS/DG students except for fee paying students.

156. The argument that private unaided schools are required to provide equipment to EWS/DG students only if they are providing such equipment to the 75% fee paying students is mis-conceived. Section 12(1)(c) requires private unaided schools to inter alia provide free and compulsory elementary education to 25% EWS/DG students; which means education sans financial barrier viz-a-viz those things which are indispensable for access to elementary education.

Section 12(1)(c) obligation is in no way dependent upon what school gives to the fee paying children, free or otherwise. The equipment in question is indispensable/mandatory for the purpose of accessing and availing elementary education through online means and therefore has to be provided free of cost under Section 12(1)(c). Moreover, everything which is necessary for pursuing and completing elementary education which fee paying students are also required to have, are not provided free to such students.

161. In order to address this discrimination and fulfill their obligations, the private unaided schools under Section 12(1)(c) and Government schools like Kendriya Vidyalayas under Section 3(2) of RTE Act, 2009 are directed to provide equipment of optimum configuration which is sufficient to enable EWS/DG students to get access to online learning."

(Emphasis supplied)

143. In Master Manjunath v. Union of India, reported in 2019 SCC OnLine Kar 3101, the question before the Karnataka High Court was whether the State Government is under an obligation to provide two sets of uniforms to the children to whom Section 3 of the RTE Act is applicable. The school provided only one set of uniform. In such circumstances, the Court directed distribution of second set of uniforms as a Government Order dated 30.06.2018 permitted its distribution, and held that if the rules require the children to compulsorily wear uniforms, the parents would have to incur expenses, and ultimately it will prevent the children from pursuing education. The Court observed that providing one set of uniform for five or six days would be irrational or rather unhygienic.

144. What flows from the aforesaid discussion is that Section 3 of the RTE Act is not restricted to the formal entitlement of enrolment in a school. The right it guarantees is one of effective and continuous access to education. Section 3 incorporates the requirement that education shall be provided in conditions consistent with dignity and equality. The absence of sanitary napkins and safe disposal mechanisms compels menstruating girls to stay away from school for several days each month. When such circumstances continue to persist, it is an indication that the State has failed in ensuring regular attendance and continuity of education. This results in direct denial of the right guaranteed under Section 3.

145. One another good reason to hold the aforesaid is that education under Section 3 must be free. Free education means that no child should be required to incur expenditure that becomes a barrier to accessing education. When this expenditure leads to absenteeism or drop-out, the State's inaction converts a guaranteed right into a conditional one.

146. We must mention that any condition that forces a girl child to choose between dignity and education cannot be regarded as just and equitable. The failure to provide sanitary napkins creates a gender-specific barrier that impedes attendance, and continuity in education, thereby defeating the substantive guarantee of free and compulsory education. We further stress that while Section 3 guarantees the right to education, Section 19 operates at the institutional level by prescribing minimum infrastructural standards in order to strengthen the right to education. Thus, the provisions must be read conjunctively.

b. Menstrual management measures as mandatory "norms and standards" for schools under Section 19 of the RTE Act

147. Section 18 of the RTE Act states that no school, i.e., a school not established, owned, or controlled by the appropriate Government or the local authority, shall be established or function, without obtaining a certificate of recognition from the District Education Officer. For such a school to be recognized, it is necessary that it, inter alia, fulfils norms and standards specified in Section 19.

148. Sub-section (3) of Section 18 provides that, upon contravention of the conditions of recognition, which include adherence to the prescribed norms and standards, the competent authority may withdraw such recognition. Further, from the date of withdrawal of the recognition, the school ceases to be entitled to continue functioning. Any continuance thereafter would render the school liable to a fine prescribed under sub-section (5) of Section 18.

149. In the aforesaid context, it would be apposite to look at Rule 15 of the Right of Children to Free and Compulsory Education Rules, 2010 (for short, "the RTE Rules"), which prescribes that every school that had made a self-declaration within three months of the commencement of the Act had to conform to, inter alia, the values enshrined in the Constitution. Further, sub-rule (6) of Rule 15 stipulates that schools that do not conform to the norms, standards, and conditions mentioned in the Schedule within three years from the commencement of the RTE Act shall cease to function.

Furthermore, in order to be recognized, every school established after the commencement of the RTE Act is required to conform to the same norms, standards, and conditions. 150. Section 19 of the RTE Act stipulates that schools which are not established, owned, or controlled by the appropriate Government or the local authority shall not be established and granted a certificate of recognition unless they fulfil the norms and standards set out in the Schedule. This stipulation applies irrespective of whether the school is a Government school or a private school. In other words, the section operates independently of Section 18.

151. The net effect of the aforesaid is that every school, whether Government-run or privately managed, must act in accordance with the norms and standards laid down in Section 19 of the RTE Act. The RTE Act expressly provides consequences in the event of non-compliance by schools that are not established, owned, or controlled by the appropriate Government or a local authority. Insofar as schools established, owned, or controlled by the appropriate Government or a local authority are concerned, non-compliance with the norms and standards would amount to a contravention attributable to the State itself.

152. We take notice of the building norms and standards listed in the Schedule to the RTE Act. It reads thus:-

"2. Building All-weather building consisting of-

- (i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;
- (ii) barrier-free access;
- (iii) separate toilets for boys and girls;
- (iv) safe and adequate drinking water facility to all children;
- (v) a kitchen where mid-day meal is cooked in the school;

(vi) Playground;

(vii) arrangements for securing the school building by boundary wall or fencing."

(Emphasis is ours)

153. We shall clarify that the expression "barrier-free access" to a school building is not confined to the structural design of the building alone but extends equally to the amenities and facilities within it. Barrier-free access signifies that schools are required to identify and remove all impediments that obstruct access to education, whether by eliminating physical barriers or by adopting affirmative measures necessary to secure the effective realization of barrier-free access to education. Nothing within the school shall prevent a student from attending school, and/or once entered, from remaining in school for the full duration necessary to meaningfully participate in educational activities.

154. In *Radha Shekhawat v. State of Rajasthan*, reported in 2015 SCC OnLine Raj 3428, the Rajasthan High Court took cognizance of the report submitted by the Advocate General, wherein it was stated that construction was underway in 176 schools which had no toilets, and 700 schools which had only one toilet. The Court expressed dismay at the non-availability of toilets and the condition of existing toilets, which were nothing more than walls to hide, without any door, roof, or facility of water. The Court directed that the responsibility of construction and maintenance of toilets shall be shared by the School Management Committee, and the Sarpanch in light of Article 243(G) of the Constitution. Needless to say, the Court held that the right to education remains unfulfilled, if there are inadequate classrooms, electricity, water, and proper toilets in the schools. The relevant observations read thus:-

"10. The survey report, submitted in pursuance to the orders passed by the Court, has brought on record the fact that even where there are toilets available, they are either broken or not suitable for girls, and that all most all the toilets are not being properly maintained. We have already observed that the open and unclean toilets are of no consequence, unless separate toilets are provided for girls and boys, and that each toilet has a roof and door with a latch by which can be closed, specially for girls, water and that it is regularly cleaned.

12. We find sufficient force in the contention of learned counsel appearing for the petitioner that apart from the school staff, who is responsible for construction and maintenance of the toilets, the responsibility should also be shared by the School Management Committee, which is chaired by the

parents, and of which the Head Master is the Secretary. Learned Advocate General has also made valuable suggestions that in order to secure availability of toilets in Government Schools and its maintenance, the Sarpanch of Panchayat should also be made responsible.

We find sufficient force in the suggestions, inasmuch as, the Eleventh Schedule in the Constitution of India, with reference to Article 243(G), gives the responsibility of availability of drinking water, and education including Primary and Upper Primary Schools, to village Panchayats. The right to receive education for the children guaranteed by Article 21-A of the Constitution of India, includes right to education in a hygienic conditions. The right to education remains unfulfilled, if there are inadequate class rooms, electricity, water and proper toilets in the schools.

14. The Sarpanch of the village, will have overall supervision of the provision of toilets, and its maintenance and cleanliness in the schools in rural areas, and that the Schools Management Committee for all the schools both the urban and rural areas, will carry out overall supervision of the provision of maintenance and cleanliness of the toilets and availability of water in all the schools. It will be open to them to report the non-availability of the budget and its disbursement to the Block Development Officer in rural areas and Elementary Education Officer in urban areas."

(Emphasis supplied)

155. The Madras High Court, in *Setupati Higher Secondary School v. State of T.N.*, reported in 2016 SCC OnLine Mad 31508, dealt with the issue, whether the Government, being the funding authority in a recognized and aided private school, has the right to frame rules for fixation of teaching posts and to grant approval for appointments, including vocational instructor posts. The High Court rejected the contention of the respondent-State by placing reliance on the decision of this Court in *State of Orissa v. Mamata Mohanty*, reported in (2011) 3 SCC 436.

In the said decision, this Court held that paucity of funds cannot be a ground for the State to evade maintenance of educational standards. Taking into consideration Sections 19 and 25 of the RTE Act respectively, read with the Schedule, the Court held that the Government cannot shirk its duties and run away from its responsibilities, stating that due to a want of funds, posts cannot be sanctioned in schools. In such circumstances, the Court directed the respondents to approve the appointment of a vocational instructor. The relevant observations read thus:-

"12. In the case of State of Orissa v. Mamata Mohanty, reported in (2011) 3 SCC 436, the Hon'ble Supreme Court held that standard of teaching shall not suffer on the ground of want of funds/paucity of funds cannot be a ground for the State for not maintaining the standard of education and not providing quality education to its citizens. In Paragraph No. 33 of the said decision, the Hon'ble Supreme Court held thus:-

"33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds."

16. Under such circumstances, the refusal for approval of appointment is without basis and without application of mind. Hence, the impugned orders, dated 07.11.2014 and 10.11.2014, are set-aside and the respondents are directed to approve the appointment of Thiru. R. Kannan, as Vocational Instructor, in the petitioner school, with sanction of grant-in-aid, within a period of four weeks from the date of receipt of a copy of this order."

(Emphasis supplied)

156. We may look into the decision of the Uttarakhand High Court in Deepak Rana v. State of Uttarakhand, reported in 2016 SCC OnLine Utt 2454, wherein the Court expressed disappointment at the condition of school infrastructure in the State. The Court found that there were no toilets for girls in 67 schools. It observed that the fundamental right to free and compulsory education entails the availability of basic facilities such as a school building with furniture, blackboards, toilets, free uniforms and books, and mid-day meal facilities. The lack of infrastructure was identified as a major factor lowering the standards of education. At last, the Court issued a slew of directions, including the construction and maintenance of separate toilets for boys and girls.

157. The Calcutta High Court in State of W.B. v. Krishnendu Biswas, reported in 2025 SCC OnLine Cal 2888, while dealing with the enhancement of qualification of the respondent therein, observed that there are drop-outs or

out-of-school children in society, and it is the duty of the State to fulfil the object of the RTE Act qua those children. The Court noted that factors contributing towards the drop-out of children from school, more particularly girls, are poor sanitary problems due to poor infrastructural facilities. The relevant observations read thus:-

"16. The petitioner's termination also constitutes a violation of his "fundamental right to livelihood under Article 21 of the Constitution of India". Depriving the drop out or out of school children from their free and compulsory education to children aged 6 to 14 years is sheer violation of the RTE Act and also Article 21-A of the Indian Constitution, inserted by the 86th Amendment in 2002 which mandates the State to provide free and compulsory education to all children aged 6 to 14 years as determined by law, making education a fundamental right.

17. There is no dispute that there are no drop out students. The issue of dropout student continued to prevail in the country, preventing many children from attending school due to mainly engagement in domestic work to support their families, lack of interest in studies and sometimes especially difficult for girls to continue study because of concerned about their safety and sanitary problems due to poor infrastructural facilities.

To curb such problems, State should provide efficient and sufficient infrastructure. Apart from that, the State shall also set-up an alternative and innovative school education as well as bring back them to have education. State can involve those Shiksha Mitras to educate them and/or also inculcate awareness amongst the dropout children and their parents so that children may attend the school regularly for having education then only actual object of SSA and RTE act, will be fulfilled."

(Emphasis supplied)

158. An application was filed by a school for recognition of classes I to IV but was rejected by the Kerala State Educational Department on the ground that the school did not have a playground, and there were 15 government-aided schools within 5 kms of the applicant school. In such circumstances, the Kerala High Court in *St Mary's English Medium School v. State of Kerala*, reported in 2025 SCC OnLine Ker 4092, took notice of Sections 18 and 19 of the RTE Act respectively and the Schedule appended to the Act. The Court refused to interfere with the order of rejection as the school was not set up according to the norms and standards provided in the Schedule. It was held that adherence to the prescribed norms and standards must not be mere lip service. The relevant observations read thus:-

"7. Thus, a school must be set up according to the norms and standards as provided in Schedule read with Section 19, and it must have recognition from the competent authority to run the school. If the school does not have norms and standards prescribed under the Schedule, no recognition can be granted and such a school cannot be allowed to be run. For running such a school which does not fulfill the norms and standards and does not have recognition, consequences are provided in Section 18 itself.

8. As per the Schedule, the school inter alia must have a building which should be all weather building consisting of the followings:

- i. at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;
- ii. barrier-free access;
- iii. separate toilets for boys and girls;
- iv. safe and adequate drinking water facility to all children;
- v. a kitchen where mid-day meal is cooked in the school;
- vi. Playground; vii. arrangements for securing the school building by boundary wall or fencing.

9. The playground is one of the requirements of the building.

10. The petitioner in the writ petition has not stated the dimensions of the playground of his school. Nowhere in the writ petition I find anything mentioned about the area of the playground which the petitioner school have. When the Act contemplates playground, it means that it should be enough for sports facilities and if the playground is very small, it cannot be said to be a sufficient playground. When the Schedule contemplates a building to have a playground, it means it should have a playground of sufficient area in which sports can be played. In the absence of the requisite pleadings, I cannot accept the argument of the petitioner that the petitioner school has a playground of sufficient dimensions, which can provide a sports facility to its students."

(Emphasis supplied)

159. What emerges from the aforesaid discussion is that the fundamental right to education necessarily embodies the availability of basic and enabling facilities. These include clean and functional separate toilets commensurate with the strength of the students, access to sanitary napkins, and a designated and hygienic mechanism for the disposal of used sanitary napkins. These

facilities are not ancillary conveniences but integral to ensuring barrier-free access to education, more particularly, for girl students.

160. In the aforesaid context, compliance with Section 19 read with the Schedule cannot be subjected to financial convenience. In other words, the State cannot be permitted to plead absence of funds as a justification for non-compliance with the norms and standards. We say so because the State is under an obligation to provide barrier-free access to education.

