

V.S. DREAM COACHING

Year – 2026



Secret of success is to
know something
nobody else knows

NO. 3 OF 2026

NEWSLETTER

MARCH 2026

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ESTABLISHED IN SEPT. 2022

**FOR
JUDICIAL SERVICE
ASPIRANTS**

**IN THE SERVICE OF JUDICIAL
FRATERNITY**

**GET QUALITY STUDY
MATERIAL
WITH LATEST CASE LAW**

FOR

**HIGHER JUDICIAL SERVICE,
CIVIL JUDGE AND
PROSECUTION
EXAMINATIONS**

FOR

**PRELIMS AND MAINS
EXAMINATIONS**

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LAW AND GK SERIES**

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NEWSLETTER

MARCH 2026

1. Transgender Persons (Protection of Rights) Amendment Act, 2026

Source – Indian Express

The government has presented the amendment as a bid to 'protect only those who face severe social exclusion due to biological reasons for no fault... no choice of their own.' This understanding reverts to a pre-2014 understanding of transgender identity

Transgender Bill explained

A new amendment introduced in Parliament proposes major changes to the Transgender Persons (Protection of Rights) Act, 2019, including removing the right to gender self-identification recognised by the Supreme Court in the landmark National Legal Services Authority Vs. Union of India in 2014 and introducing medical certification for identity recognition. Union Minister of Social Justice and Empowerment Virendra Kumar introduced the Transgender Persons (Protection of Rights) Amendment Bill, 2026, on March 13 in Lok Sabha. The said Bill was passed from Lok Sabha on 24 March, 2026 and from Rajya Sabha on 25 March 2026. The move has drawn criticism from transgender and LGBT+ groups across the country.

Definitions of sex, gender, and transgender

The 2019 Act defined a transgender person as one whose gender does not match the gender assigned to that person at birth. These include a bouquet of identities

- Trans men and trans women, regardless of their having undergone gender-affirming (officially sex reassignment) surgery, hormone therapy or other such therapies
- Persons with intersex variations
- Genderqueer persons (interpreted as including non-binary identities)
- Persons with such sociocultural identities as kinner, hijra, aravani and jogta

This definition aligns with the definition used by the Office of the High Commissioner of the United Nations for Human Rights, describing transgender

as an umbrella term for those people “whose sense of their own gender is different to the sex that they were assigned at birth”.

This definition establishes a distinction between sex, which refers to one’s biological status as male or female based on one’s anatomy, chromosomes, and hormone prevalence, and gender, a social construct that determines roles, behaviours, and attributes that society deems acceptable for men and women. Hence, one’s ‘gender identity’, or a person’s sense of self and their gender, may or may not correlate with the sex assigned at birth.

What the 2014 judgement entailed

In *NALSA v Union of India* (2014), the Supreme Court did two things: One, it recognised the transgender community as the “third gender” and affirmed equal applicability of fundamental rights under the Constitution to trans persons. Two, it affirmed the right of self-identification of gender, meaning a person could identify as male, female or third gender.

The apex court subsequently directed the central government to frame relevant laws to ensure legal recognition to the transgender community as the third gender and also to take steps for their welfare. In 2019, the central government **implemented the Transgender Persons (Protection of Rights) Act**, which provided for the legal recognition of the community.

In practice, this meant the inclusion of the third gender (other) in all official forms, as well as the establishment of a mechanism to distribute transgender identity cards. These cards allowed individuals to be legally recognized as the third gender and also protected their rights. The Ministry of Social Justice also formed the Transgender Welfare Board, with the states following suit. The Transgender Certificate and Identity Cards, one of the most important schemes resulting from the 2019 Act, allow trans persons to access various government welfare schemes. According to the National Portal for Transgender Persons, 32,424 such cards have been issued to date.

Changes proposed by the 2026 Amendment

The government has presented the latest amendment as a bid to “protect only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own.” This understanding reverts to a pre-2014 understanding of transgender identity, relying heavily on biological characteristics as the parameter for eligibility.

Narrower Definition

The definition of a transgender person under the bill is largely restrictive, recognising only one subset from the 2019 bill: Those with socio-cultural identities (kinner, hijra, aravani, jogta, eunuch) or persons born with specific congenital biological variations, a narrower, medicalised list replacing the open-ended intersex reference: primary sexual characteristics, external genitalia, chromosomal patterns, gonadal development, endogenous hormone production or response. The bill also creates a new and distinct category: any person or child who has been compelled — by force, allurements, inducement, deceit, or undue influence — to assume a transgender identity through mutilation, emasculation, castration, amputation, or surgical, chemical, or hormonal procedure.

No More Self-Identification

The bill also does away with Section 4(2) of the 2019 Act, which enshrined the right to self-identify. It says the Act was not intended to protect “each and every class of persons with various gender identities, selfperceived sex/gender identities or gender fluidities.” The bill claims that the 2019 definition was “vague” and made it “impossible to identify the genuine oppressed” intended beneficiaries, making the “operation and enforcement of several provisions under penal, civil and personal laws unworkable.”

Medical Board for Certification

Under the 2019 Act, the process of issuing transgender identity cards was administrative. A transgender person applied to the District Magistrate and received a certificate of identity, without any need for a medical examination or other clinical gate-keeping.

The bill calls for the formation of a medical board headed by a Chief Medical Officer or a Deputy Chief Medical Officer, at the centre or state/UT level. This board will now be tasked with making recommendations to the DM, which the latter must consider, along with the advice of other medical experts where relevant, before issuing a certificate of identity. While the Act did not place any minimum qualifications for eligibility to serve on the National Council for Transgender Persons, established in 2020, the Bill posits that the state/UT representatives on the Board must now have a minimum rank of Director in the relevant Ministry or Department.

Scale of Punishment

The Act authorised punishments ranging from six months to two years of prison time, plus a fine, for pushing a trans person into forced or bonded labour, denying access or right of passage to a public place, forcing a trans person to leave their place of residence, household or village; and for causing harm, injury, or endangerment — physical, mental, sexual, verbal, emotional, or economic.

The Bill expands on this and introduces four more clauses, each liable to attract rigorous imprisonment. The offence of kidnapping an adult with grievous hurt or permanent injury to force assumption of transgender identity, under the bill, will attract a minimum 10 years of RI, extendable to life, plus a minimum fine of Rs 2 lakhs. The same offence against a child is RI for life and a minimum fine of Rs 5 lakhs. Similarly, for forcing an adult to present as transgender and engage in begging, servitude, or bonded labour, the bill suggests five to 10 years RI, plus a minimum fine of Rs 1 lakh. The same offence against a child can attract 10-14 years RI, plus a minimum fine of Rs 3 lakhs.

Criticism of the bill

Transgender persons and activists who are working in the field of rights of the marginalised have said the amendment has taken away the basic freedom and right of self-determination of gender from the individual.

Kadambari Shaikh, a transgender activist from Pune, said the stripping of the freedom to choose their identity is a major violation of human rights. “Our identity should not need approval from others. It is something we live every day. Any change in the law must protect this right and support the freedom and dignity of transgender persons,” she said.

The present amendment, Anil Ukarande, founder of Yutak, a trust which works for sexual minorities, explained, has put the onus on the individual to “prove” their identity, which should never be the case. “The amendment has talked about a medical board and asked hospitals to submit documents before the certificate is issued. For a transgender person, this would be very difficult, given the deep transphobia which still exists in society,” he said.

Ukarande and other activists said the present amendment has allowed recognition only of transgender persons from certain “socio-cultural” backgrounds. “The age-old guru-chela system allows individuals protection and fosters a sense of community. But they are also centres of power as well as exploitation — many individuals have transitioned without being part of the socio-cultural systems. This amendment puts a question mark over them,” he said.

2. US and Israel attack on Iran

On **28 February 2026**, the United States and Israel launched a **joint military strike on Iran**, marking a major escalation in West Asian geopolitics. The attack, justified as a **pre-emptive action against Iran's nuclear and missile programmes**, triggered a wider regional crisis, including disruptions in the **Strait of Hormuz**, a critical global energy route.

The recent military confrontation involving the United States, Israel, and Iran represents one of the most serious escalations in West Asia in recent years. Although such tensions are not new, the scale and directness of the strikes signal a shift from shadow conflict and proxy warfare to overt military engagement. What makes this episode particularly significant is not merely the conflict itself, but its wider ramifications—especially the emerging crisis in the Strait of Hormuz, a narrow yet crucial passage through which a substantial portion of the world's oil supply flows.

The roots of this confrontation can be traced back to the Iranian Revolution, which fundamentally altered Iran's relationship with the West. Since then, Iran's nuclear ambitions, coupled with its support for various non-state actors in West Asia, have been a persistent source of concern for both the United States and Israel. The weakening of the Joint Comprehensive Plan of Action further aggravated tensions by removing a key diplomatic framework that had earlier restrained Iran's nuclear programme. In the absence of sustained diplomatic engagement, mistrust deepened, creating conditions in which military action began to be seen as a viable, albeit risky, alternative.

The strikes carried out by the United States and Israel can be understood as part of a broader strategy aimed at preventing Iran from acquiring strategic capabilities that could alter the regional balance of power. For Israel, such actions are consistent with its long-standing doctrine of pre-emption against existential threats. For the United States, the objective extends to maintaining its influence in West Asia and reassuring its allies of its commitment to regional security. However, such military interventions often produce unintended consequences, particularly when the targeted state possesses the capacity for asymmetric retaliation.

Iran's response has reflected precisely such an approach. Rather than engaging in direct large-scale warfare, it has relied on a mix of missile strikes, drone operations, and indirect pressure through allied groups. Crucially, Iran has leveraged its geographical position to threaten maritime security in the Strait of Hormuz. This strategy highlights a key aspect of modern conflict: the ability of

relatively weaker states to impose significant costs on stronger adversaries by targeting critical nodes of the global economy.

The Strait of Hormuz thus becomes central to understanding the wider implications of the crisis. As one of the world's most important oil transit chokepoints, any disruption in this narrow passage has immediate repercussions for global energy markets. Even limited instability can lead to sharp increases in oil prices, disruptions in supply chains, and heightened uncertainty in international trade. The crisis therefore underscores the vulnerability of the global economy to geopolitical tensions in strategically sensitive regions.

The consequences of the conflict are unfolding at multiple levels. Geopolitically, it risks deepening divisions among major powers, with countries like Russia and China taking positions that may not align with those of the United States and its allies. This polarization complicates diplomatic efforts and increases the likelihood of prolonged instability. Regionally, the involvement of multiple actors, including non-state groups, raises the spectre of a wider conflict that could engulf much of West Asia.

In this complex scenario, India's position assumes particular significance. India has consistently adopted a balanced and pragmatic approach, guided by its core national interests. On one hand, India maintains strong strategic partnerships with the United States and Israel, encompassing defence, technology, and intelligence cooperation. On the other hand, Iran remains important for India's energy security and regional connectivity, especially through projects such as the Chabahar Port, which provides access to Afghanistan and Central Asia.

Faced with the current crisis, India's stand can be characterized by cautious neutrality combined with active concern. It has emphasized the need for de-escalation, dialogue, and respect for international law. India's primary concern lies in ensuring the uninterrupted flow of energy supplies through the Strait of Hormuz, given its heavy dependence on oil imports from the Gulf region. Any disruption not only raises import costs but also fuels domestic inflation and affects economic stability.

At the same time, India is deeply concerned about the safety of its large diaspora in West Asia, which numbers in the millions. Past experiences have shown that conflicts in the region can necessitate large-scale evacuation operations, making it imperative for India to remain prepared for humanitarian contingencies. Diplomatically, India seeks to maintain open channels with all parties involved, avoiding alignment with any one bloc while advocating peaceful resolution.

From a broader perspective, India's response reflects its evolving foreign policy doctrine—often described as “strategic autonomy.” This approach allows India to engage with multiple partners simultaneously while safeguarding its own interests. In the context of the present crisis, it enables India to navigate a highly polarized environment without compromising its economic or strategic priorities.

In conclusion, the US–Israel strikes on Iran and the resulting Strait of Hormuz crisis illustrate the intricate interplay between military power, strategic geography, and global economic interdependence.

For India, the situation presents both challenges and opportunities: challenges in terms of energy security and regional stability, and opportunities to play a constructive diplomatic role. Ultimately, the crisis reinforces the need for sustained dialogue and multilateral cooperation, as the costs of escalation are likely to be borne not just by the countries directly involved, but by the international community as a whole.

3. Corporate Laws (Amendment) Bill, 2026

Source – Indian Express

After **moving the Corporate Laws (Amendment) Bill, 2026 in the Lok Sabha** on March 23, Corporate and Finance Minister Nirmala Sitharaman proposed to send the Bill to a 31-member Joint Parliamentary Committee (JPC) to enable further scrutiny. The JPC will include 21 Lok Sabha MPs and 10 Rajya Sabha MPs nominated by their respective chairpersons and make its report on the Bill on the last day of the first week of the Monsoon Session later this year.

What is the Corporate Laws (Amendment) Bill, 2026

The Corporate Laws (Amendment) Bill, 2026, seeks to amend the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, to streamline regulatory processes for companies, and decriminalise minor offences by shifting from criminal penalties to monetary fines . In addition to tweaking norms for convening hybrid annual or extraordinary general meetings, unpaid dividend and the investor protection framework, it also proposes the introduction of a framework for conversion of specified trusts (registered under SEBI / IFSC authority) into Limited Liability Partnerships (LLPs) and an increase of profitability threshold for applicability of corporate social responsibility (CSR).

What are the Acts which the proposed new law seeks to amend and how?

The Companies Act, 2013 was enacted to consolidate and amend the laws relating to companies and introduced significant changes related to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. It was amended in 2015, 2017, 2019 and 2020 to decriminalise certain offences, facilitate ease of doing business, rationalise compliance requirements, and recognise new concepts.

The Limited Liability Partnership Act, 2008 was enacted to make provisions for the formation and regulation of limited liability partnerships and related matters, in the form of an LLP which has the flexibility of a partnership firm but is constituted in the form of a body corporate structure with limited liability and perpetual succession. The LLP Act was amended in the year 2021 to facilitate ease of doing business and to decriminalise certain offences.

Key provisions of the proposed law

The key provisions of the Bill include increasing the eligibility threshold for CSR to be hiked to Rs 10 crore profit from the current one of Rs 5 crore. At the moment, companies are required to spend 2% of the average profit from the last three years on CSR initiatives.

It also proposes to provide relaxation to small companies by providing exemption from CSR provisions, requirements related to auditor appointment, and reduction in additional fees. The Bill also seeks to increase the time period for transfer of unspent CSR amounts relating to ongoing projects to the unspent corporate social responsibility account with the scheduled bank to 90 days from the current 30 day-period.

Other key provisions include enabling companies to hold Annual General Meetings and Extraordinary General Meetings through video conferencing or other audio visual means, with the requirement of holding at least one Annual General Meeting in physical mode at least once in three years. Also, certain affidavits required under the Act can be replaced with self-declarations.

Objections to the Bill

The objections raised by opposition MPs to the proposed law include contentions that it suffers from excessive delegation of essential legislative functions in violation of settled constitutional doctrines. The Opposition says that the law leaves core policy matters, such as classification of companies for exemptions, determination of compliance requirements, thresholds for Corporate Social Responsibility, audit obligations, and penalty frameworks to subordinate legislation without adequate legislative guidance, especially from Parliament. This, according to the Opposition, is through the Bill enabling sub-delegation of legislative and regulatory powers to authorities such as the National Financial Reporting Authority (NFRA).

The Opposition has also objected to the Bill for permitting the Centre to identify class or classes of companies for different regulatory treatments across multiple provisions and vesting sweeping powers in the Centre to issue directions to and supersede statutory regulators such as NFRA on broad and undefined grounds like public interest.

Other significant contentions include the alleged attempt to “dilute” CSR requirements as well as removing previous provisions for imprisonment in case of violation of the Companies Act, 2013, alleged dilution of accountability framework in corporate governance that risks weakening shareholder

participation, compliance discipline and overall corporate governance standards.

Government's response

The government has argued that the proposed provisions are very similar to those given to other regulators, such as SEBI, Competition Commission and IDBI, and the power to make regulations by the NFRA is subject to prior consultation with stakeholders and, further, each regulation is to be laid down before both the Houses of Parliament within 30 days.

With regard to CSR, the government has sought to argue that only the net profit criterion is being amended in favour of small businesses striving to grow, with the net profit criterion of Rs 5 crore being enhanced to Rs 10 crore as a reflection of changes in the nation's economic scenario now compared with 2013. The government has sought to emphasise that other significant criteria, such as net worth of Rs 500 crore, or a turnover of Rs 1,000 crore are being retained.

With regard to decriminalisation, the government has contended that 21 offences are being moved to the adjudication mechanism, wherein penalties are levied in the Bill. While the process of levying the penalties, according to the government, is transparent and through the e-adjudication platform, the discretion of government officers concerned has been done away with as an anti-corruption measure.

According to the government, the proposed law will ensure that corporate governance is facilitated, electronic VC meetings will increase shareholder participation, and provisions for small companies are a step forward towards easing their burden on the one hand and helping greater formalisation of MSMEs on the other.

4. New Income Tax Rules

April 1, 2026 not just signals the start of the new financial year 2026-27, but this time also brings with it a new set of income tax rules. The New Income Tax Rules 2026, based on the Income Tax Act 2025, have several changes that salaried taxpayers should be aware of. Your exemption limits are changing - hence the math behind the choice of the new and old income tax regime is also changing.

Beyond that, the language of the Income Tax Act has been simplified and several common sections and forms have been renamed, which is important to know when filing tax returns.