161. The aforesaid is further fortified in light of the duties of the appropriate Government and local authority stipulated under Sections 8 and 9 respectively. The appropriate Government and the local authority are entrusted with the duty to provide infrastructure including school building, teaching staff and learning equipment. The appropriate Government and the local authority have to ensure and monitor admission, attendance and completion of elementary education by every child. Most importantly, it also has to ensure good quality elementary education conforming to the standards and norms specified in the Schedule.

162. We need not discuss further on the requirement of separate toilets for boys and girls. The requirement for "barrier-free access" must be understood in a substantive sense. It obliges the schools not merely to ensure formal access to school buildings, but to proactively identify and remove all barriers impeding presence of a child in the school. To put this in context, the absence of sanitary napkins and a hygienic mechanism to dispose it results in absenteeism, or drop-out of girls from school. We are constrained to observe that such failure is not administrative but constitutional.

163. What emerges is a stark constitutional failure, inasmuch as, although the statute mandates barrier-free access to the school building and separate toilets for boys and girls yet even after almost 17 years of enactment of the legislation, many schools continue to lack basic necessities for students. The norms and standards laid down in the Schedule are not merely procedural in nature but are integral to the effective realization of Section 3 of the RTE Act, and more particularly, the right to education under Article 21A.

F. Role of Men in Menstruation

164. At this stage, we would like to emphasize on the role young boys and male teachers play in the life of adolescent girl students. We have no hesitation in saying that if the spirit of Article 21A and the RTE Act is to be achieved in its fullest sense, it would not be sufficient that merely gender-segregated toilets or sanitary napkins are provided. We say so because this is far more than an infrastructural problem. The absence of menstrual hygiene

facilities in schools is not the only barrier that impedes education but rather it is only half the problem. More often than not, the environment within which the girl child is acquiring education, is equally impeding, if not a greater barrier.

165. Undoubtedly, laws have the power to shape and influence social behaviour and bring forth transformative change. However, we must also acknowledge the grim reality that the implementation of these laws faces several challenges arising from deep-rooted attitudes and norms which our society is unwilling to break away from.

166. A school may have adequate facilities for menstrual hygiene, but an unsupportive, rather hostile and stigmatized environment would render them of no use. The environment at school is not a monolith of females, it consists of young boys, male teachers, and male staff. Until the whole ecosystem is sterilized of the stigma associated with menstruation, the infrastructural efforts would remain underutilized.

167. Menstruation should not be a topic that is only shared in hushed whispers. It is crucial that boys are educated about the biological reality of menstruation. A male student, unsensitized towards the issue, may harass a menstruating girl child which may discourage her from attending school.

168. In this context, the responsibility weighs even heavier on the male teachers. They must be sensitized to the needs of a girl child. For instance, a request to the restroom or the sudden need to leave the classroom must be treated with sensitivity rather than straight dismissal or invasive questioning. To put briefly, we would say, ignorance breeds insensitivity, knowledge breeds empathy.

169. All that we are trying to convey is that, men have a multifaceted role in menstrual hygiene and awareness for school-going adolescent girls. On one hand, male teachers can integrate accurate, stigma-free information into lessons. At the same time, the staff would be responsive towards maintaining cleanliness and hygiene in toilets. On the other hand, peers and classmates would be empathetic and helpful.

170. Time is over ripe that we recognize menstrual health as a shared responsibility rather than a woman's issue. Awareness must not be limited to girls, but extends to boys, parents, and teachers. When menstruation is discussed openly in schools, it ceases to be a source of shame. It is recognized as what it is, a biological fact. Needless to say, it must be seen as a collective effort rather than a constitutional pull.

171. We acknowledge and appreciate the efforts on part of the Union and States to undertake awareness and training programmes for teachers, and implement capacity-building programme. However, one swallow does not make the summer. These initiatives are uneven and what is lacking is an active monitoring mechanism to oversee implementation.

VI. CONCLUSION

172. A conspectus of the aforesaid detailed discussion on the Articles 14, 21 and 21A of the Constitution, respectively, and the RTE Act is as follows:-

a. The right to education has been termed as a 'multiplier right' as it enables exercise of other human rights. The right to education forms part of the broader framework of the right to life and human dignity, which cannot be realized without access to education.

b. The substantive approach to equality under Article 14 demands that treatment be accorded with due regard to the individual, institutional, systemic, and contextual barriers that impede the translation of rights in reality. At the same time, the State, as a benefactor, is under an obligation to remedy such structural disadvantages.

c. Inaccessibility of menstrual hygiene management measures undermines the dignity of a girl child, as dignity finds expression in conditions that enable individuals to live without humiliation, exclusion, or avoidable suffering. Privacy is inextricably linked with dignity. As a corollary, the right to privacy entails a duty on the State to not only refrain from violating privacy but an accompanying obligation on the State to take necessary measures to protect the privacy of an individual.

d. The right to life under Article 21 of the Constitution includes the right to menstrual health. Access to safe, effective, and affordable menstrual hygiene management measures helps a girl child attain the highest standard of sexual and reproductive health. The right to healthy reproductive life embraces the right to access education and information about sexual health.

e. The right to equality is expressed through the right to participate on equal terms. At the same time, equality of opportunity necessitates that everyone has a fair chance to acquire the skills necessary to access benefits. Inaccessibility of menstrual hygiene management measures strips away the right to participate on equal terms in school. The domino effect of the absence of education is the inability to participate in all walks of life later.

f. The fundamental right to education under Article 21A and the RTE Act comprises free, compulsory, and quality education. Free education includes

all kinds of charges or expenses that would prevent a child from pursuing and completing elementary education.

g. All schools, whether run by the appropriate Government or privately managed, must act in accordance with the norms and standards laid down in Section 19. In case of a school not established, owned, or controlled by the appropriate Government or the local authority is found to be in contravention of the provisions of the RTE Act, it would be de-recognized and the consequences therefrom would follow. Insofar as a school established, owned, or controlled by the appropriate Government or the local authority is found to be in contravention of the provisions of the RTE Act, the State would be held accountable.

VII. DIRECTIONS

173. Having exhaustively discussed the constitutional and the statutory framework as regards the issue at hand we find it appropriate to direct the following:

I. As regards the "toilet and washing facilities", we direct that:-

i. All States and Union Territories shall ensure that every school, whether Government-run or privately managed, in both urban and rural areas, is provided with the functional, gender-segregated toilets with usable water connectivity.

ii. All the existing and newly constructed toilets in schools shall be designed, constructed, and maintained so as to ensure privacy and accessibility, including by catering to the needs of children with disabilities.

iii. All school toilets shall be equipped with functional handwashing facilities, with soap and water available at all times.

II. As regards the "availability of menstrual absorbents", we direct that:-

i. All States and Union Territories shall ensure that every school, whether Government-run or privately managed, in both urban and rural areas, provides oxobiodegradable sanitary napkins manufactured in compliance with the ASTM D-6954 standards free of cost. Such sanitary napkins shall be made readily accessible to girl students, preferably within the toilet premises through sanitary napkin vending machines, or, where such installation is not immediately feasible, at a designated place or with a designated authority within the school.

ii. All States and Union Territories shall ensure that every school, whether Government-run or privately managed, in both urban and rural areas, establish Menstrual Hygiene Management (MHM) corners. Such MHM corners shall be equipped with, including but not limited to, spare innerwear, spare uniforms, disposable bags, and other necessary materials to address menstruation-related exigencies.

III. As regards the "disposal of sanitary waste", we direct that:-

i. All States and Union Territories shall ensure that every school, whether Government-run or privately managed, in both urban and rural areas, is equipped with a safe, hygienic, and environmentally compliant mechanism for the disposal of sanitary napkins, in accordance with the latest Solid Waste Management Rules.

ii. Each toilet unit shall be equipped with a covered waste bin for the collection of sanitary material, and cleanliness and regular maintenance of such bins shall be ensured at all times.

IV. As regards the "awareness and training about menstrual health and puberty", we direct that:-

i. The National Council of Educational Research and Training (NCERT) and the State Council of Educational Research and Training (SCERT) shall incorporate gender-responsive curricula, more particularly, on menstruation, puberty, and other related health concerns (PCOS, PCOD, etc.), with a view to break stigma and taboo associated with menstrual health and hygiene.

ii. All teachers, whether male or female, shall be adequately trained and sensitized on menstrual hygiene, including appropriate ways of supporting and assisting menstruating students.

iii. Information regarding the availability of Jan Aushadhi Suvidha Oxo-Biodegradable Sanitary Napkin shall be widely disseminated through advertisement in social media, print media, radio advertisement, TV advertisement, cinema advertisement, and outdoor publicity like bus queue shelter branding, bus branding, auto wrapping, wall paintings.

iv. The child helpline set up by the National Commission for Protection of Child Rights in furtherance of Rule 26 of the RTE Rules be disseminated forthwith through social media, print media, radio advertisement, TV advertisement, cinema advertisement, etc.

174. The District Education Officer (DEO) is directed to conduct periodic inspections, preferably once in a year, of school infrastructure, particularly with regard to toilet and washing facilities, availability of menstrual absorbents, sanitary waste disposal mechanisms and training/awareness

measures undertaken by the concerned school. Whilst conducting such periodic inspections, the DEO must mandatorily obtain anonymous feedback in the form of a tailored survey from the students themselves and ensure that any further action taken pursuant to such a periodic inspection gives due regard to the responses received from such a survey.

175. The aforementioned action taken by the DEO must be in accordance with Section 18 of the RTE Act read with Rule 16 of the RTE Rules. Additionally, for the purpose of ensuring that transparency and accountability is fixed on part of both the DEO and the concerned school respectively, the DEO must annex a copy of the report of the periodic inspection and a copy of the consolidated responses received from the student survey along with the notice which is to be issued under Rule 16(1)(a) of the RTE Rules.

176. The National Commission for Protection of Child Rights (NCPCR), or, as the case may be, the State Commission for Protection of Child Rights (SCPCR), is requested to oversee the implementation of the aforesaid directions. In case of noncompliance, the NCPCR and SCPCR shall take necessary steps as provided under Sections 15 and 24 of the Commissions for Protection of Child Rights Act, 2005, respectively. Section 15 of the said Act vests the Commissions with the power to recommend that the concerned Government or authority take appropriate action. Thus, the powers of the DEO and the concerned Commission are not overlapping.

177. We do not say for a moment that the steps taken by the States at present be discontinued in view of the aforesaid directions. These directions, along with the Union's Menstrual Hygiene Policy for School Girls, shall operate as mandatory standards in addition to the steps being taken by the States through its policies, schemes, programmes etc.

178. Considering the nature of the case, the Union will have to satisfy us on substantial compliance. In this regard, we, therefore, issue a continuing mandamus. The Union shall also ensure upon the compliance of our directions and guidelines in all States. It will be for the Union to also apprise us on the compliance by all the States.

179. The Union of India and all the States and Union Territories respectively shall ensure that the aforesaid directions are strictly complied with within a period of three months from the date of the pronouncement of this judgment.

180. Before we part, we would like to say something on the issue we have addressed. This pronouncement is not just for the stakeholders of the legal system, it is also meant to be for the classroom where girls hesitate to ask for help, it is for the teachers who want to help but are restrained due to lack of

resources, and it is for the parents who may not realize the impact of their silence, and for the society to establish that progress is measured how we protect the most vulnerable. We wish to communicate to every girl child, who might have become a victim of absenteeism because her body was perceived as a burden, that the fault is not hers. These words must travel beyond the courtroom, law review reports, and reach the everyday conscience of society at large.

181. The Registry shall forward one copy each of this judgment to the following:-

- i. All the High Courts;
- ii. All State Governments/Union Territories through Secretary, Ministry of Health and Family Welfare, Government of India;
- iii. Secretary, Ministry of Education, Government of India;
- iv. Secretary, Ministry of Drinking Water and Sanitation, Government of India;
- v. Secretary, Ministry of Women and Child Development, Government of India.

182. We treat this matter as part heard. The Registry shall notify this matter after three months alongwith the compliance report on behalf of the States and Union Territories before this very Bench.

.....J. (J.B. Pardiwala)

.....J. (R. Mahadevan)

New Delhi;

January 30, 2026

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<https://blogs.worldbank.org/en/education/globally-periods-are-causing-girls-be-absentschool>;

World Economic Forum, 1 in 10 girls in Africa will drop out of school for this reason, 2015.

<https://www.weforum.org/stories/2015/12/1-in-10-girls-in-africa-will-drop-out-of-school-for-this-reason/>.

3 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), UN ESCOR, UN Doc E/C.12/1999/10 (Dec. 8, 1999), available at: https://www.right-to-education.org/sites/right-toeducation.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf.

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5 UN Committee on the Rights of the Child (CRC), General Comment No. 1: The Aims of Education (Article 29) (2001), UN Doc CRC/GC/2001/1 (Apr. 17, 2001) available at: <https://www.ohchr.org/en/resources/educators/human-rights-educationtraining/general-comment-no-1-aims-education-article-29-2001>.

6 Vishaka v. State of Rajasthan, (1997) 6 SCC 241; Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647; Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759.

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9 Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217.

10 Shantanu Sharma, Devika Mehra, et.al., "Menstrual Hygiene Preparedness Among Schools in India: A Systematic Review and Meta-Analysis of System- and Policy-Level Actions" 17 International Journal of Environmental Research and Public Health 647 (2020).

11 B.N. Patavegar, S. Ahmad, et.al., "A Study of School Absenteeism During Menstruation Amongst Adolescent Schoolgirls in An Urban Area of North India" 15 National Journal of Community Medicine 741 (2024).

12 Painful menstruation; see Merriam-Webster, "Dysmenorrhea", Merriam-Webster Medical Dictionary, available at:

<https://www.merriamwebster.com/dictionary/dysmenorrhea#medicalDictionary>.

13 Common Cause v. Union of India, (2018) 5 SCC 1.

14 Belen Torondel, Shalini Sinha, et.al., "Association between Unhygienic Menstrual Management Practices and Prevalence of Lower Reproductive Tract Infections: A Hospital-Based Cross-Sectional Study in Odisha, India" 18 BMC Infectious Diseases 473 (2018), available at: <https://pubmed.ncbi.nlm.nih.gov/30241498/>.

15 Society For Enlightenment & Voluntary Action v. Union of India, 2024 SCC OnLine SC 2922; Maniben Maganbhai Bhariya v. Distt. Development Officer, Dahod, (2022) 16 SCC 343.

16 M. Nagaraj v. Union of India, (2006) 8 SCC 212.

17 Vikas Chothe, Jagdish Khubchandani, et.al., "Students' Perceptions and Doubts About Menstruation in Developing Countries: A Case Study From India" 15 Health Promotion Practice 319-326 (2014).

18 Sandra Fredman, "Substantive Equality Revisited" 14 International Journal of Constitutional Law 723 (2016).

19 Zhongmin Wu, Why is Social Justice Possible? Social Justice Issues during China's Period of Transition (Springer Nature, Singapore, 2024).