The new **Income Tax Act, 2025**, passed by **Parliament in August 2025** and later **approved by President Droupadi Murmu**, aims to reduce legal complexity, cut litigation, and align tax administration with a digital-first economy.

New ‘Tax Year’ system replaces ‘FY’ & ‘AY’

One of the most significant structural changes is the removal of the long-standing distinction between ‘Previous Year’ and ‘Assessment Year’. From FY27 onwards, taxpayers will deal with a single concept — ‘Tax Year’ — simplifying return filing, timelines, and overall understanding, especially for first-time filers.

No change in tax rates, slabs continue

The new law is revenue-neutral. Tax rates will continue to be decided through the annual Finance Act. As per Budget 2026-27, income tax slabs remain unchanged, with the new regime continuing as the default system.

A key relief remains intact — individuals earning up to Rs 12 lakh continue to pay zero tax due to rebate under Section 87A.

Late ITR Filing Relief: Refunds still allowed

In a taxpayer-friendly move, refunds of TDS will now be allowed even if returns are filed after the due date. This is expected to benefit late filers who earlier faced practical difficulties in claiming refunds.

New PAN Rules: Wider mandatory usage

The new framework significantly expands the scope of PAN usage to improve financial tracking and compliance.

PAN will now be mandatory for:

- Annual cash deposits or withdrawals of Rs 10 lakh or more
- Property transactions above Rs 20 lakh
- Vehicle purchases above Rs 5 lakh (including two-wheelers)
- Hotel or event payments exceeding Rs 1 lakh
- All insurance premium payments (no minimum threshold)

This marks a shift from transaction-based limits to annual financial behaviour tracking.

Cash transaction rules tightened

Cash reporting norms have been simplified but made stricter in scope.

Instead of tracking daily transactions, the new rules introduce an annual aggregate threshold of Rs 10 lakh for deposits and withdrawals, enabling better monitoring of high-value activity while reducing compliance burden for small users.

HRA Rules: More Cities Get Metro Benefit

The draft rules propose expanding the metro category for HRA benefits.

Cities likely to be added include Bengaluru, Hyderabad, Pune and Ahmedabad.

Taxpayers in these cities can claim 50% of salary as HRA exemption instead of 40%, reducing taxable income. At the same time, compliance becomes stricter, with mandatory landlord PAN disclosure in specified cases.

Higher tax-free perquisites

The new law updates outdated limits on employer-provided benefits.

Key changes include meal allowance exemption raised to Rs 200 per meal, gift and voucher exemption increased to Rs 15,000 annually, revised valuation of company cars and driver benefits, and enhanced children's education and hostel allowances.

These changes align tax-free benefits with current cost structures.

Crypto reporting rules tightened

Crypto transactions will come under stricter reporting requirements. Exchanges will have enhanced obligations to share transaction data with tax authorities, aimed at curbing tax evasion and improving transparency in digital asset markets.

CBDC recognised as legal payment mode

The draft rules formally recognise the Digital Rupee (CBDC) as a valid electronic payment mode under tax laws. This integrates central bank digital currency into mainstream tax compliance and reporting systems.

Property reporting threshold doubled

Reporting thresholds for immovable property transactions have been revised upward from Rs 10 lakh to Rs 20 lakh. It now includes gifts, joint development agreements, and stamp-duty-based valuations. This aligns tax reporting with current real estate price levels.

Simplification Drive: Rules and Forms Slashed

A major highlight of the reform is administrative simplification.

- Total rules reduced from 511 to 333
- Forms cut from 399 to 190

Provisions have been consolidated into topic-based structures, reducing redundancy and improving clarity.

ITR deadlines tweaked for some Taxpayers

While salaried individuals will continue to file returns by July 31, deadlines for non-audit cases (ITR-3, ITR-4) have been extended to August 31. This provides additional time for professionals and self-employed taxpayers.

Higher Costs for F&O Traders

Trading in derivatives becomes more expensive due to an increase in Securities Transaction Tax (STT):

- Options premium: 0.1% → 0.15%
- Options intrinsic value: 0.125% → 0.15%
- Futures: 0.02% → 0.05%

This may impact high-frequency and retail derivatives traders.

Buyback, Dividend and MF Tax Rules Revised

Several investment-related tax provisions have been streamlined. Stock buybacks will now be taxed as 'capital gains' instead of 'deemed dividend'. No deduction will be allowed for interest expenses on dividend/mutual fund income. There will be a simplified TDS declaration across multiple income sources.

TCS Relief on Foreign Travel and Remittances

Tax Collected at Source (TCS) has been rationalised. TCS on foreign travel has been reduced to a flat 2%, while education and medical remittances abroad have also been cut to 2%. This lowers upfront tax burden on international spending.

More Time for Revised Returns

The window for filing revised returns has been extended from December 31 to March 31. This gives taxpayers more time to correct filings, though late fees will apply after December.

Renumbering of Income Tax Provisions

The new Income-tax Act, 2025, also introduce a comprehensive renumbering and restructuring of sections. Key changes include renumbering Section 80C to 123, Form 16 to Form 130, and Form 26AS to 168. The objective is to reduce excessive cross-referencing and improve readability.

Why the old Income Tax Act is being replaced

The 1961 Act was drafted for a very different economy. Over 60 years, hundreds of amendments, provisos, and cross-references made it bulky and difficult to interpret. As business models evolved and technology reshaped finance, the government decided a structural overhaul was necessary rather than incremental changes.

The new Act removes obsolete provisions, consolidates applicable ones, and cuts text volume and section count by nearly 50%, making it leaner and easier to navigate.

5. Passive Euthanasia permitted

In a landmark decision, the Supreme Court of India in **Harish Rana Vs. Union of India** permitted passive euthanasia by allowing the withdrawal of life-sustaining treatment for a patient in a permanent vegetative state.

This judgment represents the first practical implementation of the constitutional principles laid down in the **Common Cause Vs. Union of India**, which recognised the right to die with dignity under Article 21 of the Constitution.

The ruling marks a major development in India's jurisprudence on end-of-life care, patient autonomy, and medical ethics.

Facts of the case

Harish Rana, a 19-year-old student from Chandigarh, suffered a catastrophic accident in **August 2013** after falling from a fourth-floor building. The accident caused severe brain damage, leaving him in a **Permanent Vegetative State (PVS)** with **100% quadriplegia**.

For nearly **13 years**, he survived solely through **Clinically Assisted Nutrition and Hydration (CANH)** via PEG tubes, without any improvement in neurological condition.

After the **Delhi High Court** dismissed the family's request in 2024, the matter reached the Supreme Court.

Considering medical evidence and family consent, the court finally permitted **withdrawal of life-sustaining treatment under strict supervision**.

Observations of the Supreme Court on Passive Euthanasia

1. Acceptance of Medical Boards' Recommendations

The court accepted the unanimous recommendation of medical boards and directed the **All India Institute of Medical Sciences** to admit the patient to its palliative care department. The court emphasised that:

- Withdrawal of treatment must be **humane and medically supervised**.
- Adequate **palliative care and pain management** must be ensured.
- Ending treatment **must not amount to abandonment of the patient**.

Thus, the focus remained on **dignified end-of-life care** rather than merely discontinuing treatment.

2. Clinically Assisted Nutrition as Medical Treatment – A significant clarification in the judgment was that **Clinically Assisted Nutrition and Hydration (CANH)** through PEG tubes constitutes **medical treatment**, not basic care. Therefore:

- Its withdrawal can fall within the scope of **passive euthanasia**.
- Medical boards may approve its discontinuation when it is **not in the patient's best interest**.

3. Waiver of Reconsideration Period – Under existing guidelines, a reconsideration period of 30 days normally applies before implementing passive euthanasia. However, the court **waived this period** to:

- Prevent prolonged suffering
- Ensure the timely implementation of the medical board's decision

Procedural directives issued by the Court

To streamline passive euthanasia decisions nationwide, the court issued several procedural directions.

1. **Institutional Mechanisms** - High Courts must ensure that **Judicial Magistrates** receive hospital notifications regarding medical board decisions.
2. **Medical Board Panels** - The Union Government must ensure that **Chief Medical Officers (CMOs)** in every district maintain panels of **Registered Medical Practitioners** for secondary medical boards.
3. **Call for Comprehensive Legislation** – The court urged the **Government of India** to enact a **comprehensive law on end-of-life care**.

The court warned that without legislation, decisions could be influenced by:

- Financial hardship
- Lack of medical insurance
- Socio-economic vulnerabilities

Living Will and Advance Medical Directives

The concept of a **Living Will** was recognised earlier in the **Common Cause (2018)** judgment. A **Living Will** is a written document allowing individuals to:

- Specify medical treatment preferences in advance
- Authorise withdrawal of life support if they become incapable of making decisions

The ruling significantly strengthens **patient autonomy** by allowing individuals to retain control over medical decisions even when they cannot communicate their wishes.

Euthanasia – Euthanasia refers to the deliberate act of ending a person's life to relieve unbearable suffering caused by terminal illness or irreversible medical conditions.

The term originates from Greek words meaning “**good death.**”

Types of Euthanasia

1. **Active Euthanasia:** Direct intervention to cause death, such as administering a lethal injection.
2. **Passive Euthanasia:** Withholding or withdrawing life-sustaining treatment, allowing natural death to occur.

Classification by Consent

- **Voluntary:** With patient's explicit consent
- **Non-voluntary:** When patient cannot give consent (coma or PVS)
- **Involuntary:** Without consent (illegal)

Legal Framework in India

Indian law distinguishes clearly between active and passive euthanasia.

Active Euthanasia: Remains illegal under the **Bharatiya Nyaya Sanhita**, where intentionally causing death is punishable.

Passive Euthanasia: Legally permitted under Supreme Court guidelines, recognizing **right to die with dignity as part of Article 21.**

Important Judgments on Euthanasia

Maruti Shripati Dubal v State of Maharashtra (1987) – The **Bombay High Court** initially recognised the right to die as part of Article 21.

Gian Kaur Vs. State of Punjab (1996) – The Supreme Court reversed the above ruling and held that the **right to life** does not include the right to die.

Aruna Shanbaug Case (2011) – In **Aruna Shanbaug Vs Union of India**, the Supreme Court allowed passive euthanasia under strict safeguards.

Common Cause Case (2018) – The Supreme Court recognised the right to die with dignity and legally validated living wills.

Harish Rana Case (2026) – The first real implementation of passive euthanasia guidelines in India.

Legal Procedure for Passive Euthanasia

The Supreme Court guidelines establish a **two-stage medical review system**.

Primary Medical Board - Consists of:

- Treating physician
- Two independent doctors with at least five years of experience

Secondary Medical Board

Includes three independent doctors nominated by district authorities.

Both boards must provide their decision within **48 hours**, and the decision must be communicated to the **Judicial Magistrate First Class (JMFC)**.

Global Perspective

The legal status of euthanasia varies across countries:

- **Netherlands** permits both active euthanasia and assisted suicide
- **Switzerland** permits assisted suicide
- **Italy** permits passive euthanasia

India adopts a **limited approach**, allowing passive euthanasia under strict legal safeguards.

Arguments in Favour

- Respects **individual autonomy and dignity**
- Relieves unbearable suffering
- Prevents prolonged artificial life support
- Can be regulated through strict medical safeguards

Arguments Against

- Risk of misuse and coercion
- Ethical concerns in the medical profession
- The possibility of pressure on vulnerable patients
- Fear of a “slippery slope” expanding eligibility

Strengthening Support for Terminally ill Patients in India

National Palliative Care Mission: A dedicated mission could expand pain management and hospice services nationwide.

Integration into Public Health System: Palliative care must be integrated into:

- Primary Health Centres
- District hospitals
- National health programmes

Promoting Living Wills: Awareness campaigns can encourage citizens to prepare advance directives.

Community-Based Care: Models such as **Kerala's Neighbourhood Network in Palliative Care** demonstrate effective community involvement.

Financial Protection: Palliative care services should be covered under Pradhan Mantri Jan Arogya Yojana and other public health schemes.

Conclusion

The **Harish Rana judgment (2026)** represents a compassionate evolution in Indian constitutional law. By implementing passive euthanasia guidelines while emphasising palliative care, the Supreme Court has balanced human dignity, patient autonomy, and medical ethics.

However, lasting reform requires:

- Comprehensive legislation on end-of-life care
- Strong institutional safeguards
- Universal access to palliative care services

Only through such measures can India ensure that dignity in life is matched by dignity in death.

6. Important Supreme Court Cases

March 2026

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S.N.	Subject	Case Reference
1.	A quarrel, per se, will not constitute the offence of domestic cruelty or dowry harassment in terms of Sec. 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act.	Dr. Sushil Kumar Purbey and Anr. Vs. State of Bihar and Ors., decided on 09.03.2026
2.	The appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order 41 Rule 27 CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage.	Gobind Singh and Ors. Vs. Union of India and Ors., decided on 09.03.2026
3.	A plaintiff who approaches the court with unclean hands by withholding material information is not entitled to the equitable relief of specific performance.	Muddam Raju Yadav Vs. B. Raja Shanker (D) Thr. Lrs. and Ors., decided on 10.03.2026
4.	Call Detail Records (CDRs) cannot be relied upon in evidence unless accompanied by the mandatory certificate under Section 65-B of the Indian Evidence Act, 1872	Pooranmal Vs. State of Rajasthan and Anr., decided on 10.03.2026
5.	The public servant who personally demands and accepts a bribe can be convicted under the Prevention of Corruption Act, 1988, even if the charge of criminal conspiracy fails and the co-accused is acquitted. If the conspiracy allegation fails, the prosecution can still secure a conviction if the evidence independently establishes that the accused public servant demanded and	Central Bureau of Investigation Vs. Baljeet Singh, decided on 10.03.2026

	accepted the bribe.	
6.	Passed its first-ever order allowing passive euthanasia, in terms of its 2018 Common Cause judgment (as modified in 2023) recognizing the fundamental right to die with dignity.	Harish Rana Vs. Union of India and Ors., decided on 11.03.2026
7.	'Creamy Layer' status for reservation under the Other Backward Classes (OBC) category cannot be determined solely on the basis of parental income, without reference to the posts and status held by the parents in their organizations.	Union of India and Ors. Vs. Rohith Nathan and Anr. Etc., decided on 11.03.2026
8.	The seniority of a direct recruit is to be counted from the first date of their joining after which they were sent for training. The period therefor is irrelevant. It may change from time to time.	M. Thanigivelu and Ors. Vs. Tamil Nadu Electricity Board and Ors., decided on 11.03.2026
9.	It is settled in law that in view of Section 149 IPC, every member of the unlawful assembly is vicariously liable for acts done by anyone of them to achieve a common object. Therefore, two things are essential to attract Section 149 IPC. The first is "unlawful assembly" and the second is "common object". The presence of the accused persons as part of the unlawful assembly is sufficient for conviction even if no overt act is imputed to each one of them individually.	Dablu Etc. Vs. State of Madhya Pradesh, decided on 11.03.2026
10.	Air Force Group Insurance Society to be a 'State' under Article 12 of the Constitution, amenable to Writ jurisdiction.	Ravi Khokhar and Ors. Vs. Union of India and Ors., decided on 12.03.2026
11.	It is impermissible to conduct 'a mini trial' at the stage of summoning an additional accused under Section 319 Cr.P.C.	Mohammad Kaleem Vs. State of Uttar Pradesh and Ors., decided on 17.03.2026

12.	The right of reproductive autonomy is not confined to the biological act of giving birth. Adoption is an equal exercise of the right to reproductive and decisional autonomy under Article 21 of the Constitution.	Hamsaanandini Nanduri Vs. Union of India and Ors., decided on 17.03.2026
13.	Where allegations of forgery are set out in the FIR and Investigating Agency has undertaken the exercise of getting the disputed documents examined through the handwriting expert, an order quashing the FIR without awaiting the outcome of the handwriting expert's report would be totally unjustified.	Sharla Bazliel Vs. Baldev Thakur and Ors., decided on 17.03.2026
14.	If the extant service Rules/Regulations permit continuance of the disciplinary proceedings, initiated against an officer/ employee before he had attained the age of superannuation, those can be continued and brought to its logical conclusion even after he had attained the age of superannuation.	Virinder Pal Singh Vs. Punjab and Sind Bank & Ors., decided on 19.03.2026
15.	Dishonour of a post-dated cheque, by itself, is not sufficient to presume dishonest intention on the part of the drawer. The criminal liability for cheating requires proof of fraudulent intent at the inception of the transaction, and cannot be inferred merely from subsequent failure to fulfil a promise. For an offence of cheating, the dishonest or fraudulent intention must exist at the time of making the promise. Mere breach of contract or failure to keep a promise cannot automatically amount to cheating.	V. Ganesan Vs. State represented by the Sub Inspector of Police and Anr., decided on 19.03.2026
16.	An incomplete Gang Chart cannot be sent to the jurisdictional court, and a Gang Chart becomes legally valid	Gabbar Singh alias Devendra Pratap Singh alias Rajesh Singh Vs. State of Uttar Pradesh and

	only after completion of a structured approval mechanism laid down in the Rules, which includes: 1. Express recommendation by the Station House Officer and Additional Superintendent of Police; 2. Consideration and satisfaction of the Superintendent of Police and the District Magistrate; 3. Final approval through a joint meeting between these authorities, followed by their signatures on the document.	Ors., decided on 20.03.2026
17.	A candidate cannot claim appointment as a matter of right from the same select list merely because a selected candidate failed to complete pre-appointment formalities or did not join duty. Such a vacancy must be filled in accordance with the governing recruitment rules and not by operating the same select list beyond its statutory framework.	State of Karnataka and Ors. Vs. Santhosh Kumar C, decided on 23.03.2026
18.	Once an individual converts to Christianity and actively professes and practices the same, he cannot be regarded as a member of the Scheduled Caste community. No person who professes a religion other than Hinduism, Sikhism or Buddhism can be regarded as a member of a Scheduled caste. Conversion to any other religion results in the immediate and complete loss of Scheduled Caste Status.	Chinthada Anand Vs. State of Andhra Pradesh and Ors., decided on 24.03.2026
19.	Expressed concern over the disclosure of a rape victim's identity in court records and directed all Registrars General of High Courts to ensure strict compliance with the statutory prohibition under Section 228-A IPC in all pending cases, including those instituted prior to its 2018 judgment in Nipun Saxena Vs.	State of Himachal Pradesh Vs. Hukum Chand alias Monu, decided on 24.03.2026

	Union of India, (2019) 2 SCC 703. The mandate against disclosure of a victim's identity is a long-standing position in law, yet it has not been consistently followed.	
20.	The absence of a signature on the charge-framing order sheet is a curable procedural defect and does not vitiate the trial, particularly where the accused was duly informed of and understood the charges against them. It is, at best, a curable procedural irregularity within the ambit of Sections 215 and 464 Cr.P.C. In the absence of any demonstrated failure of justice, such defect cannot vitiate the proceedings.	Sandeep Yadav Vs. Satish and Ors., decided on 25.03.2026
21.	The dismissal of a suit for default does not operate as res judicata since there is no adjudication on merits. A litigant who had an opportunity to pursue a claim but allowed proceedings to be dismissed repeatedly may still be denied relief on equitable principles, as such conduct can amount to abuse of the process of court.	Sharada Sanghi and Ors. Vs. Asha Agarwal and Ors., decided on 25.03.2026

IN THE SUPREME COURT OF INDIA

Dr. Sushil Kumar Purbey and Anr.