20 The decision in Society for Unaided Private Schools of Rajasthan (supra) has been overruled by Pramati Educational & Cultural Trust (supra) insofar as it held that the RTE Act was applicable to aided minority schools. Thus, the RTE Act is not applicable to aided or unaided minority schools covered under Article 30(1) of the Constitution.

21 Kadambur Higher Secondary School v. Kerala State Commission for Protection of Child Rights Sreeganesh, 2024 SCC OnLine Ker 1746.

9. Important Allahabad High Court Cases

January 2026

INDEX

S.N.	Subject	Case Reference
1.	Directs UP DGP to issue a detailed SOP for mandatory audio-video recording of all police searches and seizures as per Sec.105 BNSS.	Shadab Vs. State of U.P., Criminal Misc. Bail Application No. - 40989 of 2025, decided on 05/01/2026
2.	No absolute bar on anticipatory bail for 'proclaimed offender'	Monika Vs. State of U.P. and Anr., Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. - 10241 of 2025, decided on 05/01/2026
3.	An additional accused can be summoned under Section 319 CrPC based on the evidence recorded during trial and not on the basis of the materials available in the charge-sheet or the case diary, as they don't constitute evidence.	Man Singh Vs. State of U.P. and 3 Ors., Criminal Revision No. 6573 of 2024, decided on 07/01/2026
4.	A criminal appeal can't be dismissed merely because of non-representation or default of the advocate for the accused.	Sanjay Yadav Vs. State of U.P. and Anr., Criminal Revision No. 8411 of 2025, decided on 08/01/2026
5.	Growing influence of “western ideas” and the concept of live-in relationships is “contributing” to a rise in criminal cases when such relationships break down.	Chandresh Vs. State of U.P. and 3 Ors., Criminal Appeal No. 3529 of 2024, decided on 08/01/2026
6.	Child witness who has already examined, can't be recalled to testify again in the Court as per provision of Sec. 33(5) POCSO Act, 2012. Summarise the law relating to Sec. 311 Cr.P.C./Sec. 348 BNSS	Smt. Neelam and Anr. Vs. State of U.P., Application U/S 528 BNSS No. 49947 of 2025, decided on 12/01/2026
7.	Marriage promise by already married man prima facie attracts Sec. 69 BNS	Kuldeep Verma Vs. State of U.P. and Anr., Application U/S 528 BNSS No. 35779 of 2025, decided on 13/01/2026

8.	Magistrates must direct written complaint u/s 195 Cr.P.C. in cases of false FIRs	Umme Farva Vs. State of U.P. and Anr., Application U/S 528 Bnss No. 12575 of 2025, decided on 14/01/2026
9.	State can't shut unrecognised madarsa, but can deny government grants.	C/M Madarsa Ahle Sunnat Imam Ahmad Raza Thru.Manager, Abdul Rahman Vs. State of U.P. Thru. Addl. Chief Secy. Minority Welfare Deptt. Civil Sectt. Lko. and 3 Ors., Writ - C No. - 307 of 2026, decided on 16/01/2026
10.	Cognizance taken beyond limitation period is abuse of process. Quash criminal proceedings	Avneesh Kumar Vs. State of U.P. and Anr., Application u/s 528 BNSS No. 7072 of 2025, decided on 19/01/2026
11.	Wife can't claim maintenance if her action contributes to husband's incapacity to earn	Vineeta Vs. Dr. Ved Prakash Singh, Criminal Revision No. 8658 of 2025, decided on 19/01/2026
12.	Bars blanket bank account freezes. Mandates 24-Hour Magistrate intimation and lays down 5-point protocol for police	Khalsa Medical Store Thru. Prop. Yashwant Singh Vs. Reserve Bank of India Thru. Governor and 3 Ors., WRIT - C No. 12211 of 2025, decided on 19/01/2026
13.	Seeks UP government reply on security rules for retired judges	Association of Retired Supreme Court and H.C. Judges and Anr. Vs. Union of India and Ors., Writ - C No. 38595 of 2011, decided on 21/01/2026
14.	COPs not disclosing grounds of arrest in writing must be suspended on the ground of dereliction of duty	Umang Rastogi and Anr. Vs. State of U.P. and 3 Ors., Habeas Corpus Writ Petition No. 35 of 2026, decided on 22/01/2026
15.	Issued strict 6 point guidelines to be followed by the police officials in the cases of grievous injury to an accused in a police encounter.	Raju alias Rajkumar Vs. State of U.P., Criminal Misc. Bail Application No. 45637 of 2025, decided on 30/01/2026

Important Allahabad High Court Cases

January 2026

1. Directs UP DGP to issue a detailed SOP for mandatory audio-video recording of all police searches and seizures as per Sec.105 BNSS.

Shadab Vs. State of U.P.

Criminal Misc. Bail Application No. - 40989 of 2025

Date of Decision – 05/01/2026

Directed the Director General of Police (DGP), Uttar Pradesh, to issue a detailed Standard Operating Procedure (SOP) for the mandatory audio-video recording of searches and seizures as prescribed under Section 105 Bharatiya Nagarik Suraksha Sanhita (BNSS).

While granting bail to an accused in a theft case involving the alleged recovery of 40 motorcycles, a Bench of **Justice Arun Kumar Singh Deshwal** noted that the failure to comply with the mandatory provision of Section 105 BNSS creates a doubt over the entire prosecution story.

The bench added that the law was enacted to protect innocent persons from wrongful implication and to ensure foolproof evidence for trial. Court further observed that non-compliance with the provision by police officials may give rise to disciplinary proceedings.

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2. No absolute bar on anticipatory bail for 'proclaimed offender'

Monika Vs. State of U.P. and Anr.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. - 10241 of 2025

Date of Decision – 05/01/2026

The issuance of a proclamation under Sec. 82 Cr.P.C. against an accused does not create a total embargo on considering his/her application for anticipatory bail.

Relied on Supreme Court's decision of **Asha Dubey Vs. State of Madhya Pradesh (Criminal Appeal No. 4564 of 2024, decided on 12.11.2024).**

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3. An additional accused can be summoned under Section 319 CrPC based on the evidence recorded during trial and not on the basis of the materials available in the charge-sheet or the case diary, as they don't constitute evidence.

Man Singh Vs. State of U.P. and 3 Ors.

Criminal Revision No. 6573 of 2024

Date of Decision – 07/01/2026

The law with regard to the summoning of an accused under Section 319 Cr.P.C. is settled that this power is an extraordinary power, which should be used sparingly with circumspection and while passing the summoning order under Section 319 Cr.P.C. court must consider whether more than prima facie case is made out, or not. For summoning an additional accused under Section 319 Cr.P.C. mere prima-facie case is not sufficient.

Referring to the Constitution Bench judgment in **Hardeep Singh and Ors. Vs. State of Punjab and Ors., AIR 2014 SC 1400**, the High Court noted that the word 'evidence' used in Section 319(1) CrPC. is limited to the evidence recorded during the trial.

The Court further cited the Supreme Court's judgments of **Omi @ Omkar Rathore and Anr. Vs. State of Madhya Pradesh and Anr. 2025 INSC 27** and **Shiv Baran Vs. State of U.P., AIR 2025 SC 3349** to note that a trial court can add an individual as an accused only on the basis of the evidence adduced before it and not on the basis of the materials available in the charge-sheet or the case diary because such materials contained in the charge-sheet or the case diary do not constitute evidence.

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4. A criminal appeal can't be dismissed merely because of non-representation or default of the advocate for the accused.

Sanjay Yadav Vs. State of U.P. and Anr.

Criminal Revision No. 8411 of 2025

Date of Decision – 08/01/2026

A bench of **Hon'ble Mr. Justice Abdul Shahid** observed that the dismissal of a criminal appeal in default on account of the absence of counsel for the appellant-accused is against the mandate of Sec. 425 BNSS (Sec. 384 CrPC).

The High Court placed heavy reliance on **K. Muruganandam & Ors. v. State Rep. by the Superintendent of Police (2021) 20 SCC 642**, wherein it was held that if the accused does not appear through counsel appointed by

him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused.

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5. Growing influence of “western ideas” and the concept of live-in relationships is “contributing” to a rise in criminal cases when such relationships break down.

Chandresh Vs. State of U.P. and 3 Ors.

Criminal Appeal No. 3529 of 2024

Date of Decision – 08/01/2026

There is an increasing tendency among the youth to live together without the solemnization of marriage under the influence of Western ideas and the concept of live-in. It also noted that when such relations fail, FIRs are lodged.

Court ruled that since the laws are in favour of women, men get convicted relying upon the laws which were made when the concept of live-in was nowhere in existence.

The bench noted, “after such relationships fail, FIR is lodged and the laws being in favour of women, the boys/men get convicted relying upon the laws which were made when the concept of live-in was nowhere in existence.”

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6. Child witness who has already examined, can’t be recalled to testify again in the Court as per provision of Sec. 33(5) POCSO Act, 2012. Summarise the law relating to Sec. 311 Cr.P.C./Sec. 348 BNSS

Smt. Neelam and Anr. Vs. State of U.P.

Application U/S 528 BNSS No. 49947 of 2025

Date of Decision – 12/01/2026

A bench of **Hon’ble Mr. Justice Vivek Kumar Singh** noted that Section 33(5) of the POCSO Act cast a duty upon the Special Court to ensure that a child is not repeatedly called to give his/her testimony before the court. The legislative intent behind this provision is clear. It is to ensure that the child who has suffered a traumatic experience of sexual assault is not called time and again to testify about the same incident.

Hon'ble Court followed the dictum of Supreme Court's judgment of **Madhab Chandra Pradhan and Others Vs. State of Odisha, Special Leave Petition (Crl.) No. 10082 of 2024, order dated 05.08.2024** wherein it was ruled that a child witness, who has already been examined and cross-examined at length, cannot be recalled to testify again in the Court. Such an application cannot be allowed mechanically, especially in trial of offences under the POCSO Act.

Hon'ble Judge ruled that a witnesses who has already been examined and cross-examined, cannot be recalled and re-examined to deny the evidence he has already given before the trial court and no opportunity at a later stage can be given to him to completely efface the evidence already given by him under oath.

Law relating to recall of witnesses under Sec. 311 Cr.P.C./Sec. 348 BNSS

Hon'ble Court ruled that it is well settled by catena of decisions by the Hon'ble Apex Court that the power under Section 311 Cr.P.C. or Section 348 BNSS as the case may be, must be exercised with care, caution and circumspection and only for strong and valid reasons. The recall of a witness already examined should not be a matter of course and the discretion, given to the court in this regard has to be exercised judicially to prevent failure of justice. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right. Recalling of witnesses has to be applied on the basis of judicially established and accepted principles.

The power conferred on Courts under Sec. 311 Cr.P.C. is discretionary and is to enable the court to determine the truth after discovering all relevant facts and obtaining proper proof thereof to arrive at a just decision in the case. The power conferred under Section 348 BNSS is to be invoked by the court to meet the ends of justice, for strong and valid reasons and it is to be exercised with great caution and circumspection. The determinative factor in this regard would be whether the summoning or recalling of the witness is in fact, essential to the just decision of the case keeping in view that fair trial - which entails the interests of the accused, the victim and of the society - is the main object of the criminal procedure and the court is to ensure that such fairness is not hampered or threatened in any manner.

Jurisdiction of Section 528 BNSS

Hon'ble Court ruled that the jurisdiction under Sec. 528 BNSS is extraordinary and it can be used only in such cases where there is gross injustice or clear abuse of process of law. It can not be used to help such a person who is not cooperating in fair trial. Such power cannot be invoked to harass the witness who has already been examined or for causing delay in the trial.

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7. Marriage promise by already married man prima facie attracts Sec. 69 BNS

Kuldeep Verma Vs. State of U.P. and Anr.
Application U/S 528 BNSS No. 35779 of 2025
Date of Decision – 13/01/2026

A bench of **Justice Avnish Saxena** noted that since the accused was already married when he entered into a relationship with the victim, the alleged promise to marry her prima facie amounted to 'deceitful means' as contained under Section 69 BNS.

Court observed that the accused prima facie knew from the beginning that he could not marry the victim, as he was already married. The circumstances suggested that the alleged promise was a false one, as it was impossible to fulfil the same since the beginning.

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8. Magistrates must direct written complaint u/s 195 Cr.P.C. in cases of false FIRs

Umme Farva Vs. State of U.P. and Anr.
Application U/S 528 Bnss No. 12575 of 2025
Date of Decision – 14/01/2026

The Hon'ble Allahabad High Court has issued a strict mandamus to the police machinery in the state to mandatorily initiate prosecution against individuals/informants who lodge false or malicious First Information Reports (FIRs).

If an investigation reveals that an FIR was based on false information, the IO is “**statutorily obligated**” to file a formal complaint against the informant under Section 215(1)(a) BNSS (corresponding to Section 195(1)(a) CrPC).

Failure to do so would render the police officers liable for prosecution under Section 199(b) BNS (public servant disobeying direction of law) and departmental action.

Specific directions have been issued to the Director General of Police, Commissioner of Police, Senior Superintendent of Police, Superintendent of Police, as well as all the Investigating Officers, Station House Officers and Forwarding Officers, i.e. Circle Officers, Additional SP, SP and Public Prosecutors.

Directions

- In case a final report i.e. closure report is submitted in favour of alleged accused, the Judicial Magistrates/Courts will not only receive the entire case diary along with documents and final report i.e. closure report, but also direct the IOs investigating for submitting written complaint against informant, as well as witnesses of the FIR as provided under section 195(1)(a) CrPC for furnishing false information.
- The Judicial Magistrates/ Courts, first of all, while taking cognizance of the offences after perusal of entire case diary and documents, if prima facie appears otherwise, invite protest petition from the informant and after hearing the informant, if find that offences is made out, take cognizance either under Section 190(1)(a) or 190(1)(b) Cr.P.C. (corresponding Section 210(1)(a) or 210(1)(b) BNSS).
- If no offence is made out, then proceeds on the written complaint, which is submitted by the Investigating Officer under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS) in respect of offence of Section 177 and 182 IPC for furnishing false information against the alleged accused of the FIR to use the police his lawful power to cause injury to the alleged accused persons.
- The Director General of Police, will instruct all police officers within the State that while completing the investigation, if a final report (closure report) exonerating the accsed is submitted in the court, then in every case, where the police machinery has been misused by furnishing false, frivolous, or misleading information, a written complaint as per Section 215(1) BNSS (corresponding Section 195(1) Cr.P.C.) must be filed before the competent Magistrate/Court of offence mentioned under Section 212 and 217 BNSS against the informant and witnesses of the case crime.
- In case of final report/closure report filed under section 193 of BNSS (corresponding Section 173 CrPC), the police shall also submit a report in the form of complaint as prescribed Section 215(1)(a) BNSS to the

concerned Judicial Magistrate/Court for taking cognizance of offences provided under section 212 and 217 BNS against informant and witness in case the final report/closure report is accepted and the protest petition is rejected.

- If an IO does investigation and ultimately found that no offence is made out, he is duty bound to submit a written complaint for giving false information to the police under Section 212 and 217 of BNS for taking cognizance as provided under section 215(1)(a) BNSS
- Otherwise, the Investigating Officer, Station House Officer and Forwarding Authority, i.e. Circle Officer and Public Prosecutor, shall be liable for committing an offence as mentioned under Section 199(b) BNS (corresponding Section 166A(b) of IPC).

If the observation made by it is not followed in letter and spirit, it would amount to contempt of court and the aggrieved person may approach this Court for appropriate action against such contemptuous conduct of the police authorities as well as the judicial officers.

All the exercise shall be done within 60 days from the date of this order by the police authorities as well as the judicial officers to regulate judicial proceedings in accordance with law.

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9. State can't shut unrecognised madarsa, but can deny government grants

C/M Madarsa Ahle Sunnat Imam Ahmad Raza Thru. Manager, Abdul Rahman Vs. State of U.P. Thru. Addl. Chief Secy. Minority Welfare Deptt. Civil Sectt. Lko. and 3 Ors.

Writ - C No. - 307 of 2026

Date of Decision – 16/01/2026

There is no provision in law which enables the District Minority Welfare Officer to close operations of an unrecognized Madarsa in the State of Uttar Pradesh.

Reliance was placed on **Anjum Kadari Vs. Union of India, (2025) 5 SCC 53 and In re: Kerala Education Bill, [1959] 1 SCR 995**, where the Supreme Court had classified minority educational institutions into three categories:

- (i) those which do not seek either aid or recognition from the State;
- (ii) those which want aid; and
- (iii) those which want only recognition but not aid.

The first category of institutions is protected by Article 30(1).

Court ruled that the petitioner madarsa will not be entitled to claim any government grant till it is recognized and the Madarsa Education Board will not be obliged to permit the students of the petitioner madarsa in examination conducted by the Madarsa Board and the students will not be entitled to claim the benefit of their qualification acquired from the madarsa for any purposes relating to the State Government.

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10. Cognizance taken beyond limitation period is abuse of process. Quash criminal proceedings

Avneesh Kumar Vs. State of U.P. and Anr.

Application u/s 528 BNSS No. 7072 Of 2025

Date of Decision – 19/01/2026

While dealing with a case where cognizance was taken beyond the limitation period as provided under Sections 468 and 469 of the CrPC, the Allahabad High Court has asked a Chief Judicial Magistrate to be more cautious in future. Directing the Judicial Training and Research Institute to impart training to the Judicial Officers, the High Court held that cognizance should not be taken contrary to the mandate of law.

The High Court called for an explanation from the CJM Concerned as to why cognizance was taken beyond the limitation period as provided under Sections 468 and 469 CrPC. In her explanation, the CJM concerned admitted that the point of limitation did not come to her mind due to "bona fide oversight."

In her explanation, the said CJM states that it is humbly submitted to the Hon'ble Court that as per the usual practice prevalent in all magisterial courts in the State of Uttar Pradesh, and perhaps in other states too, no in depth enquiry or examination of the record is made on receiving the police report i.e. the charge-sheet (or the final report) for purposes of taking cognizance of the offences and only a prima facie view is formed by the Magistracy on the basis of material contained in the case diary.

Rejecting this justification, **Hon'ble Mr. Justice Praveen Kumar Giri** observed that such a practice "cannot substitute a law which is not mentioned in the Code of Criminal Procedure".

For such an explanation and the passing of the impugned order, it may be assumed that the officer is "taking her judicial service very lightly and is not treating it as a serious obligation to impart justice".

The behaviour and conduct of the Presiding Officer, as reflected from her explanation and the cognizance order, prima facie demonstrated a conduct unbecoming of the office held by her.

However, the Court did not initiate any departmental proceedings against her and only directed her to be more cautious in future and to pass orders strictly in accordance with the law. The Court also found the police authorities negligent in this case.

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11. Wife can't claim maintenance if her action contributes to husband's incapacity to earn

Vineeta Vs. Dr. Ved Prakash Singh
Criminal Revision No. 8658 of 2025
Date of Decision – 19/01/2026

If a wife, by her own acts or omissions, causes or contributes to the incapacity of her husband to earn, she cannot be permitted to take advantage of such a situation and claim maintenance.

It is the pious obligation of a husband to maintain his wife, in the facts of the present case, the conduct of the wife and her family members had rendered the husband incapable of earning his livelihood.

The Hon'ble Court referred to the Supreme Court judgment in **Shamima Farooqui Vs. Shahid Khan (2015) 5 SCC 705**, which held that a husband's liability to maintain is contingent upon his ability to earn.

Hon'ble Court also referred the judgment of **Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200** that the amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.

Hon'ble Justice Lakshmi Kant Shukla noted that since the husband's physical incapacity, specifically the risk of paralysis from the bullet in his spine, was caused by the revisionist's side, he could not be held liable for failing to provide maintenance.

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12. Bars blanket bank account freezes. Mandates 24-Hour Magistrate intimation and lays down 5-point protocol for police

Khalsa Medical Store Thru. Prop. Yashwant Singh Vs. Reserve Bank of India Thru. Governor and 3 Ors.

WRIT C No. 12211 of 2025

Date of Decision – 19/01/2026

The Allahabad High Court at Lucknow, a Division Bench of **Justice Shekhar B. Saraf and Justice Manjive Shukla** ruled that a blanket notice by the police to the bank to freeze a particular account, without indicating the amount (on which lien is being sought) would be illegal and arbitrary.

Hon'ble Court has quashed a police direction that led a bank to place a debit freeze on an account in a cyber-fraud probe and ordered the bank to immediately de-freeze it and allow normal operations. The dispute arose after the investigating officer sent a freeze request alleging the account had received fraudulent transfers from a victim, but the communication did not specify any sum for which a lien was sought.

Court further added that investigating Officer is required to intimate the jurisdictional Magistrate about the same within 24 hours.

The Court has also provided that the concerned IO must also inform the banks of the case number that has been registered on basis of which said lien/freezing is sought

Principles for freezing a bank account under a suspicion of cyber crime

(i) Section 106 BNSS should not be interpreted to empower police officers to intervene in money disputes by seizing property especially based on mere suspicion but it must be bolstered by reasonable belief.

(ii) Information for freezing the bank account by the investigating officer shall be sent immediately to the nodal officer of the bank of the beneficiary or payment service system, including the payment aggregator, so as to take action at their end. The police officer must furnish information with relation to the alleged crime and should accompany a copy of the FIR or information received. The bank or the payment system operator (PSO) may decline a request, if it is received without a copy of any complaint or FIR.

(iii) The notice under Section 106 BNSS may require to mark lien on a specific amount (money allegedly transferred from or to the bank account of accused), but in no case the police may ask or request any bank or payment

system operator (PSO) including payment aggregator, to block or suspend entire financial account.

(iv) As soon as information to block or put on hold or marking of a lien is forwarded to a bank or any financial intermediary, including a payment system operator (PSO), then the information shall simultaneously be sent to the jurisdictional Judicial Magistrate within 24 hours. Failure to inform may render such an action as void.

(v) If any bank puts on hold any bank account or escrow account maintained by any entity / citizen on the request of the police without following the proper procedure, then the bank shall be personally liable for the Civil and Criminal consequences for the loss including financial and reputational damage of such entity / citizen.

Further, noting that in the present case, the IO provided no FIR, no seizure order and no specific amount for the lien, the Court quashed the notice and directed the bank to immediately de-freeze the petitioner's account.

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13. Seeks UP government reply on security rules for retired judges

Association of Retired Supreme Court and H.C. Judges and Anr. Vs. Union of India and Ors.

Writ - C No. 38595 of 2011

Date of Decision – 21/01/2026

The Allahabad High Court sought details from the state government on relevant security rules, if any, framed for retired High Court Judges.

A bench comprising **Justice Ajit Kumar and Justice Swarupama Chaturvedi** passed the order on a petition filed by the Association Of Retired Supreme Court And High Court Judges and another party.

During the hearing, senior advocate **Alok Kumar Yadav**, assisted by advocate Vashishth Dwivedi, argued that the security of retired judges is a serious issue that needs to be addressed.

Petitioners' counsels argued, "It becomes necessary for the independence of judiciary as a judge passes judgment with his own independent conviction even on the last day when he is demitting his office. A judge takes oath to do justice without fear or favour, affection or ill-will to uphold the Constitution and the laws."

The counsels further submitted that a retired judge requires at least minimum security while moving in public. "A constitutional post-holder at least

deserves this much protection to his life and his family after demitting office,” they added.

The petitioner (Association of Retired Supreme Court & HC Judges) sought parity with the remuneration benefits granted to retired judges by the State of Andhra Pradesh, a model that the Supreme Court had previously endorsed.

During the proceedings, Additional Advocate General MC Chaturvedi, assisted by Additional Chief Standing Counsel PK Shahi, informed the Bench that the State Government had passed a Government Order dated December 29, 2025.

This order was issued in compliance with the Supreme Court's following direction in the contempt proceedings of the case in Justice V.S. Dave President, The **Association of Retd. Judges vs. Kusumjit Siddhu**:

“As far as the State of Uttar Pradesh is concerned, the state has not been providing facilities to retired Chief Justices and Judges of the High Court in terms of the 2021 Rules of the State of Andhra Pradesh and the proposal for the same is pending. We direct the State Government to issue appropriate order within a period of one month from today. Compliance shall be reported within one month from today”.

Additional Advocate General MC Chaturvedi submitted that with the issuance of this Government Order, there is now "substantial compliance of directives issued by the Supreme Court in par with the facilities available to the retired Judge in Andhra Pradesh".

The Court took the Government Order on record and directed that it be filed with an affidavit within two weeks. Against this backdrop, the High Court directed the Additional Advocate General to place before the Bench the relevant security rules, if any, framed for retired High Court Judges.

The Court has ordered a proper affidavit to be filed in the matter. The matter has been listed for further hearing on **February 9, 2026**.

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14. COPs not disclosing grounds of arrest in writing must be suspended on the ground of dereliction of duty

Umang Rastogi and Anr. Vs. State of U.P. and 3 Ors.

Habeas Corpus Writ Petition No. 35 of 2026

Date of Decision – 22/01/2026

Any police officer who fails to disclose specific "grounds of arrest" in the arrest memo shall be liable for departmental proceedings after being placed under suspension.

A bench of **Justice Siddharth and Justice Jai Krishna Upadhyay** observed that "**empty compliance**" of the law by merely filling out forms without substance amounts to a **dereliction of duty**.

"It is high time that the police officials, who are not complying the requirements of the arrest memo and violating the constitutional mandate provided under Article 22(1) of the constitution of India and further violating Section 50 and 50A Cr.P.C / 47, 48 and B.N.S.S should be sternly dealt with", the Court remarked in its order and directed that the order be communicated to the Uttar Pradesh's Director General of Police.

The High Court found that while the Investigating Officer had used the correct proforma for preparing the arrest memo, the **column related to the grounds of arrest was not properly filled**.

Relying on the Supreme Court's judgment of **Mihir Rajesh Shah Vs. State of Maharashtra and Anr. [2025] 11 SCR 291**, which held that grounds of arrest must be furnished to the arrestee in writing, the High Court declared the arrest and the subsequent remand order as illegal, null and void.

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15. Issued strict 6-point guidelines to be followed by the police officials in the cases of grievous injury to an accused in a police encounter.

Raju alias Rajkumar Vs. State of U.P.
Criminal Misc. Bail Application No. 45637 of 2025
Date of Decision – 30/01/2026

A bench of **Hon'ble Mr. Justice Arun Kumar Deshwal** clarified that the **District Police Chiefs, including Superintendents of Police (SP), Senior Superintendents of Police (SSP) and Commissioners, would be personally liable for Contempt of Court action** if the Supreme Court's guidelines in the case of **People's Union for Civil Liberties (PUCL) and Anr. Vs. State of Maharashtra, (2014) 10 SCC 635**, regarding encounters are not strictly followed within their jurisdiction.

In PUCL case, the Apex Court had issued important Guidelines in the matters of investigating police encounters as the standard procedure for thorough, effective and independent investigation.

The Hon'ble Court also noted that it has come across several cases where police officers, just to get out of turn promotion or appreciation from the

higher authority or to get fame in social media “unnecessarily use fire arm and caused fire arm injury on the leg of the accused just below the knee”.

The Court ruled that such act is not permissible in the eyes of law as the power of punishment to accused is within the domain of judiciary and not in the domain of police. India is a democratic country. It has to be run as per the ethos and directions of the Constitution of India which clearly distinguishes role of legislature, executive and judiciary.

In the State of UP a 'Half Encounter' by police (often colloquially referred to as 'Operation Langda' or 'Half-Fry') refers to an engagement where an accused/criminal is shot in the leg so as to incapacitate him rather than killing him.

The Court observed that, despite the "law of the land" established by the Supreme Court in **People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014)**, police in Uttar Pradesh frequently ignored mandatory procedures.

Guidelines for the police officials

(i) If in pursuance to any information, police party reached at the spot and encounter takes place wherein fire arm is used by the police party and as a result accused or any other person received grievous injury then an FIR to that effect shall be registered by the head of the police party involved in the police encounter in the same police station or adjoining police station but investigation of said FIR shall be conducted by CBCID or police team of any other police station under the supervision of senior police officer at least one level above the head of police party engaged in the police encounter.

(ii) In the FIR, name of the members of police party involved in encounter is not required to be mentioned in the category of accused/suspect but only the team whether STF or regular police could be mentioned.

(iii) Injured criminal/victim should be provided medical aid and his/her injury should be examined and thereafter his/her statement should be recorded either by the Magistrate or Medical Officer with certificate of fitness of injured.

(iv) After complete investigation into incident of police encounter, report should be sent to the competent court who will follow the procedure as mentioned in the judgement given by the Apex Court in PUCL's case (supra).

(v) Out of turn promotion or gallantry award shall not be given to the officer of the police party soon after occurrence of police encounter. It must be

ensured that such reward are given or recommended only when gallantry reward of person is established beyond doubt by a committee constituted by the police head.

(vi) If the family of the injured in police encounter finds that the above procedure has not been followed or there exists lack of independent investigation or pattern of abuse or impartiality by any of the functionaries then he may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident of police encounter. Upon receiving the said complaint, the concerned Sessions Judge shall look into the merit of the complaint and redress the grievance raised therein.

If any person is aggrieved by non-action regarding death or grievous injuries in a police encounter, then he can file an application before the Sessions Judge.