Vs.

State of Bihar and Ors.

**[Criminal Appeal No. _____ of 2026
arising out of SLP (Crl.) No. 3075/2024]**

Head Note – A quarrel, per se, will not constitute the offence of domestic cruelty or dowry harassment in terms of Sec. 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present appeal arises from the judgment and order dated 8th August 2023 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 70355 of 2022. By the impugned order, the High Court quashed the criminal proceedings against one of the accused, namely, the sister-in-law of the complainant (respondent no. 3), while declining to extend the same relief to the present accused-appellants, who are the father-in-law and mother-in-law of the complainant (respondent no. 2).

3. The facts giving rise to the present appeal, shorn of unnecessary details, are as follows:

3.1. The complainant married Dr. Rishi Raj, the son of the present appellants, on 8th July 2019.

3.2. On 31st March 2021, the husband instituted a divorce petition against the complainant under Section 13 of the Hindu Marriage Act, 1955, before the Principal Judge, Family Court, Darbhanga, Bihar.

3.3. On 18th March 2022, the complainant submitted a written report, on the basis of which First Information Report No. 81/2022 was registered under Sections 341, 323, 498A and 34 of the Indian Penal Code, 1860, and Sections 3 and 4 of the Dowry Prohibition Act, 1961, at Police Station Lalit Narayan University, District Darbhanga, Bihar, against the husband, the two appellants herein, and the sister-in-law.

3.4. The complainant alleged that, soon after the marriage, she was subjected to persistent torture and cruelty, particularly on account of demands for a BMW

car and other valuable articles, which she was unable to fulfil. It was further alleged that the husband physically assaulted her, and that on 18th March 2022, the accused persons, acting in concert, tied a sheet around her neck and strangled her with the intent to cause her death.

3.5. The complainant additionally filed Complaint Case No. 790/2022 before the Chief Judicial Magistrate, Hajipur, Vaishali, Bihar, wherein she made further allegations against the same accused persons.

3.6. The appellants filed an application for anticipatory bail, which was allowed by the Trial Court vide order dated 12th April 2022.

3.7. Pursuant to the investigation arising out of FIR No. 81/2022, the police report was submitted on 5th June 2022.

3.8. The Judicial Magistrate, vide order dated 7th September 2022, took cognizance of offences under Sections 341, 323, 498A and 34 of the IPC and Sections 3 and 4 of the Dowry Act against the husband, the appellants herein, and the sister-in-law, in L.M.N.U. P.S. Case No. 81 of 2022.

3.9. On 23rd November 2022, the appellants, along with the sister-in-law (respondent no.3), filed a petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the order dated 7th September 2022, whereby the Judicial Magistrate had taken cognizance of the aforesaid offences.

3.10. The High Court, by the impugned order, partly allowed the petition for quashing, but only insofar as the sister-in-law of the complainant was concerned. The High Court held that the allegations against her were general and omnibus in nature, and therefore insufficient to sustain criminal proceedings. However, the petition was dismissed with respect to the present appellants being the father-in-law and mother-in-law of the complainant with the High Court taking a view that prima facie case had been made out against them.

3.11. Aggrieved by the said order, the present appellants have approached this Court.

4. We have heard the learned counsel appearing for the appellants, the learned counsel for the respondent-State, and the learned senior counsel for the complainant- Respondent No. 2 at length, and have also perused the material placed on record.

5. Learned counsel for the appellants submits that the High Court erred in confining the grant of quashing relief solely to sister-in-law, on the ground that

the allegations against her were general in nature, while declining the same relief to the appellants. It is contended that the allegations against the present appellants are equally general and omnibus and that no specific role has been attributed to them in the complaint. It is accordingly submitted that the criminal proceedings against the appellants also merit quashing.

It is further submitted that the FIR in question is, in substance, a counter-blast to the divorce petition filed by the husband. In this regard, it is pointed out that whereas the FIR makes no mention of any dowry in the form of a motor vehicle, the complainant within a period of twelve days, supplemented and improved upon her initial version in the complaint filed before the Chief Judicial Magistrate, adding fresh allegations to the effect that her family had given a Maruti car as dowry. It is submitted that such material improvements to the initial account cast serious doubt on the credibility of the complaint.

6. Per contra, the learned senior counsel for the complainant submits that the allegations against the present appellants are specific and cannot be characterised as general or omnibus. It is further submitted that the trial is at an advanced stage and that the recording of prosecution evidence is already underway. Attention is also drawn to the fact that the High Court has directed the Trial Court to conclude the proceedings within a period of one year. In view of these circumstances, it is urged that the appellants ought to be required to face trial and that this Court should not interfere with the criminal proceedings at this stage.

7. Having considered the submissions advanced by the parties and upon a careful perusal of the material on record, we are of the view that the High Court fell into error in restricting the quashing of criminal proceedings only to the sister-in-law (respondent no.3). A comparative reading of the FIR reveals that the allegations levelled against the sister-in-law and those against the present appellants are, in all material particulars, identical. The FIR does not assign any specific or overt act to either appellant; there are no particular dates, places, or individual acts attributed to them.

The lone allegation that stands separately against the present appellants is that they would quarrel. This, however, does not constitute a criminal offence and cannot, by itself, sustain cognizance of the offences under Sections 341, 323, 498A & 34 of the IPC and Sections 3 & 4 of the Dowry Act for which the appellants have been summoned. The standard applied by the High Court in quashing proceedings against the sister-in-law, on the ground that the allegations against her were general and omnibus, applies with equal force to the present appellants, and there is no principled basis for distinguishing between them.

8. It is further pertinent to note that the marriage was solemnised in July 2019, and the husband filed the divorce petition as early as March 2021. The criminal complaint against the appellants was, however, lodged only in March 2022, nearly a year after the filing of the divorce petition. Though this delay, standing alone, would not constitute a sufficient ground for quashing the criminal proceedings against the appellants.

However, viewed in conjunction with the absence of any specific allegations attributable to them, the delay lends credence to the submission that the criminal complaint against the in-laws may have been instituted by way of a counter-blast to the divorce proceedings initiated by the husband. When these two considerations are read together, we are satisfied that the continuation of the criminal proceedings against the present appellants cannot be sustained.

9. Before moving forward, we consider it necessary to clarify that the observations made hereinabove are confined to the question of the maintainability of the criminal proceedings against the present appellants, and must not be construed as an expression of any opinion on the merits of the case as a whole.

The criminal proceedings against the husband shall continue in accordance with law. We note, in this context, that the husband did not seek quashing of the proceedings against him before the High Court under Section 482 of the CrPC; it was only the present appellants and the sister-in-law who did so. The husband is also not before this Court in the present appeal. We therefore find no occasion to comment upon the allegations levelled against him, and the proceedings against him shall be governed by law.

10. In view of the foregoing, we are of the considered opinion that the High Court erred in applying different standards to persons who stand on an identical footing insofar as the nature of the allegations against them is concerned. Since the allegations against the present appellants and the sister-in-law are, in substance, the same, the reasoning that led the High Court to quash the proceedings against the sister-in-law ought equally to have led to the quashing of proceedings against the present appellants. The impugned order, to the extent that it declined to extend such relief to the appellants, cannot be sustained.

11. Accordingly, the impugned judgment and order dated 8th August 2023 passed by the High Court is set aside to the extent that it refused to quash the criminal proceedings against the present appellants. Consequently, all proceedings arising out of L.N.M.U. P.S. Case No. 81 of 2022, registered under Sections 341, 323, 498A and 34 of the Indian Penal Code, 1860, read

with Sections 3 and 4 of the Dowry Prohibition Act, 1961, are hereby quashed insofar as the present appellants are concerned.

12. In the result, the present criminal appeal is allowed in the above terms.

13. Pending application(s), if any, stand(s) disposed of.

.....J. [Vikram Nath]

.....J. [Sandeep Mehta]

New Delhi;

March 09, 2026

1 In short "HMA"

2 In short "FIR"

3 Hereinafter, referred to as "IPC".

4 Hereinafter, referred to as "Dowry Act".

5 Hereinafter, referred to as "CrPC".

IN THE SUPREME COURT OF INDIA

Gobind Singh and Ors.
Vs.
Union of India and Ors.

[Civil Appeal Nos. 5168-5169 of 2011]

Head Note – The appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order 41 Rule 27 CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage.

JUDGMENT

Vikram Nath, J.

1. The present appeals, by special leave, are directed against the judgment dated 12th August, 2009, and the subsequent judgment rendered in review on 15th March, 2011, by the High Court of Madhya Pradesh, Bench Gwalior,¹ in First Appeal No. 80 of 1996 and Review Petition No. 300 of 2009, respectively whereby the appeal filed by the Union of India was allowed and the review of the appellant was dismissed. By the aforesaid orders, the judgment and decree dated 25 March 1996 passed by the Court of the Vth Additional District Judge, Gwalior², in Civil Suit No. 5-A of 1990 was set aside and the suit was dismissed.

2. The appellants³ herein instituted in Civil Suit No. 5-A of 1990, seeking a declaration of title and a decree of permanent injunction against the defendants⁴. Respondent Nos. 1 to 4 were arrayed as defendant Nos. 1 to 4, respectively, in the said suit.

FACTS OF THE CASE:-

3. The facts, insofar as they are necessary for the disposal of the present appeals, are set out hereinafter:-

3.1. The case of the appellant-plaintiffs is that the land bearing Survey No. 2029, admeasuring 8 Bighas and 10 Biswas, situated in Patwari Halqa No. 51, opposite Baaj Cinema Hall, Murar, Pargana and District Gwalior, is owned and possessed by them. It is alleged that on 4th December, 1989 officers of the respondent-defendants entered upon the suit property with the intent to remove the wire fencing erected thereon, the two shops constructed by the plaintiffs, as well as the standing crops on the said land.

3.2. In this backdrop, the appellant-plaintiffs instituted a civil suit, being Civil Suit No. 55A of 19895, on 5th December, 1989 before the Civil Court, seeking a declaration of title and a decree of permanent injunction restraining the defendants from interfering with the suit property. The appellant-plaintiffs asserted that the suit property constituted their ancestral property and that their forefathers had been in continuous ownership and possession thereof for the preceding fifty years.

3.3. The Trial Court, vide judgment dated 26th March, 1996, decreed the suit, holding that the title, ownership and possession of the suit property vested in the appellant-plaintiffs, and that the respondent-defendants had failed to establish any title thereto.

3.4. Aggrieved by the said decree, the respondent-defendants preferred first appeal before the High Court. During the pendency of the appeal, the appellant-plaintiffs filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 19086, seeking to place on record certified copies of the General Land Register maintained by the respondent-defendants. It was the case of the appellant-plaintiffs that the said documents would demonstrate that the suit property stood recorded as private land.

3.5. The High Court, vide judgment dated 12th August, 2009, allowed the appeal preferred by the respondent-defendants, holding that the appellant-plaintiffs had claimed perfection of title on the basis of a decree passed in an earlier suit to which the respondent-defendants were not parties.

3.6. Aggrieved thereby, the appellant-plaintiffs instituted a review petition before the High Court primarily on the ground that the application for additional evidence had not been decided. The High Court, however, by judgment dated 15th March, 2011, dismissed not only the review petition but also the application for additional evidence and affirmed the judgment rendered in the first appeal, while imposing costs of Rs.2,000/-.

4. It is in these circumstances that the appellant-plaintiffs have approached this Court.

SUBMISSIONS ON BEHALF OF THE PARTIES:-

5. Shri Anupam Lal Dass, learned Senior Counsel appearing on behalf of the appellants, assailed the judgments passed by the High Court and advanced the following submissions:-

5.1. That the High Court acted contrary to law in proceeding to decide the appeal on merits without first adjudicating upon the application filed by the

appellant-plaintiffs under Order XLI Rule 27 of CPC for leading additional evidence.

5.2. That the predecessors-in-interest of the appellant-plaintiffs had instituted a civil suit against the State seeking a declaration of title, which was decreed by a court of competent jurisdiction, and that the said judgment has since attained finality.

5.3. That the material on record clearly establishes that the appellant-plaintiffs have remained in continuous and uninterrupted possession of the suit property since the time of their forefathers, and have, therefore, perfected title thereto by way of adverse possession.

5.4. On these premises, the appellant-plaintiffs prayed that the present appeals be allowed and that the impugned judgments of the High Court be set aside.

6. Per contra, Shri V. Chitambresh, learned Senior Counsel appearing for the respondents, strongly opposed the submissions advanced on behalf of the appellants and advanced the following contentions:-

6.1. That the land comprising Morar Cantonment, within which the suit property is situated, vested in the Union Government in the year 1953 upon transfer of ownership from the State Government.

6.2. That the ex parte decree passed in the earlier civil suit against the State of MP instituted by the predecessors-in-interest of the appellant-plaintiffs would not be binding on the Union, having been rendered in the absence of the respondent-defendants, who were neither impleaded nor afforded an opportunity of being heard in the said suit.

6.3. The application for additional evidence was misplaced and without any merit. It did not fall within the four corners of the principles and parameters laid down in the Order XLI Rule 27 CPC. The same has been rightly rejected by the High Court while deciding the review petition.

6.4. On these grounds, the respondent-defendants vehemently urged that the present appeals be dismissed and the impugned judgments of the High Court be affirmed.

ANALYSIS AND DISCUSSION:-

7. We have heard the learned senior counsel appearing for the parties and have carefully perused the material placed on record.

8. The limited question that arises for consideration is whether the High Court's omission to expressly adjudicate the application filed under Order XLI Rule 27 of CPC while deciding the first appeal has resulted in any manifest injustice or miscarriage of justice so as to warrant interference by this Court.

9. In order to properly appreciate the controversy involved, it would be apposite to advert to the reasoning adopted by the courts below. While decreeing the suit instituted by the appellant-plaintiffs, the Trial Court recorded the following findings:-

i. That it was an undisputed fact that, in respect of the suit property, a decree dated 9th July, 1984, had already been passed by a competent court in favour of the predecessors-in-interest of the appellant-plaintiffs.

ii. That upon an appraisal of the material placed on record, the appellant-plaintiffs were found to be in possession and occupation of the suit property in the capacity of owners thereof.

iii. That the respondent-defendants failed to place on record any documentary evidence to substantiate their claim of ownership or possession over the suit property.

iv. That the objection raised by the respondent-defendants regarding the alleged failure of the plaintiffs to disclose the source of their title was rejected, as the documentary evidence on record sufficiently established that the plaintiffs held ownership over the suit property and had been in continuous possession and occupation thereof for a considerable length of time thus consequently, the plaintiffs' ownership stood proved.

10. When the said decree was assailed by the respondent-defendants before the High Court by way of an appeal, the High Court, while allowing the appeal, recorded the following findings:-

i. That the earlier suit instituted by the predecessors-in-interest of the plaintiffs against the State of Madhya Pradesh was decreed ex parte by the Civil Court, without the respondent-Union of India having been impleaded as a party to the said proceedings. It was not binding on the Union of India.

ii. That from the pleadings and evidence adduced in the present suit, it emerged that the plaintiffs' claim over the suit property was founded on adverse possession, predicated on their alleged possession of the land since the time of their forefathers. Their could not be any perfection of rights by adverse possession against the State/Union howsoever long may be the possession.

iii. That the plaintiffs failed to discharge the burden of proving ownership over the suit property, having neither produced any documentary evidence nor examined any witness to establish the point of time at which their forefathers came into possession of the land and on what basis.

iv. That the plaintiffs had sought to claim perfection of title on the basis of adverse possession in the earlier suit filed by their predecessor and, by doing so, procured a decree of declaration without impleading the respondent-defendants. Consequently, the said decree was held to be not binding on the respondent-defendants, and the plaintiffs were found not to have acquired ownership in the eyes of law.

v. While deciding the review petition the application for additional evidence was also dismissed as being without any merit.

11. In our considered view, the High Court has committed no error in rendering the impugned judgments and, for the reasons that follow hereinafter, we are not persuaded to interfere and are, accordingly, inclined to dismiss the present appeals.

11.1. It is true that the High Court, while delivering the judgment dated 12th August, 2009, did not advert to the application filed by the appellant-plaintiffs under Order XLI Rule 27 of CPC. However, when the said judgment was assailed by way of a review petition, the appellant-plaintiffs specifically contended that the judgment could not be sustained on account of the High Court's failure to consider the application seeking to adduce additional evidence. The High Court, by its subsequent judgment dated 15th March, 2009, dismissed the review petition and, in the process, also rejected the application filed under Order XLI Rule 27 of CPC as being without any merit.

11.2. In order to properly appreciate the controversy involved, it is necessary to first advert to the statutory provision applicable to the case at hand. Order XLI Rule 27 of CPC reads as follows:-

"27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) . . .

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) . . . the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

(emphasis supplied)

11.3. Rule 27, being couched in negative terms, makes it abundantly clear that parties to an appeal are not entitled to adduce additional evidence, whether oral or documentary, save and except in the circumstances expressly enumerated therein.

The provision contemplates only three eventualities in which additional evidence may be permitted: first, where the court which passed the decree has refused to admit evidence which ought to have been admitted; second, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and third, where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.

11.4. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order XLI Rule 27 of CPC can be entertained. Sub-rule (2) of the said provision further mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission. While elucidating the scope and object of Order XLI Rule 27 of CPC, this Court, in *Union of India v. Ibrahim Uddin*,⁷ undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter:-

"36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence.

41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment."

(emphasis supplied)

Thus, a holistic reading of the aforesaid decision makes it clear that the appellate court's inquiry, while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 of CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record.

11.5. In *State of Karnataka v. K.C. Subramanya*,⁸ the appellants therein had moved an application before the appellate court under Order XLI Rule 27 of CPC seeking leave to produce a map of the area to establish that the disputed land constituted a public road. This Court, while affirming the High Court's decision to reject the said application, held as follows:

"4. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will."

(emphasis supplied)

This Court thus categorically held that unless the requirements stipulated under Order XLI Rule 27 of CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party.

11.6. Where the appellate court permits additional evidence to be adduced, Order XLI Rule 27(2) of CPC casts a mandatory obligation upon the court to record the reasons for such admission. In Ibrahim Uddin (supra), this Court elucidated the rationale underlying the requirement of recording reasons in the following terms:-

"42. Whenever the appellate court admits additional evidence it should record its reasons for doing so (sub-rule (2)). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the court of further appeal to see, if the discretion under this Rule has been properly exercised by the court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the Rule."

11.7. The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the Trial Court. The Appellate Court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the Appellate Court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below.

11.8. In the present case, the High Court, upon an examination of the evidence adduced by the parties, proceeded to analyse the decree passed in the earlier civil suit instituted by the predecessors-in-interest of the appellant-plaintiffs.

The High Court observed that the said decree was not binding upon the respondent-defendants, as they had not been impleaded as parties to those proceedings. Consequently, no legal sanctity could be attached to any subsequent entries made in the revenue records on the strength of the said decree, including the mutation of the plaintiffs' names therein.

11.9. Once the said finding recorded by the Trial Court was set aside, whereby the entire claim of ownership of the appellant-plaintiffs rested upon the earlier decree and the consequent entries in the revenue records, the onus squarely shifted upon the appellant-plaintiffs to independently establish their title to the suit property.

11.10. The appellant-plaintiffs were, from the outset, fully aware that the respondent-defendants had not been impleaded as parties in the earlier civil suit instituted by their predecessors. Having founded their claim upon a decree which was non-est insofar as the respondent-defendants were concerned, it was impermissible for the appellant-plaintiffs to seek to introduce additional evidence at the appellate stage to cure the inherent defects in their case. The present suit being one for declaration of title, it was incumbent upon the appellant-plaintiffs, if they indeed possessed a valid title, to adduce their best and complete evidence at the stage of trial before the court of first instance, where such evidence could have been produced as a matter of right.

11.11. Further, even at the stage of the earlier suit instituted by the predecessors-in-interest of the appellant-plaintiffs, their consistent case was one of lawful title to the suit property. No plea of adverse possession was ever raised against the respondent-defendants. The appellants wish to rely upon the additional evidence, namely, the entries in the General Land Register maintained by the respondent-defendants to show that the suit property is recorded as private land. Such an endeavour, at the appellate stage and in the absence of foundational pleadings, is wholly impermissible in law. Mere recording of the land in suit as private land in the GLR does not in any manner benefit the appellants claim of ownership.

11.12. Once the appellant-plaintiffs asserted that they derived valid title to the suit property through their forefathers, the burden lay squarely upon them to substantiate such claim by producing cogent title deeds in support thereof. However, no such documentary evidence was forthcoming.

11.13. On the other hand, the consistent stand of the respondent-defendants from the inception has been that the appellant-plaintiffs are rank trespassers and encroachers upon the suit property. The respondent-defendants have specifically denied the assertion that the appellant-plaintiffs or their

predecessors had been in enjoyment of the suit property for the preceding fifty years prior to the institution of the suit.

11.14. Further, the respondent-defendants have traced their title to the decision of the Union of India dated 17th July, 1953, pursuant to which the suit land, along with other immovable properties, vested in the respondent-defendants in terms of title, ownership and possession. This assertion stands fortified by the Gazette Notification dated 4th November, 1954, issued by the erstwhile State of Madhya Bharat, which also recognises that the suit land and other properties with title, ownership and possession vested in the respondent-defendants.

11.15. The above discussion will also reflect that even if the additional evidence in the form of GLR is accepted, the same will have no impact on the findings returned by the High Court. The application for additional evidence was thus rightly rejected by the High Court.

11.16. Before parting, we deem it appropriate to record our disapproval of the unscrupulous litigants such as appellant-plaintiffs and their predecessors and the manner in which they have conducted themselves. The material on record indicates that the earlier suit instituted by the predecessors-in-interest of the appellant-plaintiffs culminated in a decree passed without impleading the respondent-defendants, who were the lawful owners of the suit property.

The attempt to secure a decree behind the back of the true owner is a circumstance that cannot be lightly brushed aside. It is also not without significance that appellant-plaintiff No. 1, Govind Singh, was employed in the office of the Commissioner at the relevant time. The proximity of events, namely, the passing of an ex-parte decree followed by the expeditious mutation of revenue entries in favour of the appellant-plaintiffs, casts a shadow over the bona fides of the proceedings.

11.17. In such a backdrop, when the appellant-plaintiffs themselves asserted title on the basis of long and continuous possession through their predecessors, the subsequent attempt to introduce additional evidence at the appellate stage assumes little legal significance. Once the trial had concluded and the decree was under challenge in appeal, the appellants could not be permitted to fill the gaps in their case by seeking to adduce further material to fortify a claim that was fundamentally flawed.

12. For the foregoing reasons, we find no infirmity in the judgments rendered by the High Court.

13. Accordingly, the judgments dated 12th August, 2009, in First Appeal No. 80 of 1996 and 15th March, 2011, in Review Petition No. 300 of 2009 passed by the High Court of Madhya Pradesh at Gwalior are hereby affirmed.

14. Consequently, the present appeals stand dismissed.

15. Pending application(s), if any, shall also stand disposed of.

.....J. [Vikram Nath]

.....J. [Sandeep Mehta]

New Delhi

March 09, 2026

1 Hereinafter, referred to as "High Court".

2 Hereinafter, referred to as "Civil Court".

3 Hereinafter, referred to as "appellant-plaintiffs".

4 Hereinafter, referred to as "respondent-defendants".

5 Re-numbered later as "5-A of 1990".

6 For short, "CPC".

7 (2012) 8 SCC 148

8 (2014) 13 SCC 468

IN THE SUPREME COURT OF INDIA

Muddam Raju Yadav

Vs.

B. Raja Shanker (D) Thr. Lrs. and Ors.

**[Civil Appeal No. 3255 of 2026
arising out of SLP (Civil) No. 6453 of 2024]**

Head Note – A plaintiff who approaches the court with unclean hands by withholding material information is not entitled to the equitable relief of specific performance.

In a suit for specific performance, the conduct of the parties is significant as it assists the Court in evaluating the evidence to find out the bona fides of the parties at the time of execution of the agreement. Even a slight doubt in the mind of the Court that the plaintiff was not acting bonafidely and that the material facts, having bearing on the agreement, have been withheld in the agreement itself and from the Court also, the equitable and discretionary relief has to be denied.

JUDGMENT

Prashant Kumar Mishra, J.

1. Leave granted.

2. The present Appeal is preferred by the appellant/plaintiff whose suit for specific performance of agreement of sale dated 4.6.2002 was decreed by the Trial Court. However, in appeal by the respondent(s)/defendant(s), the High Court has set aside the judgment and decree of the Trial Court. Resultantly, the suit filed by the appellant/plaintiff stands dismissed.

3. The sale agreement dated 4.6.2002 was in respect of house property bearing No.1-91/1 (Old No.1-17/2) constructed on Plot No.1 admeasuring 406.33 square yards in Survey No. 1 situated at Medchal Village and Mandal, Ranga Reddy District. The agreement was for a total sale consideration of Rs.13,00,000/- (Rupees Thirteen Lakh) and defendant(s) had received a sum of Rs.6,00,000/- (Rupees Six Lakh) as advance.

The agreement was registered on the same day with the Office of the Sub Registrar, Medchal, Ranga Reddy District. As per the terms of agreement, the plaintiff had to pay the balance amount of sale consideration of Rs.7,00,000/- (Rupees Seven Lakh) to the defendant(s) at the time of execution of the sale deed within 11 months from the date of agreement.

As per the plaintiff, he was always ready and willing to pay the balance amount of sale consideration; however, the defendant(s) avoided to receive the amount and execute the sale deed on one pretext or the other. The plaintiff issued a legal notice dated 25.4.2003 calling upon the defendant(s) to execute the sale deed. However, despite the receipt of legal notice, the defendant(s) neither submitted any reply nor executed the sale deed, necessitating filing of the subject suit.

4. According to the defendant(s), the plaintiff is an unlicensed money lender and he lent an amount of Rs.6,00,000/- (Rupees Six Lakh) towards hand loan to the defendant(s) holding the original sale deed of the defendant(s) in respect of the suit schedule property with an understanding that within 12 months from the date of the agreement, the defendant(s) would return Rs.6,00,000/- (Rupees Six Lakh) and the plaintiff would return the original title deeds and would also get the registered agreement cancelled.

It was also agreed that in the event of non-discharge of the loan amount within 12 months, the defendant(s) would transfer the suit schedule property in favour of the plaintiff as per the prevalent market value, until which time, the plaintiff had undertaken and declared that he would not exercise any right, interest, title or claim over the suit property. The understanding was reduced into writing, signed by the plaintiff on the same day i.e., 4.6.2002 followed by the registered agreement of sale dated 4.6.2002 and, thus, the agreement was nothing but a sham and nominal document.

Pursuant to the written understanding dated 4.6.2002, the plaintiff acknowledged the receipt of Rs.1,00,000/- (Rupees One Lakh) on 25.9.2002 towards part repayment of the loan amount, but successfully evaded to pass a receipt acknowledging the payment of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand) paid on two occasions in the months of the November and December 2002. When the defendant and his sons insisted for receipt of the said repayments of the loan amount, the plaintiff issued a legal notice presenting a new version that he was a bona fide purchaser on the strength of sale agreement and suppressing the true fact of loan transaction.

It was, therefore, pleaded by the defendant(s) that as per the understanding, the sale consideration was determinable only after 12 months from the date of the agreement of sale and that too in the event of the defendant(s) failing to return the loan amount of Rs.6,00,000/- (Rupees Six Lakh) to the plaintiff. Thus, as per the defendant(s), the sale agreement is not enforceable, being a sham and nominal document. The defendant(s) also stated that the market value of the suit property was much higher than what has been quoted in the agreement.

5. In the course of trial, the plaintiff examined himself as PW-1 and got marked Exhibits A-1 to A-7 on his behalf, out of which, the following are the material documents:

- i. Exhibit A-1 was the agreement of sale dated 4.6.2002;
- ii. Exhibit A-2 was a no objection letter executed by the sons of the defendant;
- iii. Exhibit A-3 was an office copy of the legal notice dated 25.4.2003; and
- iv. Exhibit A-7 was the statement of account of the plaintiff issued by the State Bank of Hyderabad, Old Bowenpally.

6. On the other hand, the defendant examined his sons namely, Dr. B. Venuprakash and Shri B. Shyamsunder as DW-1 and DW-2 respectively. He got marked Exhibit B-1 - a photocopy of the receipt for Rs.1,00,000/- (Rupees One Lakh) and Exhibit B-2 - the Memorandum of Understanding¹ dated 4.6.2002.

7. The Trial Court decreed the suit on the reasoning that the defendant(s) has not denied the execution of the agreement and receipt of the legal notice and since the plaintiff was in possession of required fund for payment of the balance sale consideration as reflected in Exhibit A-7, the bank account statement of the plaintiff, he was always ready and willing to perform his part of the contract and was entitled for decree of specific performance. Under the impugned judgment, the High Court has allowed the defendants' appeal to set aside the judgment of the Trial Court.

8. We have heard the learned counsel for the parties and perused the material papers.

9. Since the High Court has recorded a finding that in view of Exhibit B- 2 - Memorandum of Understanding dated 4.6.2002 executed by the parties on the same day on which the agreement was entered into between them, the sale agreement appears to be a sham and nominal document, we shall examine the correctness of the said finding of the High Court.

10. It is the case of the defendant(s) from the very beginning that the sale agreement was executed by way of security for a loan of Rs.6,00,000/- (Rupees Six Lakh) advanced by the plaintiff to the defendant(s) and the same was clearly reflected as recited in the MoU (Exhibit B-2). It is to be seen that said MoU was on a non-judicial stamp paper bearing document no.47663 and the no objection letter (Exhibit A-2) executed by the sons of the defendant was on Rs.100/- non-judicial stamp paper bearing document no.47662. Both the documents were dated 4.6.2002 and purchased from the same stamp vendor.

The witnesses to both the documents were also one and the same. All these would probablise the defence of the defendant(s) that the agreement of sale was not a genuine transaction but was executed as a security for a loan transaction.

11. Although Exhibit B-1, the photocopy of the receipt executed by the plaintiff while receiving a sum of Rs.1,00,000/ (Rupees One Lakh) towards repayment of loan from the defendant(s), has been found not admissible and, hence, cannot be relied upon, yet the execution of the MoU (Exhibit B- 2) clearly makes out a very strong probable case to prove that the subject agreement was a sham and nominal document.

12. In a suit for specific performance, the conduct of the parties is significant as it assists the Court in evaluating the evidence to find out the bona fides of the parties at the time of execution of the agreement. Even a slight doubt in the mind of the Court that the plaintiff was not acting bonafidely and that the material facts, having bearing on the agreement, have been withheld in the agreement itself and from the Court also, the equitable and discretionary relief has to be denied.

A plaintiff approaching the Court with uncleaned hands, like in the present case-the plaintiff having withheld the document i.e., MoU (Exhibit B-2), as the same was nowhere mentioned in the plaint, the present was a fit case for denial of relief of specific performance and the High Court has rightly allowed the appeal preferred by the respondent(s)/defendant(s) to set aside the judgment and decree passed by the Trial Court.

13. For the foregoing reasons, we do not find any substance in this Appeal. Hence, the Appeal fails and the same is, accordingly, dismissed.

.....**J. (Prashant Kumar Mishra)**

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

New Delhi;

March 10, 2026.

1 For short, "the MoU"

IN THE SUPREME COURT OF INDIA

Pooranmal

Vs.

State of Rajasthan and Anr.

**[Criminal Appeal No(s)._____ of 2026
arising out of SLP (Crl.) No (s). 1977 of 2026]**

Head Note – Call Detail Records (CDRs) cannot be relied upon in evidence unless accompanied by the mandatory certificate under Section 65-B of the Indian Evidence Act, 1872.

In the absence of the certificate, mandatorily required under Section 65-B of the Evidence Act [Section 63 BSA, 2023], the call detail records become inadmissible in evidence and cannot be relied upon to support the prosecution's case.

Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law.

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. The appellant, Pooranmal¹, along with one Ladu Lal faced trial in Sessions Case No. 33 of 2010 before the Court of the Additional Sessions Judge, (Women Atrocities Cases), Bhilwara, Rajasthan². Both the accused were convicted by the trial Court vide judgment and order dated 8th February, 2012, for the offence punishable under Sections 302/34 of the Indian Penal Code, 1860³ [Sections 103 (1)/3(5) of the Bhartatiya Nyaya Sanhita, 2023⁴] and were sentenced to undergo life imprisonment and fine of Rs. 5,000/- with default stipulation. Both the accused were also convicted for the offence punishable under Section 201 of the IPC [Section 238 of the BNS] and sentenced to undergo seven years rigorous imprisonment and fine of Rs. 5,000/- with default stipulation. Both the sentences were ordered to run concurrently.

4. The common appeal being DB Criminal Appeal No. 238 of 2012 preferred by the accused persons against their conviction stands rejected by the High

Court of Judicature for Rajasthan at Jodhpur⁵ vide judgment and order dated 16th March, 2018. It may be mentioned here that Ladu Lal assailed the said judgment of the High Court by preferring Special Leave Petition (Crl.) No. 1071 of 2022, which has been dismissed by this Court in limine vide order dated 7th February, 2022.