Sessions Judge may take action on a complaint and, in appropriate cases, may refer the matter to the High Court to initiate contempt proceedings against the District Police Chief where a flagrant violation of the guidelines in PUCL's case on police encounters has been reported.

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10. Study Material-G.K.

DUAL GOVERNMENT IN BENGAL

The Dual government in Bengal was implemented in **1765 by Robert Clive**, the Governor Presidency of Fort William in Bengal. This system of dual administration divided the governance of Bengal into Diwani and Nizamat. The Diwani focused on revenue collection by the British East India Company, and the Nizamat dealt with law and order placed under the Nawab.

The dual government in Bengal allowed the Company to exercise its control without direct responsibility. It led to severe administrative failure, economic exploitation of the masses and social unrest. Finally, the system was abolished in **1772 by Governor General Warren Hastings** for better governance in Bengal.

Background

The dual administration system in Bengal was introduced after the Battle of Buxar. This battle reshaped the power dynamics between native rulers and the British East India Company. The Company won the battle leading to the signing of the **Treaty of Allahabad with Shah Alam II in 1765**. Under this treaty, the British got the Diwani rights over Bengal and the right to collect taxes and administer the territory.

Battle of Buxar

The Battle of Buxar was fought on **October 22, 1764**, between the combined armies of the **Nawab of Bengal, Mir Qasim; the Nawab of Awadh, Shuja-ud-Daula; and the Mughal Emperor Shah Alam II**, with the English forces under **Major Hector Munro**. The British East India Company won the battle, making them the dominant power in Bengal.

What was the Dual Government In Bengal?

After the **Treaty of Allahabad in 1765**, **Robert Clive introduced the Dual Government system in Bengal**, where both the Nawab and the British East India Company played a role in governance. While the Company exercised control over revenue collection (Diwani), judicial and police powers (Nizamat) were nominally left with the Nawab. To manage the administration, Clive appointed deputies, known as Naib Diwan and Naib Nazim.

- **Muhammad Reza Khan** served as **Naib Diwan for Bengal**, responsible for revenue collection on behalf of the Company, and **Naib Nazim**, overseeing judicial and police powers nominally under the Nawab. Similarly, **Raja Sitab Roy** held the same roles for Bihar. This arrangement allowed the Company to control Bengal's governance without assuming direct responsibility.
- While the Nawab retained his title, he functioned under the supervision of the Company through **Muhammad Reza Khan (Naib Diwan)**, effectively becoming a puppet ruler.
- The Company's influence over the Nizamat was further solidified through its power to nominate the Naib Nazim.

Advantages of Dual Government in Bengal to the Company

With the dual government administration, the company retained the actual sovereign power of ruling Bengal, while the Nawab appeared to be the authority. The Nawab, being the Nizam, had the duty of administration but did not have the resources to discharge it. The Nawab also bore the brunt of bad governance as most administrative actions and decisions were carried out in his name.

On the other hand, the company benefited from the power and resources without bearing any direct responsibility. The revenue collected under this system became the major income for the company, and only a small annual payment was made to the Mughal Emperor.

Role of Robert Clive

Robert Clive was **instrumental** in establishing British dominance in Bengal. He fought the Battle of Buxar and signed the **Treaty of Allahabad in 1765**, obtaining the **Diwani rights over Bihar, Bengal, and Orissa**. Robert Clive led to the establishment of the dual government in Bengal, making the Nawab only a nominal head. Clive **focused more on maximising the company's revenue collection through the system**.

Failure of Dual Government in Bengal

The dual system led to an administrative collapse and affected the people of Bengal. Neither the Company nor the Nawab emphasised administration and public welfare.

- **Misuse of Dastaks:** The Company's employees misused the Dastaks (passes), ruining Indian merchants and domestic industries like silk and cotton.

- **Burden on Peasants:** The Company's policy of allocating land to the highest bidder led to an unnecessary burden on peasants, with many of them abandoning their lands, leading to the Famine of 1767-69.
- **District division:** For administrative efficiency, Bengal was divided into thirty districts in 1769 by the Company, with each district having an English Supervisor. However, this did not produce any positive outcome, as the Supervisors prioritised Company revenue and private businesses undermining peasant welfare and effective governance.

Abolition of Dual Government of Bengal

In 1772, **Governor-General Warren Hastings abolished the Dual Government of Bengal.** The system had failed to deliver efficient governance, leading to widespread administrative breakdown, economic hardship, and social unrest. The division of responsibilities between the British East India Company and the Nawab caused confusion, corruption, and mismanagement. Hastings recognized that it was unsustainable to maintain separate control of the Diwani and Nizamat.

To streamline governance and restore order, Hastings ended the Nawab's remaining Nizamat powers and consolidated both revenue and judicial authority under the direct control of the Company.

As compensation for the loss of political power, the **Nawab was granted an annual pension of 16 lakh rupees for his personal expenses,** marking the complete transition of Bengal's administration into British hands.

11. Study Material-Language

Synonyms and Antonyms

S.N.	Words	Synonyms	Antonyms
1.	Acumen	Awareness, brilliance	Stupidity, Ignorance
2.	Adhere	Comply, observe	Condemn, disjoin
3.	Abolish	Abrogate, annual	Setup Establish
4.	Abash	Disconcert, rattle	Uphold, Discompose
5.	Abound	Flourish, proliferate	Deficient, Destitute
6.	Abate	Moderate, decrease	Aggravate
7.	Abject	Despicable, servile	Commendable, Praiseworthy
8.	Abjure	Forsake, renounce	Approve, Sanction
9.	Abortive	Vain, unproductive	Productive
10.	Absolve	Pardon, forgive	Compel, Accuse
11.	Accord	Agreement, harmony	Discord
12.	Acrimony	Harshness, bitterness	Courtesy, Benevolence
13.	Adamant	Stubborn, inflexible	Flexible, Soft
14.	Adherent	Follower, disciple	Rival, Adversary
15.	Adjunct	Joined, Added	Separated, Subtracted
16.	Admonish	Counsel, reprove	Approve, Applaud
17.	Adversity	Misfortune, calamity	Prosperity, Fortune
18.	Alien	Foreigner, outsider	Native, Resident
19.	Allay	Pacify, soothe	Aggravate, Excite
20.	Alleviate	Abate, relieve	Aggravate, Enhance
21.	Allure	Entice, fascinate	Repulse Repel
22.	Ascend	Climb Escalate	Descend, Decline
23.	Amplify	Augment, deepen	Lessen, Contract
24.	Arraign	Incriminate, indict	Exculpate, Pardon
25.	Audacity	Boldness, Courage	Mildness, Cowardice
26.	Authentic	Accurate, credible	Fictitious, unreal
27.	Awkward	Rude, blundering	Adroit, clever
28.	Axiom	Adage, truism	Absurdity, Blunder
29.	Baffle	Astound, Faze	Facilitate, Clarify
30.	Bewitching	Alluring, charming	Repulsive, Repugnant
31.	Bleak	Grim, Austere	Bright, Pleasant
32.	Brittle	Breakable, crisp	Tough, Enduring
33.	Bustle	Commotion, Tumult	Slowness, Quiet
34.	Barbarous	Frustrate, perplex	Civilized
35.	Baroque	Florid, gilt	Plain, unadorned
36.	Barren	Desolate, Sterile	Damp, Fertile
37.	Barrier	Barricade, Obstacle	Link, Assistance

38.	Base	Vulgar, Coarse	Summit, Noble
39.	Batty	Insane, silly	Sane
40.	Bawdy	Erotic, Coarse	Decent, Moral
41.	Befogged	Becloud, Dim	Clear headed, Uncloud
42.	Benevolent	Benign, Generous	Malevolent, Miserly
43.	Benign	Favorable, friendly	Malignant, Cruel
44.	Bind	Predicament	Release
45.	Bleak	Austere, Blank	Bright, Cheerful
46.	Blunt	Dull, Insensitive	Keen, Sharp
47.	Boisterous	Clamorous, rowdy	Placid, Calm
48.	Bold	Adventurous	Timid
49.	Busy	Active, Engaged	Idle, Lazy
50.	Calculating	Canny, Devious	Artless, honest
51.	Calamity	adversity, misfortune	Fortune
52.	Callous	obdurate, unfeeling	Compassionate, Tender
53.	Calumny	defamation, aspersion	Commendation, Praise
54.	Capable	competent, able	Incompetent, Inept
55.	Captivate	Charm, fascinate	Disillusion offend
56.	Captivity	imprisonment, confinement	Freedom, Liberty
57.	Cease	terminate, desist	Begin, Originate
58.	Chaste	virtuous, pure	Sullied, Lustful
59.	Chastise	punish, admonish	Cheer, encourage
60.	Compassion	kindness, sympathy	Cruelty, Barbarity
61.	Comprise	include, contain	Reject, lack
62.	Concede	yield, permit	Deny, reject
63.	Concur	approve, agree	Differ, disagree
64.	Consent	agree, permit	Object Disagree
65.	Consequence	effect, outcome	Origin, Start
66.	Consolidate	solidify, strengthen	Separate, Weaken
67.	Conspicuous	prominent, obvious	Concealed, hidden
68.	Contempt	scorn, disregard	Regard, Praise
69.	Contradict	deny, oppose	Approve, Confirm
70.	Contrary	dissimilar, conflicting	Similar, Alike
71.	Calm	Harmonious, unruffled	Stormy, turbulent
72.	Callous	Insensitive, indurated	Kind, merciful
73.	Camouflage	Cloak, disguise	Reveal
74.	Candid	Blunt, bluff	Evasive
75.	Captivate	Beguile, bewitch	Repel
76.	Carnal	Earthly, fleshly	Spiritual
77.	Catholic	Generic, liberal	Narrow- minded
78.	Celebrated	Acclaimed, lionized	Unknown, Inglorious

79.	Cement	Plaster, mortar	Disintegrate
80.	Censure	Rebuke, reprimand	Praise, Acceptance
81.	Cheap	Competitive, Inexpensive	Dear, unreasonable
82.	Clandestine	Covert, fruitive	Open, Legal
83.	Classic	Simple, Typical	Romantic, Unusual
84.	Coarse	Bawdy, Boorish	Fine, Chaste
85.	Comic	Clown, Jester	Tragic, tragedian
86.	Compact	Bunched, thick	Loose, Diffuse
87.	Compress	Abbreviate, Shrink	Amplify, Expand
88.	Conceit	Egotism, Immodesty	Modesty
89.	Concord	Agreement, accord	Discord
90.	Condemn	Castigate, Chide	Approve, Praise
91.	Confident	Bold, Undaunted	Diffident, cowardly
92.	Consolidate	Centralize, Fortify	Weaken
93.	Courtesy	Generosity, Reverence	Disdain, Rudeness
94.	Creation	Formation, foundation	Destruction
95.	Cunning	Acute, Smart	Nave, Coarse
96.	Decay	Collapse, decompose	Flourish, Progress
97.	Deceit	deception, artifice	Veracity, Sincerity
98.	Decipher	interpret, reveal	Misinterpret, distort
99.	Defile	contaminate, pollute	Purify, sanctity
100.	Defray	spend, pay	Disclaim, Repudiate
101.	Deliberate	cautious, intentional	Rash, Sudden
102.	Demolish	Ruin, devastate	Repair, construct
103.	Deprive	despoil, divest	Restore, Renew
104.	Deride	mock, taunt	Inspire, Encourage
105.	Disdain	detest, despise	Approve, praise
106.	Dissuade	Remonstrate, Counsel	Insite, Persuade
107.	Denounce	Blame, boycott	Defend
108.	Dense	Opaque, piled	Sparse, brainy
109.	Derogatory	Sarcastic, critical	Laudatory, appreciative
110.	Despair	Depression, misery	Contentment, Hope
111.	Destructive	Catastrophic, pernicious	Creative, Constructive
112.	Docile	Pliable, pliant	Headstrong, obstinate
113.	Dwarf	Diminutive, Petite	Huge, Giant
114.	Eager	Keen, acquisitive	Indifferent, apathetic
115.	Eclipse	Diminution, Dimming	Shine, eclipse
116.	Eccentric	strange, abnormal	Natural, Conventional
117.	Ecstasy	delight, exultation	Despair, Calamity
118.	Efface	destroy, obliterate	Retain, Maintain

119.	Eloquence	expression, fluency	Halting, Stammering
120.	Encumbrance	hindrance, obstacle	Incentive, stimulant
121.	Endeavour	undertake, aspire	Cease, quit
122.	Enormous	colossal, mammoth	Diminutive, negligible
123.	Epitome	precise, example	Increment, expansion
124.	Equivocal	uncertain, hazy	Obvious, lucid
125.	Eradicate	destroy, exterminate	Secure, plant
126.	Fabricate	construct, produce	Destroy, Dismantle
127.	Fallacy	delusion, mistake	Veracity, Truth
128.	Falter	stumble, demur	Persist, Endure
129.	Fanatical	narrow-minded, biased	Liberal, Tolerant
130.	Feeble	weak, frail	Strong, Robust
131.	Ferocious	cruel, fierce	Gentle, Sympathetic
132.	Feud	strife, quarrel	Harmony, fraternity
133.	Fluctuate	deflect, vacillate	Stabilize, resolve
134.	Forsake	desert, renounce	Hold, maintain
135.	Fragile	weak, infirm	Enduring, Tough
136.	Frantic	violent, agitated	Subdued, gentle
137.	Frivolous	petty, worthless	Solemn, significant
138.	Frugality	economy, providence	Lavishness, extravagance
139.	Gather	Converge, huddle	Disperse, Dissemble
140.	Gloom	obscurity, darkness	Delight, mirth
141.	Glut	stuff, satiate	Starve, abstain
142.	Gorgeous	magnificent, dazzling	Dull, unpretentious
143.	Gracious	courteous, beneficent	Rude, Unforgiving
144.	Grisly	disgusting, atrocious	Pleasing, attractive
145.	Grudge	hatred, aversion	Benevolence, Affection
146.	Guile	cunning, deceit	Honesty, frankness
147.	Generosity	Altruism, bounty	Stinginess, greed
148.	Genuine	Absolute, Factual	Spurious
149.	Gloomy	Bleak, cloudy	Gay, Bright
150.	Glory	Dignity, renown	Shame, Disgrace
151.	Hamper	retard, prevent	Promote, facilitate
152.	Hapless	unfortunate, ill-fated	Fortunate, Lucky
153.	Harass	irritate, molest	Assist, comfort
154.	Haughty	arrogant, pompous	Humble, Submissive
155.	Hazard	Peril, danger	Conviction, security
156.	Heretic	non-conformist, secularist	Conformable, religious
157.	Hideous	frightful, shocking	Attractive, alluring
158.	Hamstrung	Cripple Debilitate	Strengthen, Encourage
159.	Harmony	Conformity,	Discord, discord