5. The appellant-Pooranmal who was unable to prefer an appeal owing to poverty and lack of access to legal assistance, has now filed the present appeal through legal aid.

6. Vide order dated 28th January, 2026, we took note of the distinguishing features inter se between the case of the appellant-Pooranmal and that of the co-convict Ladu Lal and issued notice in the present appeal. The case of the prosecution as against the coconvict Ladu Lal was based on recoveries as well as the reverse burden of proof as provided under Section 106 of the Indian Evidence Act, 1872⁶ (Section 109 of the Bharatiya Sakshya Adhiniyam, 2023⁷).

In contrast, insofar as the appellant-Pooranmal is concerned, the prosecution's case rests purely on recoveries and call detail records. It was in these circumstances and remaining conscious of the dismissal of the special leave petition preferred by the co-convict Ladu Lal, that we deemed it appropriate to entertain the special leave petition filed on behalf of the appellant-Pooranmal through legal aid, notwithstanding the significant delay of 2749 days, which stands condoned by the aforesaid order.

BRIEF FACTS

7. Succinctly stated, the facts relevant and essential for disposal of this appeal are noted hereinbelow.

8. The case as set up by the prosecution is that the appellant-Pooranmal along with the co-convict Ladu Lal, committed murder of Aruna, wife of Ladu Lal, in the latter's house on the night intervening 2nd March, 2010 and 3rd March, 2010.

9. The written report of the incident (Ex. P-40) was lodged by none other than Ladu Lal before the Station House Officer, Police Station Bijolia alleging inter alia that he was sleeping in the drawing room of his house with his son Devender. His wife, Smt. Aruna, was sleeping in the adjacent room. At about 1:30 am, he got up to attend the call of nature and found that his room was bolted from outside. He tried calling Smt. Aruna on her mobile number, but she did not respond.

On this, he called his brother, Satyanarayan (PW.2), and upon receiving no response, he called his acquaintance Shankar Singh Rathore, posted as constable at the Police Station Bijolia. Thereafter, some people gathered at the spot and opened his room from outside. Upon proceeding to the adjoining room, they found Smt. Aruna lying on the bed with visible injuries, including a wound on her left temple, along with signs of struggle. On checking closely, they realised that Smt. Aruna was dead.

The almirah situated near the dead body was lying open, and a sum of approximately Rs. 4 lakh was missing therefrom. Ladu Lal alleged in the report that some unknown persons had murdered his wife by inflicting injuries on her head and requested the police to take action. On the basis of said report, FIR No. 28 of 2010 came to be registered at the Police Station Bijolia under Section 460 of the IPC (Section 331(8) of the BNS). The usual investigation was undertaken. The dead body was subjected to inquest proceedings and subsequently forwarded to the Medical Jurist for postmortem examination.

10. During the course of investigation, Ladu Lal was interrogated and looking to his evasive response, the needle of suspicion turned towards him and he was accordingly arrested. Ladu Lal made a confession/disclosure statement (Ex. P-42) and based thereupon, the appellant-Pooranmal was also apprehended in the present case. The Investigating Officer, Dalpat Singh (PW.22)8, thereafter effected recoveries of a blood-stained shirt and a sum of Rs.46,000/-, in furtherance of the disclosure statements made by the appellant-Pooranmal.

11. The Investigating Officer (PW.22) collected the call details of mobile Nos. 978****222 and 977****299 belonging to the accused persons, which led to the conclusion that the appellant-Pooranmal and Ladu Lal were continuously in contact with each other, proximate to the probable time of the incident.

12. Upon conclusion of investigation, chargesheet came to be filed against two accused persons i.e. the appellant-Pooranmal and Ladu Lal for the offences punishable under Sections 302/34 and 201 of the IPC [Sections 103 (1)/3(5) and 238 of the BNS]. Since the offence punishable under Section 302 of the IPC [103 (1) of the BNS] was exclusively triable by the Court of Sessions, the case was committed and made over to the Court of the Additional Sessions Judge, (Women Atrocities Cases), Bhilwara, Rajasthan for trial. The trial Court framed charges against both the accused who pleaded not guilty and claimed trial.

The prosecution examined twenty-four witnesses (PW.1 to PW.24) and exhibited fifty-five documents (Ex. P-1 to P-55) along with seven articles (Ex. A-1 to A-7) to prove its case. **13.** The accused, upon being questioned under Section 313 of the Code of Criminal Procedure, 1973 [Section 351 of the

Bharatiya Nagarik Suraksha Sanhita, 2023] denied the prosecution allegations and claimed to be innocent. Three witnesses (DW.1 to DW.3), and eight documents (Ex. D-1 to D-8) were exhibited in defence.

14. As stated above, the trial Court vide judgment and order dated 8th February, 2012 convicted and sentenced the appellant-Pooranmal and the coaccused for the offences mentioned above.⁹

15. The appeal preferred by the appellant- Pooranmal against his conviction has been rejected by the High Court vide judgment and order dated 16th March, 2018 and hence, this appeal by special leave.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Learned counsel appearing for the appellant- Pooranmal, vehemently and fervently contended that the conviction of the appellant-Pooranmal recorded by the trial Court, and affirmed by the High Court, is based purely on conjectures and surmises. It was submitted that the prosecution's case rests entirely on circumstantial evidence and that there is no credible or reliable evidence on record of the case so as to connect the appellant-Pooranmal with the alleged crime.

17. The learned counsel urged that the recovery of the blood-stained shirt allegedly made at the instance of the appellant-Pooranmal does not inspire confidence. The call detail records cannot be admitted in evidence because the mandatory certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] was never proved.

18. The learned counsel further contended that the recovery of the currency notes cannot be treated to be incriminating because there is no credible evidence to show that these currency notes had, as a matter of fact, been given to the appellant-Pooranmal by the co-convict Ladu Lal for committing the murder of Smt. Aruna.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

19. Per contra, learned counsel representing the State opposed the submissions advanced by the appellant's counsel. It was submitted that the special leave petition filed by the co-convict against the selfsame impugned judgment, having been rejected by this Court, there is no reason for this Court to take a different view in the case of the appellant-Pooranmal.

20. It was further submitted that the Investigating Officer (PW.22) has given unimpeachable evidence proving the grave incriminating recoveries of the blood-stained shirt and the currency notes made at the instance of the

appellant-Pooranmal. The shirt upon being examined at the serological department of the Forensic Science Laboratory¹⁰ tested positive (FSL Report Ex. P-49) for the presence of the same blood group (O) as that of the deceased-Aruna.

The appellant-Pooranmal failed to offer any explanation as to how the shirt worn by him at the time of the incident was bearing stains of the same blood group as that of the deceased-Aruna. The failure of the appellant-Pooranmal to offer any explanation to this gravely incriminating circumstance requires drawing of adverse inference.

21. It was further submitted that the call detail records are gravely incriminating. The appellant- Pooranmal failed to offer any explanation for the extensive contact with the main accused Ladu Lal proximate to the time of the occurrence. Thus, these incriminating call detail records were rightly relied upon by the trial Court and the High Court for drawing the inference of guilt against the appellant- Pooranmal.

22. It was further contended that the call detail records were proved by the nodal officers of the service providers, i.e. Vibhor Rastogi (PW.23) and Saurabh Kumar (PW.24) and hence, non-production of the certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] pales into insignificance. Mere non-production of the certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] in this case cannot be treated to be fatal to the employees of the service providers i.e., Vodafone and Bharati Hexacom Ltd./Bharati Heckjakom Ltd. prosecution's case, particularly, when the call detail records have been duly proved by examining the

23. The learned counsel also urged that the appellant-Pooranmal hails from a poor family and as such, his being in possession of such a large sum of money soon after the incident is a gravely incriminating circumstance for which the appellant- Pooranmal could not offer any explanation. Thus, by virtue of Section 106 of the Evidence Act [Section 109 of the BSA], the burden shifted on to the appellant- Pooranmal to explain as to how he came into possession of the huge sum of money recovered from his house pursuant to the disclosure made by him under Section 27 of the Evidence Act [Proviso to Section 23 of the BSA].

24. On the aforesaid grounds, learned counsel submitted that the concurrent and well-reasoned findings recorded against the accused by the trial Court and affirmed by the High Court, i.e. convicting the appellant-Pooranmal and upholding his conviction do not warrant interference. He thus implored the Court to dismiss the appeal.

ANALYSIS AND DISCUSSION

25. We have heard and considered the submissions advanced by learned counsel for the appellant- Pooranmal and learned standing counsel appearing for the State. We have also carefully perused the impugned judgments and sifted the evidence available on record.

26. Suffice it to say that, as emerging from the impugned judgments of the trial Court and the High Court, the case of the prosecution pertaining to the murder of Smt. Aruna is based purely on circumstantial evidence. Insofar as the appellant- Pooranmal is concerned, the prosecution's case rests upon following three incriminating circumstances: -

i. Call detail records indicating continuous and frequent conversation between the appellant-Pooranmal and co-convict Ladu Lal corresponding to the time of the incident.

ii. The recovery of blood-stained shirt, having same blood group as that of Smt. Aruna, in furtherance of the disclosure made by the appellant-Pooranmal under Section 27 of the Evidence Act [Proviso to Section 23 of the BSA].

iii. The recovery of currency notes totalling Rs.46,000/-, purportedly paid by co-convict Ladu Lal to the appellant-Pooranmal for committing murder of Smt. Aruna.

27. The law governing cases resting on circumstantial evidence is no longer res integra. It would, therefore, be apposite to advert to the salient principles enunciated by this Court in Sharad Birdhichand Sarda v. State of Maharashtra¹¹, wherein the parameters for appreciation of circumstantial evidence have been authoritatively and succinctly laid down:-

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

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

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

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

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

(Emphasis Supplied)

28. Bearing the aforesaid principles in mind, we shall now proceed to examine and analyse the evidence led by the prosecution to prove the circumstances relied upon by it for bringing home the guilt of the appellant-Pooranmal.

I. RECOVERY OF CURRENCY NOTES

29. At the outset, we may take note of the fact that there is a grave discrepancy regarding the exact amount of currency notes recovered by the Investigating Officer (PW.22) purportedly in furtherance of the disclosure statement made by the appellant-Pooranmal.

30. Whilst in the examination-in-chief, the Investigating Officer (PW.22) deposed that the appellant-Pooranmal furnished an information under Section 27 of the Evidence Act [Proviso to Section 23 of the BSA] regarding receipt of the amount of Rs.46,000/- (Ex. P-44) from Ladu Lal pursuant to a plan to commit the murder of Smt. Aruna.

31. The Investigating Officer (PW.22) further stated that in consequence of the said disclosure, as also another disclosure pertaining to the shirt allegedly worn at the time of the incident, the appellant- Pooranmal led the police party to his residence and got recovered a shirt (suspected to be blood-stained) kept in an iron box. The said recovery was reduced into writing vide memo (Ex. P-9), and the shirt was sealed at the spot. Further as per the information given by the appellant-Pooranmal, a sum of Rs.46,000/- was recovered from his house and was seized vide memo (Ex. P-13). The said amount was also sealed at the spot.

32. In cross-examination, the Investigating Officer (PW.22) admitted that though on the chit of material exhibit (Ex. P-52), the currency notes were mentioned as Rs.46,000/-, but when the notes were counted in Court, it was

noticed that the amount was Rs.46,145/-. The Investigating Officer (PW.22) admitted that there was no mention of these extra Rs.145 on the packet marked as (Ex. P-52).

33. Thus, the very factum of recovery of the currency notes comes under a grave cloud of doubt. That apart, mere recovery of currency notes, in the absence of any cogent evidence establishing a clear nexus between the said amount and the crime, would not by itself constitute an incriminating circumstance against the appellant-Pooranmal. Thus, the said circumstance was wrongly treated to be incriminating by the trial Court as the recovery itself is doubtful and additionally, the mere recovery of currency notes cannot constitute incriminating evidence in absence of corroborative evidence.

II. RECOVERY OF BLOOD-STAINED SHIRT

34. The second incriminating article recovered at the instance of the appellant-Pooranmal was the blood-stained shirt which upon being analysed at the FSL purportedly gave a positive test for the presence of the same blood group (O) as that of the deceased- Aruna. From the evidence of the Investigating Officer (PW.22), it transpires that the recovery of the shirt was effected in furtherance of the disclosure statement of the appellant-Pooranmal (Ex. P-43). The recovery memo of the shirt was proved as (Ex. P-9).

35. We may observe that the appellant-Pooranmal herein was a free bird since the day of incident i.e. from intervening night of 2nd and 3rd March, 2010 until 4th March, 2010, when he came to be formally arrested in connection with the present case, after being implicated by the co-convict Ladu Lal. The recovery memo (Ex. P-9) indicates that the appellant- Pooranmal had meticulously concealed the shirt in an iron box and when the same was recovered, it was bearing blood stains.

To our mind, it is highly improbable and unnatural that the appellant-Pooranmal, who was a free bird, would have taken such great pains to conceal the shirt so meticulously rather than simply destroying it by burning. Furthermore, even if the appellant-Pooranmal was desirous of preserving the shirt, all that was required to obliterate the blood stains was to wash the same. Hence, we are of the firm view that the recovery of the shirt is totally unreliable.

36. The recovery of the shirt was held to be incriminating based on the FSL report (Ex. P-49) as per which the blood stains on the shirt tested positive for the presence of O blood group being the same as that of the deceased-Aruna. For treating the FSL report (Ex. P-49) to be admissible, the prosecution would have to prove the complete chain of custody establishing the sanctity of the

sealed articles right from the time of the seizure till the time they reached the FSL. In this regard, we would like to refer to the evidence of the following witnesses:-

a. Mathura Singh (P.W.19)

37. Mathura Singh (PW.19), the Head Constable incharge of the malkhana at Police Station Bijolia, stated that on 6th March, 2010 the Investigating Officer (PW.22) deposited blood-stained tissues and shirt in a sealed cloth bag. An entry to this effect was made in the malkhana register at Serial No. 227. On 7th March, 2010, the Investigating Officer (PW.22) deposited a sealed bag containing 46 notes of Rs.1,000/- each, totalling Rs. 46,000/-.

The witness (PW.19) stated that these articles, which also included the articles/samples recovered from the crime scene and the t-shirt recovered at the instance of the co-convict Ladu Lal, bearing marks A, B, C, L, M (totalling five), were forwarded with constable Surender Singh (PW.16) to SP office Bhilwara on 15th March, 2010 for being deposited at the FSL accompanied by requisite documents. However, because the FSL forwarding letter was not yet prepared, the said articles were returned and handed back to said witness (PW.19) who redeposited the same in the malkhana with an endorsement made in the malkhana register (Ex. P-37).

38. These very articles were again taken out from the malkhana on 18th March, 2010 and handed over to Surender Singh (PW.16) for delivery to FSL. Surender Singh (PW.16) proceeded to Udaipur and deposited the samples at the FSL on 19th March, 2010. He thereafter returned on 20th March, 2010 along with the receipt evidencing such deposit.

39. The witness (PW.19) was confronted with the malkhana entry in his cross-examination and stated as below:-

"It is wrong to say that I had given the material to Surendra Singh on 12.3.10 for taking to F.S.L. and that due to some shortage in it, the material were returned on 15.3.10. Ex.D.3 The copy of the Malkhana which was attached with the challan in the file, in the C-D part of which it is written that the material were sent on 12.3.10 is wrong."

b. Surendra Singh (P.W.16)

40. The Carrier Constable, Surender Singh (PW.16), emphatically stated that he carried the malkhana articles to the FSL on 18th March, 2010, deposited them at the FSL, Udaipur on 19th March, 2010 and brought back the receipt. In his cross-examination, the witness (PW.16) stated that he did not recollect taking the same articles to the S.P. office on 12th March, 2010. He was

confronted with the malkhana register (Ex. D-3), which records that he had been handed the samples on 12th March, 2010 and had attempted to deposit them at the S.P. Office on 15th March, 2010. However, he feigned ignorance as to the said entry recorded in the official document (Ex.D-3).

41. On a holistic appreciation of the evidence of these two witnesses, it becomes clear that there is a grave discrepancy regarding the safe-keeping/chain of custody of the muddamal articles. It is clearly discernible from the evidence of Mathura Singh (PW.19) that the muddamal articles were sent out of the police station prior to 18th March, 2010, to be precise on 15th March, 2010, but the same were returned from the FSL because of some defects. The precise reason for return of the muddamal articles is not forthcoming in the evidence of the prosecution witnesses. The Carrier Constable (PW.16) categorically denied having carried the samples on any date prior to 18th March, 2010.

42. The entry made in the malkhana register (Ex. D- 3) with which both the witnesses were confronted, completely demolishes the versions of PW.19 and PW.16. In this entry, it is clearly recorded that the muddamal articles were forwarded to the FSL on 12th March, 2010. Utter failure of the prosecution to disclose as to the reasons for which the samples were returned from the FSL breaches the unbroken chain of custody mandatorily required to prove the safe keeping of the muddamal articles.

43. In Karandeep Sharma alias Razia alias Raju v. State of Uttarakhand¹², this Court emphasised that for a DNA/FSL report to be acceptable and reliable, the prosecution must establish an unbroken chain of custody and demonstrate that the samples remained duly sealed and untampered throughout, and held as follows:-

"54. In order to make the DNA report acceptable, reliable and admissible, the prosecution would first be required to prove the sanctity and chain of custody of the samples/articles right from the time of their preparation/collection till the time they reached the FSL. For this purpose, the link evidence would have to be established by examining the concerned witness.

55. Evidently, there is not even a semblance of evidence on record to satisfy the Court that the samples/articles collected from the dead body of the child-victim and those collected from the appellant which were later forwarded to the FSL were properly sealed or that the same remained in a self-same condition right from the time of the seizure till they reached the FSL. No witness from the FSL was examined by the prosecution to prove that the samples/articles were received in a sealed condition. Hence, there is every possibility of the samples being tampered/manipulated by the police officers so as to achieve a

favourable result from the FSL, thereby, inculcating the appellant in the crime."

44. In view of the analysis of evidence made above, we are of the firm view that the requisite link evidence essential to prove the safe-keeping and sanctity of the muddamal articles is lacking and the chain of custody has been breached beyond reprieve, thereby, making the FSL report (Ex. P-49) redundant and a worthless piece of paper.

45. Moreover, this Court in *Allarakha Habib Memon v. State of Gujarat*¹³, expounded that even if the FSL report establishes that the blood group detected on the article recovered at the instance of the accused matches that of the deceased, such circumstance by itself is not sufficient to link the said accused with the crime. This Court observed as follows:-

"42. The trial court as well as the High Court heavily relied upon the FSL reports (Exts. 111-115) for finding corroboration to the evidence of the eyewitnesses and in drawing a conclusion regarding culpability of the appellants for the crime. We may reiterate that the testimony of the so-called eyewitnesses has already been discarded above by holding the same to be doubtful. Thus, even presuming that the FSL reports (Exts. 111- 115) conclude that the blood group found on the weapons recovered at the instance of the accused matched with the blood group of the deceased, this circumstance in isolation, cannot be considered sufficient so as to link the accused with the crime.

43. In this regard, reliance can be placed on the judgment of *Mustkeem v. State of Rajasthan* [*Mustkeem v. State of Rajasthan*, (2011) 11 SCC 724 : (2011) 3 SCC (Cri) 473] , wherein this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. The relevant portion is extracted hereinbelow : (SCC p. 730, para 19)

"19. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of *Mustkeem* was not sufficient for test as the same had already disintegrated. At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder."

(Emphasis Supplied)

46. Thus, even if the FSL report (Ex. P-49) shows that the blood found on the shirt allegedly recovered at the instance of the appellant-Pooranmal matches that of the deceased-Aruna, such finding would by itself not be incriminating in the absence of other cogent and corroborative evidence completing the chain of circumstances.

47. Thus, neither the recovery of the currency notes is reliable, nor the recovery of the shirt inspires confidence. In addition thereto, the link evidence having not been proved, the FSL report (Ex. P-49) pales into insignificance.

III. CALL DETAIL RECORDS

48. The last and final piece of circumstantial evidence relied upon by the prosecution to bring home the charges against the appellant-Pooranmal pertains to the call detail records.

49. Section 65-B of the Evidence Act [Section 63 of the BSA] mandates that electronic evidence in form of a computer output (call detail records) can only be admitted in evidence upon satisfaction of the mandatory conditions prescribed under Section 65-B (4) of the Evidence Act [Section 63(4) of the BSA], which reads as follows: -

"(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub26 section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(Emphasis supplied)

50. This position of law was cemented by this Court in the case of Anvar P.V. v. P.K. Basheer¹⁴, wherein it was held as follows: -

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause.

Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;

- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A-opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India."

(Emphasis Supplied)

51. Subsequently, this Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*¹⁵, reaffirmed and clarified the position laid down in *Anvar P.V.* (supra), observing that the requirement of a certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] for admissibility of electronic evidence is mandatory and cannot be dispensed with, and held as follows:-

"61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], and incorrectly "clarified" in *Shafhi Mohammad* [*Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] .

Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose."

52. Admittedly, in the present case, the certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] was not proved by the prosecution. In the absence of the certificate, mandatorily required under Section 65-B of the Evidence Act [Section 63 of the BSA], the call detail records become inadmissible in evidence and cannot be relied upon to support the prosecution's case.

CONCLUSION

53. In view of the discussion made above, we are of the opinion that the prosecution has miserably failed to establish a complete and coherent chain of incriminating circumstances so as to bring home the guilt of the appellant-Pooranmal. Neither were the socalled incriminating circumstances proved by cogent and admissible evidence, nor do they form an unbroken chain pointing unequivocally towards the guilt of the appellant-Pooranmal.

54. As an upshot of the above discussion, we have no hesitation in concluding that the prosecution has failed to bring home the charges against the appellant-Pooranmal and the impugned judgments do not stand to scrutiny.

55. Consequently, conviction of the appellant- Pooranmal as recorded by the trial Court and affirmed by the High Court cannot be sustained. Hence, the impugned judgments are hereby set aside. The appellant-Pooranmal is acquitted of the charges. He is in custody and shall be released forthwith, if not wanted in any other case.

56. The appeal is accordingly allowed in the above terms.

57. Pending application(s), if any, shall stand disposed of.

.....J. (Vikram Nath)

.....J. (Sandeep Mehta)

.....J. (N.V. Anjaria)

New Delhi;

1 Hereinafter, referred to as "appellant-Pooranmal".

2 Hereinafter, referred to as "trial Court".

3 Hereinafter, referred to as 'IPC'.

4 Hereinafter, referred to as 'BNS'.

5 Hereinafter, referred to as 'High Court'.

6 Hereinafter, referred to as 'Evidence Act'.

7 Hereinafter, referred to as 'BSA'.

8 Hereinafter, referred to as 'Investigating Officer (PW.22)'.

9 Supra para 3.

10 Hereinafter, referred to as 'FSL'.

11 (1984) 4 SCC 116.

12 2025 SCC OnLine SC 773.

13 (2024) 9 SCC 546.

14 (2014) 10 SCC 473.

15 (2020) 7 SCC 1.

IN THE SUPREME COURT OF INDIA

Central Bureau of Investigation

Vs.

Baljeet Singh

**[Criminal Appeal No. _____ of 2026
@ SLP (Crl.) No. 12486 of 2025]**

Head Note – The public servant who personally demands and accepts a bribe can be convicted under the Prevention of Corruption Act, 1988, even if the charge of criminal conspiracy fails and the co-accused is acquitted.

If the conspiracy allegation fails, the prosecution can still secure a conviction if the evidence independently establishes that the accused public servant demanded and accepted the bribe.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. Bereft of proof of the conspiracy theory and finding absence of the demand of bribe, the conviction of both the accused was overturned by the High Court. The Central Bureau of Investigation (the 'CBI') which laid the trap at the instance of the complaint made by PW1, is in appeal.

3. We heard Mr. Kanakamedala Ravindar Kumar, learned Additional Solicitor General and Mr. Mukesh Kumar Moraria, learned counsel for the appellant-CBI and Mr. Vikas Pahwa, learned Senior Counsel for the respondent-accused.

4. PW1, the complainant, was the partner of a firm whose Assessing Officer under the Income Tax Act was the 1st appellant/1st accused; A1. There was a notice issued to the assessee for the assessment year 2008-09 as pending in the office of A1, to finalize which PW1 had approached the 2nd appellant/2nd accused; A2, an Income Tax Inspector, who was the subordinate of A1. It was the complaint of PW1 that in October 2010, he had met both the appellants concerned in connection with the scrutiny of the accounts of the firm in which he was a partner, pursuant to which he was directed to furnish information which also was submitted.

On 27.12.2010, PW1 had gone to the Income Tax Office where he met A2 who took him to A1. After discussions, when PW1 was coming out with A2, the

latter made a demand of Rs.5 lakhs purportedly on behalf of A1. PW1 protested and the second appellant having persisted, he haggled for a lesser amount pointing out that in October 2010 the demand was for a far lesser amount of Rs.1,50,000/-. The second appellant refused to budge, and this prompted PW1 to approach the CBI with the complaint.

5. The complaint was verified by PW22, referred to as a Trap Laying Officer (TLO). The TLO called for two independent witnesses from the House Taxes Department of the Municipal Corporation of Delhi, PW10 and PW18. In the presence of the independent witnesses there was a telephonic conversation between PW1 and A2, which was recorded in a Digital Voice Recorder (DVR) and transferred to a CD. PW1 is alleged to have informed A2 that he had in his possession only Rs.2 lakhs upon which A2 had directed PW1 to come to his office in the Drum Shaped Building, IP Estate, New Delhi.

The pre-trap proceedings were carried out in the presence of the independent witnesses wherein 200 notes of Rs.1000/- each, smeared with phenolphthalein powder, after noting down their serial numbers, were kept in an envelope which also was smeared with the powder. The entire proceedings were recorded and reduced to writing in the Handing Over Memo (HOM) signed by the complainant, the TLO and the independent witnesses. PW1 was given a DVR to record the conversation likely to take place between PW1 and A2.

6. The team reached the Income Tax Office upon which PW1 followed by the TLO and the other members of the team entered the building. PW1, on reaching the office of A2 was informed that he is in A1's room. PW1 then went to the office room of A1, where he found only A2, to whom he handed over the envelope, which A2 put in his coat pocket. PW1 walked out of the room followed by A2 and as prearranged, touched his shoe to signal the TLO. The TLO gave signal to the team and confronted A2 and took him back into the room. The independent witnesses too marched into the room, PW18 with the TLO, and PW10, a little later with the other members of the team.

The TLO and another constable caught hold of the hands of A2 and one of the independent witnesses, PW18 was asked to search A2. As pointed out by PW1, the envelope was recovered from the coat pocket of A2 by PW18 and handed over to the TLO. The notes were taken out from the envelope recovered from the coat pocket of A2 and both the hands of A2 being submerged in two separate tumblers of Sodium Carbonate solution, they turned pink revealing the taint of acceptance of the powdered envelope with the marked notes.

7. The TLO asked for A1 who was said to be in the Commissioner's office. The TLO proceeded to the Commissioner's office and after making a request to the Commissioner escorted A1 back to his room where the trap team had detained

A1. The statements were taken from both A1 & A2 and the arrest recorded. After investigation charge was framed of conspiracy under Section 120B and the offence under Section 7 of the Prevention of Corruption Act, 1988 (for brevity, 'the PC Act').

8. The prosecution examined twenty-three witnesses and produced relevant documents as also transcript of the conversation between PW1 and A2 over telephone and in person, recorded in the DVR. The defense examined three witnesses, two of whom were Officers of the Income Tax Department and DW2, a Junior Judicial Assistant at the record room of the Sessions Court at Patiala House Courts.

The Trial Court listed out fifteen circumstances found established and held the charge raised against both the accused to have been proved. Convicting the accused under Section 120B of the IPC r/w Section 7 of the PC Act and separately under Section 7 of the PC Act, sentence was imposed, of 4 years rigorous imprisonment on each count and fine of Rs.1 lakh again on each count, for both, with default sentences of simple imprisonment for 4 months each.

9. The High Court, by the impugned decision, found that there was no conspiracy proved and that there was no proof of a demand having been made by A2 and A1. Disbelieving the conspiracy angle, the trite principle that it is always difficult to establish the same since invariably it is conceived and executed in privacy was noticed. Looking at the evidence proffered it was found that merely for the reason that A1 was the Assessing Officer and A2 was assisting him, that by itself was not sufficient to establish a prior meeting of minds between A1 and A2, in furtherance of the commission of crime.

Immediately we observe that, having gone through the evidence led and the findings of both the Trial Court and the High Court, we are inclined to accept the said finding of the High Court, more particularly for reason of there being absolutely no evidence of A1 having ever demanded a bribe from PW1, nor even the demand made by A2 said to be in the presence of A1. We may note that, while issuing notice in this case on 18.08.2025, this Court dismissed the Special Leave Petition (Crl.) No.12485 of 2025 filed by the CBI against the acquittal of A1/Arun Kumar Gurjar.

10. Insofar as the absence of proof of demand, the finding of the High Court was that PW1 failed to disclose at the first instance, about the initial demand of Rs.1,50,000/- in October 2010, in the early part of his chief examination. This was the first charge alleged under Section 120B of the IPC. Even in the complaint Ex.PW1/A, there was no mention about the initial demand of Rs.1,50,000/- alleged to have been made in October 2010. A casual statement

was also made regarding other contradictions and improvements in the testimony of PW1 to hold that the demand was absent.

It was also observed that the transcription of the conversation between PW1 and A2 over the telephone, in the presence of the TLO and the independent witnesses only disclosed the offer made by PW1 of Rs.2 lakhs, which was accepted by A2. It was hence found that even on the crucial date i.e. 29.12.2010, there was no demand made of either Rs.5 lakhs or 2 lakhs from the complainant. Having gone through the testimonies, specifically of PW1, PW10, PW18 and PW 22, we are unable to agree with the High Court, reasons for which we would presently elaborate.

11. Before we look at the evidence, we should first notice the compelling argument made by the learned Senior Counsel for the respondent that if the conspiracy element is found to be absent then there is no cause to further examine the records since the charge itself has to fail. Specific reference is made to the charge-sheet produced as Annexure R2 with the counter affidavit dated 27.10.2025 filed by A2. We cannot but notice that there are two charges raised, one under Section 120B of IPC r/w Section 7 of the PC Act and the other under Section 7 of the PC Act; but without the conspiracy angle, independently as against the two accused.

For completeness we extract the charges as hereunder "Firstly, that during the period of October, 2010 to December, 2010, you Arun Kumar Gurjar, Joint Commissioner of Income Tax, Range-29, New Delhi and Baljeet Singh, Inspector, Income Tax , Range- 29 , New Delhi/IAP-V, CIT (Audit) 1, C.R Building, New Delhi while posted and functioning as such public servants entered into criminal conspiracy and in pursuance thereof by abusing your official position as public servants while scrutinizing the income tax assessment of 2008-2009 of M/S Madhya Pradesh Vanijaya Company you both demanded illegal gratification of Rs. 5, 00, 000/- in the month of October, 2010 from Sh. Pawan Aggarwal, the partner of said company for scrutiny and finalizing the income tax assessment without any hurdle and when Sh. Pawan Aggarwal refused to pay the bribe amount of Rs. 5 Lakhs, a notice dated 20.12.2010 was issued to the company by you Arun Kumar Gurjar, and subsequently when Sh. Pawan Aggarwal visited the office on 27.12.2010 you both Sh. Arun Kumar Gurjar and Sh. Baljeet Singh again demanded bribe of Rs. 5 lakhs from Sh. Pawan Aggarwal for finalization of entire matter without any hurdle and that illegal gratification of Rs.2 lakhs was accepted by you accused Baljeet Singh on 29.12.2010 from Sh. Pawan Aggarwal on behalf of yourself and accused Arun Kumar Gurjar which was recovered from his possession by CBI team and thus you both have committed an offence punishable u/s 120B of the Indian Penal Code r/w Section 7 of Prevention of Corruption Act, 1988 and within my cognizance.

Secondly, you both while posted and functioning as such public servants at aforesaid place, period and dates in your capacity as public servants by abusing your position as such public servants demanded illegal gratification of Rs.5 lakhs from Sh. Pawan Aggarwal, the partner of M/S Madhya Pradesh Vanijaya Company in lieu of finalizing the scrutiny of assessment case of abovenoted firm without any hurdle and in furtherance of said criminal conspiracy that on 29.12.2010 you Sh. Baljeet Singh was caught red-handed by CBI team while demanding and accepting Rs.2,00,000/- (which was recovered by CBI team from possession of Baljeet Singh) as part amount of said demanded amount from Sh. Pawan Aggarwal for himself and on behalf of Sh. Arun Kumar Gurjar in his office as illegal gratification other than legal remuneration as motive or reward for finalizing the scrutiny of assessment case of the firm of Sh. Pawan Aggarwal and subsequently you Arun Kumar Gurjar was also arrested and thus you both have committed an offence punishable u/s 7 of Prevention of Corruption Act, 1988 and within my cognizance."

12. We are unable to accept the contention put forth by the respondent, for which reliance was placed on the decisions in *A. Srinivasulu v. State* represented by the Inspector of Police¹, *Dashrath Singh Chauhan v. Central Bureau of Investigation*² and *Bhagat Ram v. State of Rajasthan*³.

13. Bhagat Ram³ was a Police Inspector who was alleged to have conspired with one Ram Swarup in an attempt to extort an amount of Rs.2,000/- from PW1. The Trial Court acquitted both the accused and in an appeal against acquittal, the learned Judges of the High Court found the charge under Section 120B of the IPC to be not proved. However, there was a dispute on whether Bhagat Ram alone can be convicted under Section 161 of the IPC and Section 5(1)(a) of the PC Act.

A third judge found the conspiracy angle to be proved, but due to the unanimous opinion restrained himself from imposing any conviction under that provision but still convicted Bhagat Ram under Section 161 IPC and also under Sections 347 and 389 of the IPC. This Court found that the third judge could not have reopened the entire case, since the issue before him was only limited to the offence under Section 161 IPC and Section 5(1)(a) of the PC Act.

It was also categorically found that the offence under Section 161 IPC would not survive against one of the accused since the specific case of the prosecution was that Bhagat Ram made a demand of bribe through Ram Swarup and there was no demand by Bhagat Ram directly to PW1. This disabled the Court from convicting one of the accused, as having accepted the bribe while the person who made the demand was exonerated. The facts in the present case are quite distinct insofar as the prosecution having alleged the demand and acceptance

by A2, while there was also an allegation of the bribe having been demanded for A1, who was the Assessing Officer, whose culpability was not established.

14. In Dashrath Singh², one of the accused had demanded the bribe, even as per the complaint and when it was sought to be handed over, he directed the money to be handed over to the other accused, who accepted it. Hence, the charge of demand was not available against one accused, and the charge of acceptance was absent insofar as the other accused.