		Amicability	
160.	Hasty	Abrupt, Impetuous	Leisurely, Cautious
161.	Honor	Adoration, Reverence	Denunciation, Shame
162.	Humble	Meek, Timid	Proud, Assertive
163.	Humility	Resignation, Fawning	Boldness, Pride
164.	Hypocrisy	Deception, Pharisaism	Sincerity, frankness
165.	Impenitent	Uncontrite, Obdurate	Repentant
166.	Impulsive	Flaky, Impetuous	Cautious, Deliberate
167.	Indifferent	Equitable, Haughty	Partial, Biased
168.	Indigent	Destitute, Impoverished	Rich, Affluent
169.	Infernal	Damned, Accursed	Heavenly,
170.	Inspid	Tedious, Prosaic	Pleasing, appetizing
171.	Interesting	Enchanting, Riveting	Dull, Uninteresting
172.	Immaculate	unsullied, spotless	Defiled, Tarnished
173.	Immense	huge, enormous	Puny, Insignificant
174.	Immerse	submerge, involve	Emerge, uncover
175.	Imminent	impending, brewing	Distant, Receding
176.	Immunity	prerogative, privilege	Blame, Censure
177.	Impair	diminish, deteriorate	Restore, Revive
178.	Impartial	just, unbiased	Prejudiced, Biased
179.	Impediment	hurdle, obstruction	Assistant, Concurrence
180.	Impious	irreligious, unholy	Pious, Devout
181.	Impute	attribute, ascribe	Exculpate, support
182.	Inclination	disposition, affection	Indifference, Disinclination
183.	Incompetent	inefficient, unskilled	Dexterous, Skilled
184.	Incongruous	inappropriate, absurd	Compatible, harmonious
185.	Inevitable	unavoidable, ascertained	Unlikely, Doubtful
186.	Infringe	violate, encroach	Comply, Concur
187.	Ingenuous	undisguised, naive	Wily, Craftly
188.	Insinuate	allude, hint	Conceal, Camouflage
189.	Inspid	tasteless, vapid	Delicious, luscious
190.	Insolvent	indigent, destitute	Wealthy, solvent
191.	Instill	inculcate, inject	Eradicate, extract
192.	Intricate	tangled, complicated	Regulated, Orderly
193.	Intrigue	scheme, conspiracy	Candor, Sincerity
194.	Intrinsic	genuine, fundamental	Extraneous, incidental
195.	Invective	accusation, censure	Approval, acclamation
196.	Invincible	unconquerable, impregnable	Effeminate, languid
197.	Irrepressible	irresistible, unconfined	Composed, hesitant

198.	Immaculate	Exquisite, Impeccable	Defiled, Tarnished
199.	Jaded	tired, exhausted	Renewed, recreated
200.	Jejune	dull, boring	Interesting, exciting
201.	Jovial	frolicsome, cheerful	Solemn, morose
202.	Jubilant	rejoicing, triumphant	Melancholy, depressing
203.	Judicious	thoughtful, prudent	Irrational, foolish
204.	Just	honest, impartial	Unequal, unfair
205.	Justify	defend, exculpate	Impute, arraign
206.	Juvenile	young, tender	Dotage, antiquated
207.	Keen	sharp, poignant	Vapid, insipid
208.	Kindred	relation, species	Unrelated, dissimilar
209.	Knave	dishonest, scoundrel	Paragon, innocent
210.	Knell	death knell, last blow	Reconstruction, rediscovery
211.	Knotty	complicated difficult	Simple, manageable
212.	Lavish	abundant, excessive	Scarce, deficient
213.	Lax	slack, careless	Firm, reliable
214.	Lenient	compassionate, merciful	Cruel, severe
215.	Liable	accountable, bound	Unaccountable, apt to
216.	Liberal	magnanimous, generous	Stingy, malicious
217.	Linger	loiter, prolong	Hasten, quicken
218.	Lucid	sound, rational	Obscure, hidden
219.	Lunacy	delusion, insanity	Normalcy, sanity
220.	Lure	attract, entice	Repel, dissuade
221.	Luscious	palatable, delicious	Unsavory, tart
222.	Luxuriant	profuse, abundant	Scanty, meagre
223.	Languid	Sluggish, apathetic	Energetic, spirited
224.	Malice	Vengefulness, grudge	Goodwill, Kindness
225.	Mandatory	Imperative, requisite	Optional
226.	Masculine	Gallant, strapping	Feminine, meek
227.	Merit	Stature, Asset	Demerit, dishonor
228.	Miraculous	marvelous, extraordinary	Ordinary, trivial
229.	Mitigate	alleviate, relieve	Augment enhance
230.	Modest	humble, courteous	Arrogant, pompous
231.	Molest	harass, tease	Console, soothe
232.	Mollify	appease, assuage	Irritate, infuriate
233.	Momentous	notable, eventful	Trivial, insignificant
234.	Monotonous	irksome, tedious	Varied, pleasant
235.	Morbid	Nasty, Macabre	Healthy, Cheerful
236.	Munificent	liberal, hospitable	Frugal, penurious

237.	Murky	dusky, dreary	Bright, shining
238.	Mutinous	recalcitrant, insurgent	Submissive, faithful
239.	Mutual	joint, identical	Separate, distinct
240.	Niggardly	miser, covetous	Generous, profuse
241.	Nimble	prompt, brisk	Sluggish, languid
242.	Nonchalant	indifferent, negligent	Attentive, considerate
243.	Novice	tyro, beginner	Veteran, ingenious
244.	Noxious	baneful, injurious	Healing, profitable
245.	Nullify	cancel, annul	Confirm, Uphold
246.	Notion	Conceit, Apprehension	Reality, Concrete
247.	Numerous	profuse, various	Scarce, deficient
248.	Obstruct	impede, prevent	Hasten, encourage
249.	Obliging	Complaisant, Willing	Mulish, Obstinate
250.	Obscure	Arcane, Vague	Prominent
251.	Obstinate	Stubborn, Adamant	Pliable, flexible
252.	Obtain	Access, Inherit	Forfeit
253.	Obvious	Evident, apparent	Obscure, ambiguous
254.	Odious	Malevolent, obnoxious	Engaging, fascinating
255.	Offensive	Abhorrent, obnoxious	Engaging, fascinating
256.	Occult	latent, ambiguous	Intelligible, transparent
257.	Offspring	descendant, sibling	Ancestor, forefather
258.	Ominous	Menacing, Foreboding	Auspicious
259.	Opaque	obscure, shady	Transparent, bright
260.	Optimist	Idealist	Pessimist
261.	Oracular	cryptic, vague	Lucid, distinct
262.	Ordain	Order, impose	Revoke abolish
263.	Ornamental	decorative, adorned	Unseemly, plain
264.	Outbreak	eruption, insurrection	Compliance, subjection
265.	Outrage	offence, maltreatment	Praise, favour
266.	Pacify	Appease, Chasten	Irritate, worsen
267.	Persuade	Cajole, Impress	Dissuade, halt
268.	Perturbed	Flustered, anxious	Calm
269.	Propagate	Inseminate, fecundate	Suppress, deplete
270.	Progress	Pace, Betterment	Retrogress, worsening
271.	Prompt	Precise, Punctual	Slow, Negligent
272.	Prudence	Vigilance, Discretion	Indiscretion
273.	Pamper	Flatter, indulge	Deny, disparage
274.	Paramount	foremost, eminent	Trivial, inferior
275.	Peerless	matchless, unrivalled	Mediocre, commonplace
276.	Peevish	perverse, sullen	Suave, amiable
277.	Pertness	flippancy, impudence	Modesty, diffidence
278.	Perverse	petulant, obstinate	Complacent, docile

279.	Placid	tranquil, calm	Turbulent, hostile
280.	Pompous	haughty, arrogant	Unpretentious, humble
281.	Precarious	doubtful, insecure	Assured
282.	Predicament	plight, dilemma	Resolution, confidence
283.	Quack	Impostor, deceiver	Upright, unfeigned
284.	Quaint	Queer, strange	Familiar, usual
285.	Quarantine	seclude, screen	Befriend, socialize
286.	Quell	subdue, reduce	Exacerbate, agitate
288.	Quibble	equivocate, prevaricate	Unfeign, plain
289.	Raid	Incursion, Foray	Retreat, release
290.	Rapidity	Quickness, Velocity	Inertia, languidity
291.	Reason	Acumen, Bounds	Folly, Speculation
292.	Rebellious	Restless, attacking	Submissive, Compliant
293.	Rectify	Amend, Remedy	Falsify, Worsen
294.	Reluctant	Cautious, Averse	anxious, Eager
295.	Restrain	Detain, Confine	Incite
296.	Ratify	consent, approve	Deny, dissent
297.	Ravage	Destroy, ruin	Reconstruct, renovate
298.	Redeem	Recover, liberate	Conserve lose
299.	Remnant	Residue, piece	Entire, whole
300.	Remonstrate	Censure, protest	Agree, loud
301.	Remorse	Regret, penitence	Ruthlessness, obduracy
302.	Rescind	Annul, abrogate	Delegate, permit
303.	Resentment	Displeasure, wrath	Content, Cheer
304.	Retract	Recant, withdraw	Confirm, assert
305.	Reverence	Respect, esteem	Disrespect, affront
306.	Rout	Vanquish, overthrow	Succumb, withdraw
307.	Rustic	Rural, uncivilized	Cultured, Refined
308.	Ruthless	Remorseless, inhumane	Compassionate, lenient
309.	Sacred	Cherish, Divine	Ungodly, Profane
310.	Savage	Wild, untamed	Polished, Civilized
311.	Startled	Frightened, Shocked	Waveringly
312.	Steep	Course, lofty	Flat, gradual
313.	Stranger	Immigrant, guest	Acquaintance, national
314.	Sublime	Magnificent, eminent	Ridiculous
315.	Succinct	Concise, Terse	Lengthy, polite
316.	Sympathy	Tenderness, harmony	Antipathy, Discord
317.	System	Scheme, Entity	Chaos, Disorder
318.	Sarcastic	Ironical, derisive	Courteous, gracious
319.	Saucy	Impudent, insolent	Modest, humble
320.	Shrewd	Cunning, craftly	Simple, imbecile

321.	Scanty	scarce, insufficient	Lavish, multitude
322.	Servile	Slavish, Docile	Aggressive, Dominant
323.	Shabby	miserable, impoverished	Prosperous, thriving
324.	Slander	defame, malign	Applaud, approve
325.	Sneer	mock, scorn	Flatter, praise
326.	Solicit	entreat, implore	Protest oppose
327.	Subterfuge	Deceit, Stratagem	Frankness, Openness
328.	Stain	blemish, tarnish	Honor, purify
329.	Spurious	Fake, Counterfeit	Genuine, Authentic
330.	Sporadic	intermittent, scattered	Incessant, frequent
331.	Spry	Nimble, Brisk	Lethargic, Sluggish
332.	Squalid	dirty, filthy	Tidy, Attractive
333.	Successful	Propitious, Felicitous	Destitute, Untoward
334.	Sterile	Barren, Impotent	Profitable, Potent
335.	Stupor	lethargy, unconsciousness	Sensibility, Consciousness
336.	Subsequent	consequent, following	Preceding, previous
337.	Substantial	Considerable, solid	Tenuous, fragile
338.	Subvert	Demolish, sabotage	Generate, organize
339.	Superficial	Partial, shallow	Profound, discerning
340.	Sycophant	Parasite, flatterer	Devoted, loyal
341.	Taboo	Prohibit, ban	Permit, consent
342.	Taciturn	Reserved, silent	Talkative, extrovert
343.	Tedious	Wearisome. Irksome	Exhilarating, lively
344.	Temperate	Cool, moderate	Boisterous, violent
345.	Tenement	Apartment, Digs	Breakeven, dislodge
346.	Tenacious	Stubborn, Dodge	Docile, non- resinous
347.	Throng	Assembly, crowd	Dispersion, sparsity
348.	Timid	Diffident, coward	Bold, intrepid
349.	Tranquil	Peaceful, composed	Violent, furious
350.	Transient	Temporal, transitory	Lasting, enduring
351.	Trenchant	Assertive, forceful	Feeble, ambiguous
352.	Treacherous	Dishonest, duplicitous	Forthright, reliable
353.	Trivial	Trifling, insignificant	Significant, veteran
354.	Tumultuous	Violent, riotous	Peaceful, harmonious
355.	Tyro	Beginner, riotous	Proficient, veteran
356.	Tame	Compliant, Subdued	Wild, untamed
357.	Terse	Incisive, Compact	Diffuse, Gentle
358.	Thick	Chunky, massive	Thin, attenuated
359.	Thrifty	Frugal, prudent	Extravagant
360.	Tranquil	Amicable, Calm	Agitated, Fierce

361.	Transparent	Diaphanous	Opaque
362.	Tremble	Vibrate	Steady
363.	Uncouth	Awkward, ungraceful	Elegant, Compensate
364.	Utterly	Completely, entirely	Deficiently, incomplete
365.	Umbrage	Chagrin, offense	Sympathy, goodwill
366.	Uncouth	Boorish, Clownish	Elegant, Compensate
367.	Urchin	Foundling, Orphan	Creep, Knave
368.	Urge	Incite, Implore	Abhorrence, Abomination
369.	Vain	Arrogant, egoistic	Modest
370.	Vagrant	Wander, roaming	Steady, settled
371.	Valor	Bravery, prowess	Fear, cowardice
372.	Vanity	Conceit, pretension	Modesty, Humility
373.	Venerable	Esteemed, honored	Unworthy, immature
374.	Venom	Poison, malevolence	Antidote, Benevolent
375.	Veteran	Ingenious, experienced	Novice, tyro
376.	Vicious	Corrupt, obnoxious	Noble, Virtuous
377.	Vigilant	Cautious, alert	Careless, negligent
378.	Vivacious	Spirited, Energetic	Dispirited, Unattractive
379.	Vilify	Malign, Slur, Defame	Cherish, Commend
380.	Vouch	Confirm, consent	Repudiate, prohibit
381.	Virtue	Ethic, morality	Vice, dishonesty
382.	Vivid	Eloquent, lucid	Dull, Dim
383.	Waive	Relinquish, remove	Impose, Clamp
384.	Wan	Pale, faded	Bright, healthy
385.	Wane	Decline, Dwindle	Ameliorate, Rise
386.	Wary	cautious, circumspect	Heedless, negligent
387.	Wed	marry, combine	Divorce, Separate
388.	Wicked	vicious, immoral	Virtuous, Noble
389.	Wield	Exert, employ	Forgo, avoid
390.	Wile	Trickery, Artifice	Naivety, honor
391.	Winsome	Beautiful, Comely	Alluring, Rapturous
392.	Wilt	wither, perish	Revive, bloom
393.	Yell	shout, shriek	Whisper muted
394.	Yield	surrender abdicate	Resist, protest
395.	Yearn	languish, crave	Content, satisfy
396.	Yoke	connect, harness	Liberate, Release
397.	Zeal	eagerness, fervor	Apathy, lethargy
398.	Zenith	summit, apex	Nadir, base
399.	Zest	delight, enthusiasm	Disgust, passive
400.	Zig -zag	oblique, wayward	Straight, unbent