A. Srinivasulu¹ also dealt with a criminal conspiracy entered into by A1 to A7 to cause wrongful loss to a public sector undertaking, in which A1 to A4 were employees, so as to confer a wrongful gain on A5 to A7. It was held that once the offence under Section 120B was not made out against A5 to A7, the very foundation of the prosecution becomes shaky. We are afraid the dictum in those cases applies squarely to the facts of those cases only and does not apply to the facts of this case.

15. As we observed, in addition to the charge under Section 120B, both the accused were separately alleged to have demanded money and accepted it, which demand and acceptance even as per the statement of PW1 is not available against A1 but very much present against A2. That A2 informed PW1 that the bribe was for A1 is of no consequence insofar as A1's culpability is concerned. Since A2 was also an officer of the Department, which was carrying on the assessment, actively participating in the assessment proceedings as spoken of by PW1, A2 was in a position of some authority to influence the assessment proceedings, as far as PW1 was concerned and that was the purpose for which the demand of bribe was made.

True, if the charge under the PC Act linked with the charge of conspiracy was the only one levelled, then if one is acquitted the other cannot be convicted. But here there is another charge of demand and acceptance against both, which as against the two are not inextricably linked by a definite charge of conspiracy. The second charge can be proved against both or against one independently as there is no meeting of minds alleged.

16. It was argued on behalf of the accused that there was no demand proved and even the trial court noticed the inconsistent stand regarding the demand in the complaint and the testimony, especially regarding the demand made in October 2010 and the amounts also did not tally. The pretrap demand alleged through telephone was not established since the trial Court refused to give any credence to the voice recording for reason of the certification with respect to the electronic data under Section 65B of the Evidence Act not being produced. The voice recording at the time of trap also failed on the same count. The charge of conspiracy being that related to the demand in October the

prosecution has to fail and there was also no proof offered of the other demands alleged, is the compelling argument.

17. The complainant was examined as PW1, who clearly spoke of a demand of Rs.5 lakhs having been made by A2 on 27.12.2010 when they were coming out of the room of A1 after discussions took place with respect to the assessment. True, with respect to the demand made in October 2010, PW1 had different versions. In the original complaint, it was stated that Rs.5 lakhs was demanded in October 2010 and reiterated in December 2010, when PW1 had visited the Income Tax Office. In his deposition before Court, his version was that earlier the demand was of Rs.1.5 lakhs and later Rs.5 lakhs.

This does not in any way totally efface the demand having been made in December 2010 which tallies with the statement in the complaint and the statement under Section 161 of the Criminal Procedure Code. However, though PW1 spoke that the bribe was demanded for both A1 and A2, there is no evidence that A1 ever demanded a bribe or even that A2 made the demand in the presence of A1. It is on such demand by A2 that PW1 approached the CBI, which agency had authorized PW22 as the TLO, to carry out the trap. The demand in October 2010 though not proved, the demand made by A2 on 27.12.2010 was testified to by PW1 and is corroborated by PW22 who vouches the complaint filed before the CBI.

18. PW22 also spoke of the two independent witnesses, PW10 and PW18 having been summoned to his office. Both PW10 and PW18 confirmed the presence of PW1 in the office of the CBI and corroborated fully the pre-trap proceedings. That PW1 talked over the telephone to a person who asked him to come to the Income Tax Office is also confirmed by PW10 and PW18, but without identifying the voice on the other side. The pre-trap proceedings with respect to the notes being powdered and kept in an envelope, which was also powdered and handed over to PW1 was spoken of by the independent witnesses.

PW10 and PW18 spoke also of the numbers of the notes having been recorded by the TLO in the Hand Over Memo (HOM); Ex. PW1/E, which was produced before Court along with the notes, PW1/F10 and the envelope; PW1/E-9, signed by the complainant, the TLO and the independent witnesses; proved by the testimonies of the witnesses. The number of the notes produced tallied with the HOM as verified by the trial court and the HOM was specifically identified by both the witnesses, PW10 & PW18 who also identified the pre-trap verification memo PW1/E recovery memo PW1/G, and the arrest memos of A1 & A2 PW10/A & PW10/B respectively.

19. A1 was the Joint Commissioner of Income Tax who was the Assessing Officer of the firm in which PW1 was a partner, and A2 was an Inspector in the same department is beyond any cavil. There was a suggestion raised by A2 in the cross examination of PW1 that he harbored enmity since he had conducted a scrutiny in a related firm carried on in the very same premises in which was housed the firm of PW1. The related firm had to shell out a huge penalty for the discrepancies revealed on scrutiny. It was also the suggestion of A2 that since A1 was the Assessing Officer of PW1's firm, there was no reason for A2 to demand or accept any bribe from PW1 since he was not the authority entrusted with the assessment of PW1.

20. PW1 readily accepted the scrutiny of the related firm by a team led by A2 and also the penalty imposed on such firm. There is nothing indicated other than this to establish that the trap was laid merely on the enmity especially since, as we would presently see, the acceptance of the bribe and the recovery of the envelope with the marked cash was made from the body of A2. PW1's evidence was categoric insofar as, after issuance of notice to his firm, he had contacted A2 and A2 had been present when the issues arising on the assessment were discussed with A1, the Assessing Officer.

The fact that A2 was an Inspector who had conducted a survey operation with respect to a related firm, who was also present during the hearing with respect to the assessment proceedings before A1, clearly indicates that A2 was a person in a position of influence, which would also validate PW1's subservience insofar as understanding the demand of bribe being made by a person of some authority.

21. It was further brought out in evidence through PW7, another Inspector that A2 was transferred in October/November 2010 and PW14, an Assistant Commissioner of Income Tax deposed that there was a request made to the Chief Commissioner of Income Tax to retain A2 in the present place. Undisputedly, A2 was present in the Drum Shaped Building, on 27.12.2010, when the demand was made and on 29.12.2010, when he was trapped with the bribe, the marked notes in an envelope, recovered from his person.

One defense taken by the accused before the Trial Court was that the assessment of PW1's firm had to be completed by 31.12.2010 and the entire trap was stage-managed to ensure that the assessment is time barred. As a corollary, it should also be observed that the hearing with respect to the assessment proceedings, admittedly commenced in October, 2010 and there was no reason for the assessment to be kept pending till 29.12.2010, when the bribe was handed over.

There is also a valid inference from the above stated facts that the assessment was kept pending only to ensure the payment, which as against A1 even as of now, does not stand established. In fact, it has to be noticed that there was a huge stash of money recovered from the room of A1 on which no investigation was carried out nor a charge laid. A1 hence goes scot-free on the recovery being not properly investigated.

22. As has been found by the trial court so much of the prosecution case regarding the role of A1 and A2 in the assessment proceedings of PW1's firm, the demand made by A2, the complaint before the CBI and the pre-trap proceedings stand fully corroborated by the evidence of PW1, PW10, PW18 and PW22. The recorded conversation pertaining to the pre-trap and post-trap proceedings were eschewed from consideration by the Trial Court; rightly so. We also do not place any reliance on the mobile conversations, PW1 is said to have had with A2 from the office of the CBI before the trap was laid and in the course of the trap.

23. Insofar as the trap, we find PW10 and PW18 to have prevaricated and deposed contrary to their Section 161 statements but still corroborated the version of PW1 and PW22 on many aspects. PW18 travelled with PW1 and PW22 while moving towards the Income Tax Office and PW10 was in another car with the other team members, following the car of the TLO.

At the Income Tax Office, they dispersed and PW18 went along with the TLO who was following PW1. PW1 is said to have gone into the room of A1 where he categorically submits that he had handed over the envelope, which A2 accepted and kept inside the pocket of his coat. PW1 then came out of the room followed by A2 and on his signaling TLO, the team rushed to PW1 who pointed out A2. A2 was immediately held by his hands by PW22 and a constable and taken back into the room of A1.

24. PW18, though did not identify A2 in Court, spoke of the person who was apprehended by PW22 having been required to sit in a chair in the room of A1. PW18 also deposed that on the instruction of PW22, he had made a search of the person caught by CBI and having recovered the envelope from the coat pocket of the person apprehended, which was handed over to the TLO. PW18 made these admissions referring to the person apprehended by his name. PW10 on the other hand came into the room after the apprehension of A2 and the money was recovered. Both PW10 and PW18 spoke of the hands of the person apprehended having been washed with the test solution which turned pink.

PW10 though claimed to have failing eyesight due to diabetes, on being asked so to do, went around the Court looking at the persons standing there and identified A2, specifically deposing that he looks similar to the person caught

by the CBI though at that time the said gentleman was very healthy. In the cross examination by the Public Prosecutor, PW10 specifically deposed that the person who was caught and was identified by him was similar to the accused Baljeet Singh present in Court though he was not sure that it was the same Baljeet Singh.

PW10 also identified the sweater worn by A2, which was also said to have been dipped in a separately prepared solution, which too revealed the taint by turning pink; which sweater was also identified though there was a minor discrepancy regarding a black strip in the sweater, which is not very relevant especially considering the passage of time. The hand wash, and the wash of the coat and sweater; both belonging to A2, was testified to by PW10 & the hand wash and coat wash testified by PW18.

25. PW18 though failed to identify A2, spoke of a person from whom he recovered, on the instructions of PW22, an envelope which was handed over to the TLO and identified. The hand wash and the coat wash were also confirmed by PW18. PW10 and PW18 spoke of A1 having been brought to his room where already the trap laid had been successfully completed. It cannot at all be said that PW10 and PW18, independent witnesses turned completely hostile.

As we observed, they had corroborated the pretrap proceedings and the post-trap proceedings, immediately after the trap. While both spoke of the prearranged envelope with the marked cash having been recovered from the man apprehended in the room of A1, from which PW1 and A2 stepped out; the latter following the former, PW10 identified the apprehended man while PW18 failed so to do. There is sufficient corroboration available from the independent witnesses to also believe the trap having been successful as deposed by PW1 and PW22.

26. In this context, we cannot but notice the judgment of this Court in *Prakash Chand v. State (Delhi Administration)*⁴. The complainant there, PW6, was an architect concerned with the sanction of a building plan, which was continuously being objected to by the Overseer- Section Officer of the Delhi Development Authority, who also demanded a bribe. The trap was laid with two independent witnesses, in the course of which PW6 was handed over a file by the accused which he read at a distance and returned with the bribe amount of Rs.30/- placed inside the file. When the file was handed over to the accused, the accused placed it under the table putting his foot on it.

On the prearranged signal, the trap team came inside the room and accosted the accused. The accused denied the demand and also claimed the money to have been kept in the file, without his knowledge. The independent witnesses examined by the prosecution also did not fully support the prosecution case

resiling from the statement made during the course of the investigation. These circumstances were in favour of the accused and the compelling argument in defense was that there can be no conviction based on the uncorroborated testimony of PW6, the complainant who being a part of the trap was an interested and partisan witness.

Their Lordships found that there cannot be found a legal proposition that the uncorroborated testimony of a trap witness can never be acted upon especially when the law laid down was to the contrary, in *State of Bihar v. Basawan Singh*⁵ and *Bhanuprasad Hariprasad Dave Rajuji v. State of Gujarat*⁶. Having gone through the testimony of PW6, it was found that he was a truthful witness and there was sufficient corroboration by PW9 who led the trap team.

It was stated by PW9 that when he questioned the accused about having accepted the bribe the accused was stunned and did not reply and kept mum. PW2, the independent witness also corroborated the fact and said that the accused did not reply and kept mum and that he was perplexed, which though the other independent witness first denied in chief examination, accepted on further questioning.

27. It was categorically held in *Basawan Singh*⁵, by a Constitution Bench that there is no inflexible rule of discarding the testimony of the persons in the raiding party, unless independent corroboration is available. The trite law is that the testimony of an interested or partisan witness has to be scrutinized with care, and it is not that of an accomplice. Neither is the complainant an accomplice, nor can the persons involved in the raiding party be considered to be interested since they are exercising a public duty without any personal rancour. In the instant case, when the independent witness had not fully supported the prosecution story sufficient corroboration was found from their deposition.

A Constitution Bench of this Court in *Neeraj Dutta v. State (Govt. of NCT of Delhi)*⁷ approved *Prakash Chand*⁴ and referred also to *Sat Paul v. Delhi Administration*⁸ to hold that "even if a witness is treated as "hostile" and is cross examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon" (sic-para 67). The contention taken by the defense that the conduct of the accused when challenged by the Inspector was inadmissible under Section 162 was repelled.

Relying on *Himachal Pradesh Administration v. Shri Om Prakash*⁹, it was held that, when an accused person leads a police officer to a particular location where stolen articles and weapons are concealed, which have a connection with the offence alleged, on such recovery, the concealment would be admissible as

relevant conduct under Section 8 of the Indian Evidence Act, 1872 irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27 of the Evidence Act.

28. We notice from the evidence of PW22 that after fully corroborating the trap it was deposed that on being challenged, A2 remained mum. It was also testified that A2 tried to escape and take out the money. It was PW1 who pointed out the upper pocket of the coat of A2 where he had kept the envelope which was taken out by PW18 as fully corroborated by PW22. PW10 also stated that the man apprehended in A1s room turned pale. All these are relevant conduct of A2 pointing to his guilt fortified by the recovery of the marked cash from his body and his hands, coat and sweater, on being washed in the test solution, turning pink, as deposed by the witnesses.

29. We are unable to accept the order of acquittal passed by the High Court insofar as A2 is concerned, especially noticing the demand having been specifically spoken of by PW1 and the same having been stated in his complaint before the CBI. The pre-trap proceedings were also clearly established by the evidence of PW1, PW10, PW18 and PW22. Insofar as the trap proper is concerned, there is complete corroboration of the testimony of PW1 by that of PW22, the TLO.

There is also sufficient corroboration from PW10 & PW18, the independent witnesses regarding the apprehension of a person, who was identified in Court by PW10 and though not identified by PW18, it was PW18 who made the recovery of the envelope from the coat pocket of the apprehended person, who was A2. The hand wash of A2 also stood established beyond doubt. The marked notes were identified from the numbers taken down in the HOM at the time of pre-trap proceedings, corroborated by all the above witnesses.

30. As rightly observed by the High Court, there was neither proof of demand nor acceptance by A1 but for the statement of PW1 that A2 demanded the bribe on behalf of A1. There can be no reliance placed on such statement made by the co-accused and there can be no conviction entered into on that account. We are, however, inclined and persuaded to set aside the acquittal against A2 and restore the order of the Trial Court convicting him for the offence under Section 7 of the PC Act; there being no conspiracy under Section 120B of IPC established.

The sentence of four years of RI handed down by the trial court is modified to one year, considering the age of A2, with a fine of Rs.1 lakh with a default simple imprisonment of three months as awarded by the trial court, which will

stand restored and confirmed. A2 shall surrender within a period of four weeks from today.

31. The appeal is, accordingly, allowed to the extent indicated above.

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

.....J. (Sanjay Kumar)

.....J. (K. Vinod Chandran)

New Delhi;

March 10, 2026.

1 (2023) 13 SCC 705

2 (2019) 17 SCC 509

3 (1972) 2 SCC 466

4 (1979) 3 SCC 90

5 AIR 1958 SC 500

6 AIR 1968 SC 1323

7 (2023) 4 SCC 731

8 (1976) 1 SCC 727

9 (1972) 1 SCC 249

IN THE SUPREME COURT OF INDIA

Harish Rana
Vs.
Union of India and Ors.

[Miscellaneous Application No. 2238 of 2025]
[Special Leave Petition (Civil) No. 18225 of 2024]

Head Note – Passed its first-ever order allowing passive euthanasia, in terms of its 2018 Common Cause judgment (as modified in 2023) recognising the fundamental right to die with dignity.

The withdrawal of life support for a 32-year-old man, who has remained in an irreversible permanent vegetative state for the past 13 years after falling from a building. The bench passed the order on a miscellaneous application of the father seeking to remove all life-sustaining treatment from his son.

JUDGMENT

J.B. Pardiwala, J.

For the convenience of exposition, this judgment is divided into the following parts:

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 - (f) Need for a comprehensive statutory framework - II. The Final Order

"God asks no man whether
he will accept life.
That is not the choice.
You must take it.
The only choice is how."

1. The above words of Henry Ward Beecher assume great significance in the present case, more particularly when the courts are asked to give their decision on the question whether an individual can choose to accept life by preferring to

die. The famous Shakespearean dilemma of "to be or not to be", which had so far remained as a literary quote, is now being used for judicial interpretation to canvass the liberty to die.

2. The present Miscellaneous Application ("MA") has been filed by a mentally and physically incapacitated applicant, namely, Harish Rana, through his parents, in the captioned SLP that came to be disposed of by this Court vide order dated 08.11.2024. By way of the said order, this Court resolved the matter between the parties by ensuring that adequate care and necessary treatment are provided to the applicant, including but not limited to the provision of home care, at the expense of the respondents.

3. The captioned SLP had arisen from the order dated 02.07.2024 passed by the High Court of Delhi in Writ Petition (C) No. 4927 of 2024, whereby the High Court had dismissed the writ petition on the ground that the applicant was not being kept alive mechanically and that he was able to sustain himself without any extra or external medical aid. In the High Court's opinion, such a condition did not require any judicial intervention. Aggrieved by the said order, the applicant, through his parents, preferred the captioned SLP.