12. Current Affairs

JANUARY 2026

1. Parvati-Arga Bird Sanctuary declared Eco-Sensitive Zone
2. Supreme Court Orders Fresh Review on Aravalli Hills Mining
3. Narasapuram Lace Craft Highlighted as Symbol of Women's Empowerment
4. India Becomes World's Fourth-Largest Economy, Growth Momentum Strong
5. India Shines at FIDE World Rapid Chess Championships 2025
6. Smriti Mandhana Crosses 10,000 International Runs Milestone
7. India Successfully Tests K-4 Submarine-Launched Ballistic Missile
8. North Korea Test-Fires Strategic Cruise Missiles
9. Israel to Confer Highest Civilian Honour on Donald Trump
10. India Launches National Technology Readiness Assessment Framework (NTRAF) to Standardise Innovation Evaluation
11. Pariksha Pe Charcha crosses 3 crore registrations milestone:
12. NASA permanently shuts down its largest research library:
13. Denmark delivers its last letter, ending postal era:
14. LIC partners with Sahaj Insurance Services to expand rural insurance reach:
15. National Test House signs MoU with NHAI for highway quality assurance:
16. Former New Zealand all-rounder Doug Bracewell retires from international cricket:
17. DRDO successfully tests Pinaka Long Range Guided Rocket:
18. Army Hospital performs India's first 3D Flex Aqueous Angiography with iStent:
19. Sheikh Khalifa Medical City becomes first hospital to administer ITVISM:
20. DRDO celebrated its 68th Foundation Day on January 1, 2026, and reviewed its achievements of 2025 and its goals for 2026.
21. India's broadband subscribers cross 1 billion mark in November 2025.
22. Google allows users to change primary Gmail ID without losing data.
23. India and Pakistan exchange annual list of nuclear installations.
24. Peru becomes first country to grant legal rights to insects (stingless bees).
25. India ranks third globally in rare earth reserves but lags in production.
26. Usman Khawaja to retire after fifth Ashes Test at Sydney.

27. Deepti Sharma becomes highest wicket-taker in Women's T20Is.
28. Lav Aggarwal appointed DGFT, Rabindra Kumar Agarwal named CMD of FCI.
29. Haryana records highest sex ratio at birth in five years in 2025.
30. Goa's proposed third district to be named 'Kushavati'.
31. The US FDA approved mitapivat, the first oral pill for treating anaemia in adult thalassemia, reducing lifelong dependence on blood transfusions.
32. Prime Minister Narendra Modi inaugurated an international exhibition in New Delhi showcasing the reunited Piprahwa relics of Lord Buddha after 127 years.
33. The US carried out large-scale strikes on Venezuela in January 2026, with President Trump claiming the capture of President Nicolás Maduro, escalating regional and global tensions.
34. Andhra Pradesh emerged as India's leading investment destination in FY26, capturing the highest share of proposed investments at 25.3%.
35. Iran appointed Abdolnasser Hemmati as Central Bank governor amid soaring inflation, a collapsing rial, and widespread protests.
36. India has developed indigenously 3D-printed Automatic Weather Stations under Mission Mausam to enhance real-time climate monitoring and hyper-local forecasting.
37. India launched its first government hospital-based AI clinic at GIMS, Greater Noida, providing a real-world platform for healthcare startups to innovate and improve patient care.
38. Haryana's sex ratio at birth rose to 923 in 2025, its highest in five years, reflecting effective enforcement of the PC-PNDT Act and gender equity initiatives.
39. Karnataka recorded its highest-ever 198 organ donors in 2025, ranking third nationally and reflecting rising awareness and improved coordination in organ transplantation.
40. Karnataka recorded its first sighting of the ultra-rare "Sandalwood Leopard" in Vijayanagara district, marking only the second confirmed case in India.
41. Eastern Imperial Eagle, a rare winter migratory raptor, was sighted at Mudumalai Tiger Reserve during the 2025–26 winter season, highlighting the reserve's importance for migratory birds of prey.
42. Bulgaria becomes the 21st member of the Eurozone by officially adopting the euro, enhancing EU integration and economic connectivity.
43. Andhra Pradesh became India's top investment destination in FY26, attracting 25.3% of proposed capital investments with strong policies and infrastructure.

44. MoSPI launched its new logo and mascot 'Sankhyiki' to modernise its identity and promote citizen-friendly statistical literacy.
45. India has set up the Live Events Development Cell (LEDC) to streamline approvals and boost the fast-growing concert economy, employment, and tourism.
46. India has surpassed China to become the world's largest rice producer with a record output of 150.18 million tonnes.
47. China commissions the upgraded missile destroyer Loudi, strengthening its naval power and strategic influence globally.
48. Delcy Rodriguez becomes Venezuela's interim president following Maduro's capture, facing political uncertainty and global scrutiny.
49. World Day of War Orphans is observed on 6 January to highlight the suffering of children orphaned by wars and to promote their protection, rehabilitation, and dignity.
50. World Braille Day is observed on 4 January to honour Louis Braille and highlight the importance of accessibility and inclusion for the visually impaired.
51. Rare Kushan-era coins and lapis lazuli stones unearthed at Bhir Mound highlight Taxila's ancient trade, culture, and religious diversity.
52. India approves Nutrient-Based Subsidy rates for Rabi 2025–26, ensuring affordable fertilizers and promoting balanced nutrient use among farmers.
53. India launches e-B-4 Visa, allowing Chinese business professionals to undertake industrial and commercial activities in India for up to six months.
54. PM Modi inaugurated the 72nd National Volleyball Tournament in Varanasi, highlighting teamwork, youth talent, and India's focus on sports development.
55. DRDO has developed a portable Sea Water Desalination System (SWaDeS) to provide safe drinking water to soldiers deployed in remote, coastal and high-altitude regions.
56. India appoints new Chief Justices for Kerala, Patna, and Meghalaya High Courts, ensuring judicial continuity and leadership.
57. DSIR has removed the mandatory three-year existence condition for deep-tech startups to boost early-stage innovation in India.
58. Assam Governor Lakshman Prasad Acharya launched 'Sanskaar Shaala' in Guwahati to promote value-based education and Indian cultural ethos among children aged 4–14.
59. A new non-venomous reed snake species, *Calamaria mizoramensis*, has been discovered in Mizoram, highlighting the state's rich biodiversity.
60. Tamil Nadu launched the Assured Pension Scheme (TAPS) guaranteeing 50% of last-drawn salary as pension to state

employees, with shared contributions by employees and the government.

61. Union Education Minister Dharmendra Pradhan released 55 literary publications in classical Indian languages in New Delhi.
62. The United States has decided to exit 66 international organisations, including the India-led International Solar Alliance.
63. Ranveer Singh's film Dhurandhar set a new record for the highest return on investment in Bollywood history.
64. CCI has approved Nippon Steel's plan to acquire 100% stake in Krosaki Harima Corporation.
65. HDFC Asset Management Company entered the private credit segment with the launch of a ₹2,500 crore structured credit fund.
66. Reliance Consumer Products Limited has appointed Amitabh Bachchan as brand ambassador for its Campa Sure packaged drinking water.
67. Former world billiards champion and Dhyani Chand Awardee Manoj Kothari passed away at the age of 67.
68. Veteran Congress leader and former Union minister Suresh Kalmadi passed away at the age of 81 in Pune.
69. Rajasthan hosted the Regional AI Impact Conference to promote inclusive and responsible use of Artificial Intelligence.
70. The Delhi government has signed an MoU with the RBI to manage its banking, debt, and cash operations.
71. The Centre has notified the first phase of Census 2027, with house listing to be conducted from April 1 to September 30, 2026.
72. Labour Ministry proposes a 90-day annual work requirement for gig workers to access social security under the Social Security Code, 2020.
73. The Supreme Court of India has signed an MoU with Bhutan's apex court for the exchange of law clerks, CJI Surya Kant said.
74. The UK has unveiled stricter road safety rules named 'Dev's Law' in memory of an Indian-origin child killed in a 2018 road accident.
75. India has introduced a new e-B-4 business visa to facilitate online business travel for Chinese nationals.
76. India's GDP is projected to grow by 7.4% in FY26, according to the first advance estimates released by the NSO.
77. The General Insurance Council has appointed S Prakash as CEO – Health Insurance Ecosystem and Strategic Partnerships from January 7, 2026.
78. Distinguished Scientist A. K. Balasubrahmanian has assumed charge as Chairman of the Atomic Energy Regulatory Board from January 1, 2026.
79. NVIDIA founder and CEO Jensen Huang has been awarded the 2026 IEEE Medal of Honor with a \$2 million prize.

80. India has become the world's first country to commercially produce bio-bitumen, Union Minister Nitin Gadkari announced.
81. Bangladesh has suspended most visa categories for Indians from January 8, 2026, amid rising diplomatic tensions with India.
82. India is considering lifting five-year-old restrictions on Chinese firms bidding for government contracts imposed after the 2020 border clash.
83. IDFC FIRST Bank launched the Zero-Forex Diamond Reserve Credit Card offering zero forex markup and premium travel rewards.
84. FSS became the first payments company across India, Middle East, APAC and South Africa to receive ISO IEC 42001 certification for AI governance.
85. The Textiles Committee and NEHHDC signed an MoU in Guwahati to protect and promote Northeast India's traditional handloom and handicrafts through GI registration.
86. Uttarakhand Police secured first place in the ICJS 2.0 national rankings, while SDRF was praised for its role in Prayagraj Mahakumbh-2025.
87. Eminent ecologist Madhav Gadgil, noted for his work on the Western Ghats, passed away at the age of 82 in Pune.
88. A new reed snake species named Calamaria mizoramensis was discovered in Mizoram and published in Zootaxa on January 5, 2026.
89. NASA announced an early return of the Crew-11 mission from the ISS due to a rare and undisclosed medical issue involving one astronaut.
90. The UN General Assembly has declared 2026 as the International Year of Rangelands and Pastoralists, with FAO as the lead agency.
91. Somnath Swabhiman Parv will be observed in January 2026 to commemorate 1,000 years of faith and resilience linked to the Somnath Temple.
92. Five sewerage infrastructure projects were commissioned under Namami Gange Phase II, raising total treatment capacity to 3,976 MLD.
93. Women and Child Development Minister Annapurna Devi launched the 'PANKHUDI' portal to strengthen coordination in women and child welfare schemes.
94. UIDAI has launched 'Udai' as the official Aadhaar mascot to make Aadhaar services more citizen-friendly.
95. The United Nations has projected that India's GDP growth may moderate to 6.6% in 2026 due to global trade pressures.
96. Akasa Air has become India's fifth airline to join IATA after qualifying for the IATA Operational Safety Audit.

97. SBI Research has projected India's GDP growth for FY26 at around 7.5%, with first advance estimates placing growth at 7.4%.
98. Asian Games gold medallist and national record-holder Jinson Johnson has announced his retirement from competitive athletics.
99. National Youth Day will be celebrated on 12 January 2026 to mark the birth anniversary of Swami Vivekananda.
100. Kerala has redesignated Aralam Wildlife Sanctuary as the State's first Butterfly Sanctuary.
101. Reliance Industries announced plans to invest ₹7 lakh crore in Gujarat over the next five years, focusing on clean energy and green materials.
102. Essar Future Energy signed an MoU with the Gujarat government to invest ₹5,100 crore in a bio-fuel complex in Devbhumi Dwarka district.
103. GAIL partnered with PNGRB to support National PNG Drive 2.0 for expanding access to PNG, CNG, and the CGD network across India.
104. PNGRB signed an MoU with Germany's DVGW to promote hydrogen integration into India's natural gas infrastructure through technical and safety cooperation.
105. Virat Kohli became the fastest cricketer to score 28,000 international runs across formats, achieving the milestone in his 624th innings.
106. The Military–Civil Fusion exercise 'Sanjha Shakti' was conducted at Khadki Military Station to enhance joint preparedness for security and emergency challenges.
107. Kotak Mahindra Bank appointed former Bajaj Finance MD Anup Kumar Saha as its whole-time director, subject to regulatory approval.
108. Indian Army Major Swathi Shantha Kumar from Bengaluru won the UN Secretary-General's Award 2025 for promoting gender parity under UNMISS in South Sudan.
109. MeitY's Digital India BHASHINI Division will host 'BHASHINI Samudaye' on 13 January 2026 to strengthen India's Language AI ecosystem.
110. ISRO's PSLV-C62 mission failed after deviating from its planned trajectory due to an anomaly in the third stage, resulting in the loss of EOS-N1 and 15 co-passenger satellites.
111. External Affairs Minister S. Jaishankar launched the official website, theme and logo for India's BRICS Presidency 2026.
112. India ranked 80th in the Henley Passport Index 2026, offering visa-free or visa-on-arrival access to 55 destinations, improving five positions from last year.

113. Blinkit, Zepto, Zomato and Swiggy decided to discontinue 10-minute deliveries following government intervention to improve gig workers' safety.
114. India's fish production rose to 198 lakh tonnes in 2024–25 from 95 lakh tonnes in 2013–14, reinforcing its position as the world's second-largest producer.
115. Bharat Coking Coal Ltd's ₹1,071-crore IPO was oversubscribed 146.81 times, led by strong demand from QIBs and non-institutional investors.
116. Bangladesh Cricket Board declined ICC's request and reiterated its decision not to travel to India for the T20 World Cup 2026, citing security concerns.
117. Indian mountaineer Aritra Roy successfully summited Mount Aconcagua (6,967.15 m), the highest peak outside Asia, as part of his Seven Summits mission.
118. Australia women's team captain Alyssa Healy announced her retirement from international cricket ahead of the T20 World Cup 2026.
119. Meta appointed former Trump adviser and board member Dina Powell McCormick as its president and vice chairman amid its AI push.
120. SpaceX launched NASA's Pandora mission to study exoplanet atmospheres using long-duration observations from a Falcon 9 rocket.
121. A Delhi court has convicted Kashmiri separatist leader Asiya Andrabi under the UAPA in a terror funding and conspiracy case.
122. Russia has expelled a British diplomat over alleged espionage, further worsening already strained UK–Russia relations.
123. The U.S. has suspended immigrant visa processing for citizens of 75 countries over concerns that they may rely on public welfare.
124. China recorded a historic trade surplus of \$1.2 trillion in 2025, the highest ever achieved by any country globally.
125. The World Bank has raised India's FY26 GDP growth forecast to 7.2%, citing strong domestic demand and reforms, keeping India the fastest-growing major economy.
126. The ILO has projected that global unemployment will remain at a historic low of 4.9% in 2026, though millions of workers continue to face extreme poverty and informal employment.
127. Sydney-based amateur Jordan Smith won A\$1 million after defeating top professionals to clinch the 'One Point Slam' tournament ahead of the Australian Open.
128. The Centre has appointed new Directors General for the BSF, ITBP and NIA to lead key security and counter-terrorism agencies.

129. Environmental activist and ‘Save Kurinji’ campaign leader G. Rajkumar passed away at 70, leaving behind a legacy of biodiversity conservation.
130. Jaipur hosted the 78th Army Day Parade outside a cantonment for the first time, showcasing advanced military hardware and reinforcing the theme “Nation First.”
131. NITI Aayog released the Export Preparedness Index 2024 to evaluate India’s States and UTs on export readiness and competitiveness.
132. The Department of Posts successfully delivered its first ONDC online order on January 15, 2026, as a logistics service provider.
133. The I&B Ministry collaborated with Netflix to launch “Inspiring Innovators – Naya Bharat Ki Nayi Pehchaan” to promote creative skills and meaningful storytelling.
134. Berkeley Earth reported that 2025 was the warmest La Niña year ever recorded, despite global cooling usually associated with La Niña.
135. India and Israel signed a Joint Ministerial Declaration to boost cooperation in fisheries and aquaculture during the “Blue Food Security: Sea the Future 2026” summit.
136. South Africa’s Laura Wolvaardt was named ICC Women’s Player of the Month for December 2025 for her record-breaking performances against Ireland.
137. Australian bowler Mitchell Starc was named ICC Men’s Player of the Month for December 2025 for his outstanding performance in the Ashes series.
138. American biologist Toby Kiers won the Tyler Prize for her research on underground fungal networks critical for ecosystem and carbon regulation.
139. Venezuelan opposition leader Maria Corina Machado gave her Nobel Peace Prize medal to US President Donald Trump, who plans to keep it.
140. India will observe the 10th Defence Forces Veterans’ Day on January 14, 2026, to honour the bravery and service of ex-servicemen.
141. Bill Gates has initiated the closure process of the Gates Foundation, which is set to wind up by 2045 after spending nearly \$200 billion.
142. Jaipur hosted the second regional conference on labour codes to ensure smooth implementation of the four new labour laws.
143. From April 1, all national highway toll plazas will accept only FASTag and UPI payments to ensure smooth and faster travel.
144. India and Germany signed a Joint Declaration of Intent on telecommunications cooperation during German Chancellor Friedrich Merz’s visit to India.

145. Delhi's Aaryan Varshney became India's 92nd Grandmaster after winning his final GM norm at the Andranik Margaryan Memorial Tournament in Armenia.
146. MS Dhoni was appointed brand ambassador of the Pune Grand Tour, India's first international multi-stage cycling race.
147. Shri Praveen Vashista was appointed Vigilance Commissioner of the Central Vigilance Commission on January 16, 2026.
148. Over 100 students were infected by a norovirus outbreak in China's Guangdong province.
149. National Startup Day 2026 marks 10 years of the Startup India initiative launched to promote entrepreneurship.
150. Republic Day Parade 2026 at Kartavya Path will celebrate 150 years of 'Vande Mataram' with cultural displays, band performances, and 30 tableaux.
151. Indian Railways has significantly improved safety and infrastructure, with nearly 80% of tracks now supporting speeds above 110 kmph.
152. Prime Minister Narendra Modi inaugurated the ₹6,950 crore Kaziranga Elevated Corridor project to improve connectivity and protect wildlife.
153. Japan has initiated steps to restart the Kashiwazaki-Kariwa nuclear plant as part of its shift toward cleaner energy.
154. China's population declined for the fourth straight year in 2025 due to falling birth rates and rising deaths.
155. Iraq has confirmed the complete withdrawal of U.S.-led coalition forces from its federal territory, moving towards bilateral security cooperation with the US.
156. Micron Technology will acquire a Taiwanese semiconductor facility for \$1.8 billion to expand DRAM production.
157. UNDESA has projected India's economic growth at 7.4% for the current fiscal year, driven by strong consumption and investment.
158. ICICI Bank has approved Sandeep Bakhshi's reappointment as MD & CEO till October 2028, subject to regulatory approvals.
159. NASA's Artemis II mission will send astronauts around the Moon for the first time since 1972, with launch planned in February.
160. Scientists have discovered a new microscopic crustacean species, *Indiaphonte bijoyi*, in Lakshadweep's Kavaratti lagoon.
161. Nitin Nabin was elected unopposed as the new National President of the BJP, becoming its youngest chief.
162. Vice-President C. P. Radhakrishnan released the Hindi edition of Dr. C. Palanivelu's autobiography 'Palanivelu GUTS'.
163. The World Economic Forum barred Iran's Foreign Minister from the Davos summit over human rights concerns.

164. The Election Commission of India will host the first IICDEM 2026 conference in New Delhi with delegates from over 70 countries.
165. Maharashtra signed investment MoUs worth ₹14.5 lakh crore at the World Economic Forum 2026.
166. India is expected to enter the upper-middle-income group by 2030, according to an SBI report.
167. India and the UAE have set a target to double bilateral trade to \$200 billion by 2032.
168. The IMF increased India's GDP growth forecast for FY 2025–26 to 7.3% from 6.6%.
169. India launched the Responsible Nations Index (RNI) to promote ethical governance and sustainable development.
170. The 6th Khelo India Winter Games began in Leh, Ladakh, with participation from 21 states and UTs.
171. Uganda's President Yoweri Museveni secured a seventh term after winning 71.65% of votes in a tense election.
172. The UK has approved China's plan to build Europe's largest embassy in London despite security concerns.
173. Moody's has projected India's GDP growth at 7.3% for FY26, citing strong economic momentum.
174. India ranked sixth among 11 Asian economies in the Asia Manufacturing Index 2026, highlighting the need for faster industrial reforms.
175. Olympic medallist Saina Nehwal announced her retirement, ending a historic badminton career for India.
176. Indian boxing legend Vijender Singh has been inducted as a member of the Asian Boxing Council, marking his transition from athlete to global sports administrator.
177. INS Sagardhwani was flagged off from Kochi for the fifth Sagar Maitri mission under India's MAHASAGAR vision.
178. NASA astronaut Sunita Williams retired after 27 years, having spent 608 days in space across three missions.
179. Scientists have discovered an RNA-based ageing marker in human sperm linked to increased health risks in children of older fathers.
180. Tuberculosis cases, known as the 'Victorian disease', were reported at an Amazon warehouse in the UK.
181. DGCA launched Electronic Personnel Licence (EPL) for pilots to enable secure digital licensing via eGCA app.
182. India has declared its Dhaka mission a non-family posting due to security concerns and rising tensions ahead of Bangladesh elections.
183. The Union Cabinet extended the Atal Pension Yojana till 2030–31 to ensure social security for unorganised workers.

184. The Union Cabinet approved a ₹5,000 crore capital infusion into SIDBI to enhance MSME financing.
185. Abhishek Sharma became the fastest player to score 5,000 T20 runs, achieving the feat in 2,898 balls.
186. BCCI signed a ₹270 crore sponsorship deal with Google's AI platform Gemini ahead of IPL 2026.
187. RBI approved the reappointment of Kaizad Bharucha as Whole-time Director and Deputy MD of HDFC Bank.
188. Mozambican human rights activist Graca Machel has been selected for the Indira Gandhi Peace Prize 2025 for her contributions to education, health, and humanitarian work.
189. Lucknow became Uttar Pradesh's first city to achieve 100% scientific processing of municipal waste.
190. Himachal Pradesh CM Sukhvinder Singh Sukhu inaugurated helicopter services from Shimla to Bhuntar and Reckong Peo to boost connectivity and tourism.
191. Donald Trump filed a \$5 billion lawsuit against JPMorgan Chase and its CEO over alleged debanking.
192. The Election Commission of India launched the ECINET digital platform at IICDEM 2026 in New Delhi.
193. Gates Foundation and OpenAI launched the \$50 million 'Horizon1000' initiative to introduce AI-based healthcare services in 1,000 African primary health centres by 2028.
194. The Government of India notified emission intensity targets for 208 additional industries under the Carbon Credit Trading Scheme.
195. India and Namibia agreed to expand cooperation in defence, critical minerals, health, and digital infrastructure.
196. MSDE signed an MoU with the World Economic Forum to strengthen vocational education and skill development in India.
197. CDS General Anil Chauhan released the Military Quantum Mission Policy Framework to integrate quantum technologies into the Armed Forces.
198. Deepinder Goyal resigned as CEO of Eternal Ltd., and Blinkit CEO Albinder Singh Dhindsa was appointed as the new Group CEO.
199. Murali Krishna, son of legendary singer S. Janaki, passed away due to a heart attack on January 22.
200. India is celebrating 150 years of 'Vande Mataram' with nationwide cultural events and military band performances.
201. Bharat Rang Mahotsav 2026, the world's largest theatre festival, is being held across 40 locations in India featuring 277 productions including Indian and international plays in 228 languages.
202. Vice President C. P. Radhakrishnan released the book "Chalice of Ambrosia: Ram Janmabhoomi – Challenge and Response" in New Delhi.

203. The United States officially completed its withdrawal from the World Health Organization.
204. Telangana secured a ₹5,000 crore AI data centre investment at WEF 2026.
205. India sent 7.5 tonnes of life-saving cancer medicines to Afghanistan as part of healthcare cooperation.
206. Tata Communications appointed Ganesh Lakshminarayanan as its Managing Director and CEO-Designate.
207. The film Sinners became the first movie to receive 16 Oscar nominations.
208. Timothée Chalamet became the youngest actor to receive three Best Actor Oscar nominations.
209. Digital India BHASHINI Division signed an MoU with Survey of India on 20 January 2026 to digitise and standardise geographical names using AI technology.
210. Odisha imposed a complete ban on gutkha, pan masala and all tobacco products from February 1, 2026.
211. The discovery of Neolithic relics in Lakkundi, Karnataka, has bolstered the site's bid for UNESCO World Heritage status.
212. The production Passado Presente Zenturo is set to make its international debut at India's Bharat Rang Mahotsav and Russia's GITIS FEST in February 2026.
213. India served as the premier Country Partner at Gulfood 2026, showcasing over 600 companies to solidify its role as a global "food basket."
214. India has been ranked as the world's sixth-largest pineapple producer, with Indonesia leading the global market.
215. NPCI and NTT Data have partnered to launch UPI payment trials in Japan during fiscal year 2026 to facilitate seamless cross-border digital transactions.
216. The Indian Navy's First Training Squadron arrived in Thailand to strengthen regional maritime cooperation as part of the ASEAN–India Year of Maritime Cooperation.
217. 92-year-old Kerala activist Kollakkayil Devaki Amma was honored with the Padma Shri for her decades-long effort in creating a massive green sanctuary on barren land.
218. Researchers discovered a new flowering plant, *Strobilanthes riteshii*, in the biodiversity-rich East Kameng district of Arunachal Pradesh.
219. The Ministry of Ayush's parade tableau highlighted the integration of traditional medicine with modern technology under the theme "Ayush ka Tantra, Swasthya ka Mantra."

220. Observed on January 26, the 2026 theme focuses on the vital role of customs in securing global supply chains and combating cross-border crime.
221. India and Canada strengthened energy cooperation at India Energy Week 2026 and relaunched the Ministerial Energy Dialogue.
222. India Post partnered with Stock Holding Services Limited to provide capital market services like demat accounts and mutual funds through post offices.
223. AYUSHEXCIL and Zepto will collaborate to promote authentic AYUSH products through a dedicated digital platform under Digital India initiatives.
224. IIT Guwahati developed a predictive framework to identify potential glacial lake formation zones in the Eastern Himalayas, mapping 492 high-risk locations to reduce GLOF risks.
225. Elon Musk topped the world's richest list in January 2026 with a net worth of \$713.1 billion.
226. The India–EU FTA will boost India's pharma and medical devices sector by providing access to the \$572.3 billion EU market.
227. AIIA signed an MoU with CAYEIT to promote digital health, AI-based research, and technology-driven education in Ayurveda at national and global levels.
228. Union Minister H.D. Kumaraswamy inaugurated SIAT 2026 in Pune, focusing on safe, sustainable mobility and India's EV and net-zero goals.
229. International Data Privacy Day is observed on 28 January to promote protection of personal data and secure digital governance.
230. Gujarat approved ₹1,250 crore under the Namo Laxmi Scheme to support education of girls from Classes 9 to 12.
231. NITI Aayog launches a three-month campaign to improve key development indicators in 513 Aspirational Blocks.
232. University of Oxford reclaims first place in QS Europe University Rankings, followed by ETH Zurich and UK universities.
233. The French National Assembly approves a law prohibiting children under 15 from accessing social media platforms.
234. Madhya Pradesh announces 2026 as the 'Year of Agriculture' to strengthen farming, dairy, and rural infrastructure.
235. The United States formally withdraws from the World Health Organization citing alleged pandemic management failures.
236. Maharashtra Deputy CM Ajit Pawar passes away in Baramati plane crash, triggering three days of state mourning.
237. NASA's James Webb captures galaxy cluster MACS J1149, showcasing gravitational lensing and distant galaxies.

238. Indian Railways has introduced its first AI-powered humanoid robot, ASC ARJUN, at Visakhapatnam station for crowd monitoring, surveillance, and passenger assistance.
239. Bose Institute study finds desert dust from western India carries disease-causing pathogens to the Himalayas, impacting air quality and health.
240. Odisha CM Mohan Charan Majhi launches a portal for real-time monitoring of SFC and CFC-funded development projects.
241. Rashtriya Ayurveda Vidyapeeth organised a three-day training on medicinal plant identification in Wayanad, Kerala.
242. India ranked second globally in consumer optimism in January 2026, according to LSEG–Ipsos PCSI.
243. Karnataka hosts 39% of India’s GenAI startups, leading the country in AI innovation, says Economic Survey 2025–26.
244. Taiwan successfully conducted the first underwater sea trial of its indigenous submarine Narwhal to strengthen maritime deterrence.
245. Google DeepMind launched AlphaGenome, an AI tool to analyse DNA mutations and gene regulation.
246. Microsoft unveiled its second-generation AI chip Maia 200 to reduce dependence on Nvidia.
247. Martyrs Day is observed on 30 January to commemorate Mahatma Gandhi and India’s freedom fighters.
248. Assam launched the Mukhya Mantrir Eti Koli Duti Paat scheme providing ₹5,000 to over six lakh tea workers.
249. India has nominated Meghalaya’s living root bridges for UNESCO World Heritage evaluation 2026–27.
250. Uttar Pradesh will make Aadhaar-based biometric authentication mandatory for property registration from 1 February 2026.
251. US approves \$ 3.8 billion apache helicopter sale to Israel