4. While disposing of the captioned SLP, this Court had granted liberty to the applicant to move this Court through his parents for obtaining any further directions should it become necessary to do so. Accordingly, owing to the applicant's continued vegetative existence, which violates his right to live with dignity as enshrined under Article 21 of the Constitution of India, the parents have moved this Court once again vide the present MA inter alia seeking: (i) constitution and referral of the applicant's case to the primary medical board; and (ii) declaration that the provision of Clinically Assisted Nutrition and Hydration (hereinafter referred to as "CANH") which is currently being administered to him through a Percutaneous Endoscopic Gastrostomy tube (hereinafter referred to as "PEG tube") is "medical treatment".

5. Further, the parents have also prayed that the suitability of continuation of CANH be assessed in accordance with the ruling of the five-judge Constitution Bench of this Court in Common Cause v. Union of India, reported in (2018) 5 SCC 1 (hereinafter referred to as "Common Cause 2018") and the guidelines ascribed therein, which were later modified to some extent by Common Cause v. Union of India, reported in (2023) 14 SCC 131 (hereinafter referred to as "Common Cause 2023"). For ease of reference, the guidelines regarding withdrawal and withholding of medical treatment where no Advance Medical Directive ("AMD") exist, as laid down in Common Cause 2018 (supra) and modified in Common Cause 2023 (supra), will be hereinafter referred to as "Common Cause Guidelines"

(A). FACTUAL MATRIX

6. The applicant, presently aged 32 years, was once a young man of 20 years with a promising future, pursuing a B.Tech degree at Punjab University, when he met with a tragic and life-altering accident. On the fateful evening of 20.08.2013, at around 6 p.m., the applicant is stated to have fallen from the fourth floor of his paying guest accommodation, as a result of which he sustained a diffuse axonal injury.

He was initially rushed to the Garhwal local hospital, but within a few hours, he had to be shifted to the Postgraduate Institute of Medical Education & Research, Chandigarh ("PGI, Chandigarh") due to the severity of his medical condition. From 21.08.2013 to 27.08.2013, he remained admitted at the PGI, Chandigarh, where he was administered treatment in the form of conservative management, including AED, analgesics, ventilating support, antibiotics, tracheostomy, and feeding through a Ryle's tube (nasogastric tube). Although he was discharged from PGI, Chandigarh, on 27.08.2013, yet unfortunately, his condition remained far from recovery.

7. Following his discharge, his fragile health condition necessitated frequent hospital admissions and regular medical treatments for his head injury, seizures, pneumonia and bedsores at the Jai Prakash Narayan Trauma Centre, All India Institute of Medical Sciences, New Delhi ("AIIMS"). In the year 2013, the mode of administering CANH to the petitioner came to be switched from Ryle's Tube/nasogastric tube to a surgically placed PEG tube, which now requires replacement at a hospital every two months.

8. Ever since the incident, the applicant has been on tracheostomy, urinary catheter and CANH administered through the PEG tube. The applicant's medical records also indicate that he had a history of seizures in the year 2014, for which he was put on medication. The last seizure occurred in the year 2016, and since then, he has been receiving anti-seizure drugs for its prevention.

9. Medical reports of the applicant indicate that he exhibits no evidence of awareness of his environment and is incapable of interacting with others. He also does not indicate by any facial gesture, grunting, or body movement if he is hungry, has soiled himself or is in any other discomfort. The family of the applicant have also conveyed that they have not noted any significant benefit from any of the several treatments, including hyperbaric oxygen therapy, that were tried over the span of the last 13 years. The applicant's neurological condition has remained static with no improvement. He is unable to express his needs and has been dependent on all activities of self-care.

10. He has sleep-wake cycles and sleeps through the night. His eyes open with normal blinks but with no purposeful movement or as a response to auditory, verbal, tactile or painful stimulus. The applicant has remained bedridden ever since the incident, due to which he has often suffered terribly from painful bedsores, despite receiving the most attentive nursing care from his mother. Although the applicant has largely been cared for at home, yet his susceptible condition has time and again necessitated hospitalisation for infections. His most recent hospitalisation had been in May 2025, at the District Hospital Ghaziabad, for the treatment of coughing and bedsores. The week-long hospitalisation also involved another tracheostomy.

11. Furthermore, the disability certificate dated 21.11.2014 issued by the Janakpuri Super Speciality Hospital Society (Autonomous Institute), Government of NCT of Delhi, which has been annexed with the present MA, certified the applicant's condition as having a head injury with diffuse axonal injury with vegetative stage, quadriplegia and 100% permanent physical disability in relation to the whole body. The relevant extract from the said disability certificate is as follows:

"This is to certify that Harish Rana, Age 21 years, Sex Male, S/o Shri Ashok Rana, Resident of Block-D-House No. 309-A, Street No. 55A, Mahavir Enclave, NEW DELHI- 110059, Registration No-0026879 is a case of Head Injury with Diffuse Axonal Injury with Vegetative Stage, Quadriplegic. He is Physically disabled and has 100% [Hundred percent] disability in relation to his whole body and is Permanent in nature."

12. Another disability certificate dated 13.04.2016, issued by Dr. Ram Manohar Lohia Hospital, New Delhi, Government of India, certified that the applicant is in a Persistent Vegetative State (hereinafter referred to as "PVS") with complete sensorimotor dysfunction, and 100% permanent physical impairment. The relevant extract from the said disability certificate is as follows:

"This is to certify that I have carefully examined Mr. Harish Rana, S/o Mr. Ashok Rana, 24Y/M, r/o- D-309/A, Gali No. 55A, Mahavir Enclave III, Delhi-110059, photograph is affixed above, and am satisfied that he is a case of PERSISTENT VEGETATION STAGE WITH COMPLETE SENSORIMOTOR DYSFUNCTION, HIS PERMANENT PHYSICAL IMPAIRMENT IS 100% (HUNDRED PERCENT). His extent of physical impairment/disability has been evaluated as per guidelines F. No. A13021/2010-MS/MH-II-Directorate General of Health Services (Medical Hospital Section-II), Nirman Bhawan, New Delhi dated 18.06.2010 and is shown against the relevant disability in the table below."

13. In the aforementioned circumstances, when the present MA came before this Court, vide order dated 26.11.2025, we directed the constitution of a primary medical board of doctors in accordance with the Common Cause Guidelines. The primary medical board was directed to submit its report ascertaining whether lifesustaining treatment ought to be withdrawn or withheld in the present case.

14. Pursuant to the above, the Chief Medical Officer, Ghaziabad, U.P., constituted the primary medical board which visited the residence of the applicant for the purpose of evaluating his health condition. The primary medical board comprised of Dr. Sachin Garg, Neurologist, Dr. Amit Srivastava, Plastic Surgeon, Dr. Ankit Kumar, Anaesthesiologist and Dr. Akhil Prakash, Neurosurgeon. The primary medical board examined the applicant and addressed a letter to the Principal, LLRM Medical College, Meerut, UP. The contents of the letter read thus:

"This is to say that after consulting with CMO Ghaziabad we have visited residential place of Mr. Harish Rana S/O Mr. Ashok Rana R/O- AM-1314, Raj Empire, Rajnagar Extension, Ghaziabad for evaluation of his health condition. The team included a neurosurgeon, a neurologist, a plastic surgeon and a critical care expert. Attendants Mr. Ashish Rana (brother) and Ms. Bhawna Rana (sister) were present during evaluation. Harish Rana suffered injuries about 13yrs back since that time he is under medical care under many centers.

At present Patient was lying in bed with tracheostomy tube for respiration and gastrostomy for feeding. Patient was opening eyes spontaneously. His breathing was spontaneous with treacheostomy tube. He was emasciated and contactures were present in both lower limb and upper limb at shoulder, elbow, wrist, fingers, knee, ankle and toes. His pupils were normal in size but sluggish in reaction with no movement restriction.

No facial asymmetry present. Gag reflex present. He was having spasticity all over both upper limb and lower limb with deep tendon exaggerated at bicep, triceps, supinator, knee, ankle. Sensory and cerebellar examination could not be accurately assessed due to his state. He had intact brainstem function but due to his vegetative state he requires external support for his feeding, bladder bowel and back. He needs constant physiotherapy and tracheostomy tube care. The chances of his recovery from this state is negligible."

15. Following the primary medical board's report, vide order dated 11.12.2025, we directed the AIIMS, New Delhi, to constitute a secondary medical board, in accordance with the Common Cause Guidelines, for the purpose of further examination and evaluation of the applicant's condition.

16. Pursuant to the same, the AIIMS constituted a secondary medical board comprising Dr. Vimi Rewari, Professor, Dept. of Anaesthesia as the Chairperson; Dr. Pratap Saran, Professor & Head, Dept. of Psychiatry; Dr. Deepti Vibha, Professor, Dept. of Neurology; Dr. Deepak Kumar Gupta, Professor, Dept. of Neuro Surgery; Dr. Sheetal Singh, Assoc. Professor, Dept. of Hospital Administration; Dr. Swati Kedia Gupta, Asst. Professor, Dept. of Psychiatry; and Dr. Poonam, Dept. of Hospital Administration (Member Secretary) as members.

The secondary medical board issued its report dated 17.12.2025, inter alia consisting of the medical history, the general examination, the neurological examination, other observations made, as well as the diagnostic criteria that were applied. The said report further included a table indicating the clinical assessment of the patient's awareness, and a table indicating the patient's assessment when the diagnostic criteria of PVS are applied. The said report of the secondary medical board concludes with the following observation:

"Based on the history and examination findings, the medical board is of the following opinion:

- a. Mr. Harish Rana has non-progressive, irreversible brain damage following severe traumatic brain injury with diffuse axonal injury. He fulfills the criteria of permanent vegetative state (PVS) and has been in this state for the past 13 years.
- b. The continued administration of clinically assisted nutrition and hydration is required for the sustenance of his survival. However, it may not aid in improving his medical condition or repairing his underlying brain damage."

17. Thereafter, vide order dated 18.12.2025, we requested the learned counsel for the applicant and the learned Additional Solicitor General (ASG) appearing for the respondents to jointly speak to the parents and other family members of the applicant and to submit a report in that regard. Pursuant to the same, a Joint Report came to be filed inter alia stating that the learned counsels had interacted with the family of the applicant. During the discussion, the family spoke to the learned counsels about the nature of the applicant's life before the incident.

They informed that the applicant was the eldest child who was extremely energetic and physically active. Further, they shared that the applicant was deeply interested in gymming and playing football. The applicant's brother fondly remembered that the applicant used to play football and video games with him. The brother also stated that after years of exhaustive efforts, the family and the doctors have reached to the decision with great difficulty and on

firm belief that the continuation of medical treatment no longer serves any meaningful purpose and only prolongs the agony of the applicant.

18. In the aforesaid discussion, the parents stated that they have been taking care of the applicant for more than 13 years and that they, along with doctors, have done everything within their human capacity to alleviate the condition of the applicant during this period. However, they believe there has been no improvement in his condition. Both parents are worried as to who would take care of the applicant if anything were to happen to either of them due to their old age.

According to the parents, brother, and sister, the applicant has no voice of his own, he has not been able to speak, hear or see, or recognise anyone or eat on his own or respond to touch or affection for the past 13 years, and he is entirely dependent on artificial support. The applicant's sister is of the opinion that the decision is being taken by the family solely in furtherance of the applicant's dignity and best interests.

19. Following the in-person meeting dated 07.01.2026, another meeting was conducted by the learned ASG, through video conferencing on 08.01.2026. The said meeting was attended by the learned ASG herself, along with the representatives of the Ministry of Health and Family Welfare ("MoHFW"), and the doctors who were part of the secondary medical board, namely Professor Deepti Vibha, Professor Nishkarsh Gupta, and other concerned officials. During the course of the meeting, the following points were deliberated upon:

"Present Medical Status of the Petitioner as per Clinical Findings (i) The petitioner has been in an irreversible permanent vegetative state for the last 13 years; (ii) There is no chance of improvement or repair of the medical condition, rendering continued treatment futile; (iii) There exists a clear, unequivocal and well-considered view of the parents of the petitioner, who are also the primary caregivers, arrived at after informed interaction and deliberation."

20. Thereafter, in pursuance of our Order dated 18.12.2025, the father, the mother and the younger brother of the petitioner were present before us in the committee room of this Court. All three made a fervent appeal before us to take necessary steps to ensure that the applicant does not suffer any more. They tried to convey to us that the medical treatment imparted over a period of almost 13 years be discontinued and nature be allowed to take its own course.

According to them, if the medical treatment is not making any difference, then there is no point in continuing with such medical treatment and making the applicant suffer for no good reason. They believe that the applicant is

immensely suffering and should thus be relieved of all further pain and suffering. We acknowledge that they may not be aware of the legal nuances involved in this litigation. However, they were very clear that in view of the two reports filed by the primary medical board and the secondary medical board, respectively, there is no sign, or rather no hope, for the applicant to recover.

21. During this interaction before us on 13.01.2025, the learned ASG submitted that she had a talk with the team of doctors, i.e., the members of the primary medical board as well as the members of the secondary medical board. The doctors are of the opinion that the medical treatment of the applicant should be discontinued as its continuation is not in the best interest of the applicant, and that in the given circumstances, nature should be allowed to take its own course. The doctors are also of the opinion that the petitioner would remain in this PVS for years to come, with the PEG tubes inserted all over his body. However, he would never be able to recover and live a normal life.

22. In such circumstances referred to above, the learned counsel appearing for the parties made their final submissions before us on 15.01.2025. The same are delineated in detail in the next section.

(B). SUBMISSIONS ON BEHALF OF THE APPLICANT

23. Ms. Rashmi Nandakumar, assisted by Ms. Dhvani Mehta, Ms. Shivani Mody, Ms. Anindita Mitra & Ms. Yashmita Pandey, the learned counsels appearing on behalf of the applicant made the following submissions:

(a) That the present matter concerns the application of the guidelines laid down by this Court in Common Cause 2018 (supra), on the withdrawal or withholding of medical treatment. The judgment in Common Cause 2018 (supra) or in Common Cause 2023 (supra) respectively, does not contemplate routine or initial adjudication by constitutional courts in such matters. On the contrary, the mechanism for withdrawal or withholding of medical treatment in cases where no AMD exists is predicated on the hospital in which the patient is undergoing treatment, which is required to constitute a primary medical board, followed by a secondary medical board.

She submitted that judicial intervention by the High Court under Article 226 of the Constitution of India is envisaged only at a later stage, i.e., when there is a disagreement between the primary medical board and the secondary medical board and that the High Court was intended to play a limited, supervisory role, stepping in only when the medical decision-making process reaches an impasse. Ordinarily, therefore, courts are not required to adjudicate in the

determination of whether medical treatment ought to be withdrawn or withheld.

However, in the present case, owing to the absence of an institutional mechanism to trigger the process for a patient who was being provided long-term home-based care, the applicant's family was left with no alternative but to approach the High Court of Delhi under Article 226 of the Constitution of India in Writ Petition (Civil) No. 4927 of 2024, seeking a determination regarding the continuation of the medical treatment which the applicant was undergoing, in accordance with the Common Cause Guidelines.

The High Court of Delhi had declined the applicant's prayer seeking to obtain an opinion from the medical boards regarding the withdrawal of the PEG tube on the ground that the applicant was not being kept alive mechanically and that he was able to sustain himself without any extra external aid and that such condition did not allow the High Court to intervene and grant the relief prayed for.

(b) After the Delhi High Court dismissed the writ petition, the applicant filed the captioned SLP, which in turn was disposed of with the direction to the respondent no. 1 in conjunction with the Government of Uttar Pradesh, to provide home-based care to the applicant, but with the liberty to the parents to move this Court in the future should it become necessary for further directions.

(c) Owing to further deterioration in the applicant's condition, including hospitalisation in May 2025, and the need for a fresh tracheostomy, the present MA was filed. The learned counsel submitted that with this Court's orders dated 26.11.2025 and 11.12.2025 respectively, whereby the primary medical board and secondary medical board were directed to be constituted, the medical decision-making framework as envisaged under the Common Cause Guidelines was effectively restored.

(d) On the issue regarding the withdrawal or withholding of medical treatment, the learned counsel submitted that the PEG tube through which the applicant receives artificial nutrition and hydration is a form of mechanical life-support. The learned counsel submitted that the appropriate medical term for such forms of support providing artificial nutrition and hydration is CANH, and the same has been widely recognised, both medically and legally, as a form of lifesustaining 'treatment'.

(e) The learned counsel further submitted that this Court in Common Cause 2018 (supra), has already recognised that feeding tubes constitute a form of life support. She quoted the following extracts from the concurring opinions

authored by Sikri J., and D.Y. Chandrachud, J. respectively, to substantiate her contention:

A.K. Sikri, J.

"219. Passive euthanasia occurs when medical practitioners do not provide life-sustaining treatment (i.e. treatment necessary to keep a patient alive) or remove patients from lifesustaining treatment. This could include discontinuing treatment. This could include discontinuing life-support machines or feeding tubes or not carrying out life-saving operations or providing life-extending drugs."

D.Y. Chandrachud, J.

"359. Individuals who suffer from chronic disease or approach the end of the span of natural life often lapse into terminal illness or a permanent vegetative state. When a medical emergency leads to hospitalization, individuals in that condition are sometimes deprived of their right to refuse unwanted medical treatment such as feeding through hydration tubes or being kept on a ventilator and other life support equipment. Life is prolonged artificially resulting in human suffering."

(f) Most pertinently, the learned counsel went on to submit that the question that must be considered by this Court is not whether it is in the best interest of the patient to die, but whether it is in their best interest to prolong life-support artificially through the continued provision of CANH.

(g) Furthermore, the learned counsel submitted that there exists a long line of cases in the United Kingdom wherein it has been held that the continued provision of CANH to persons in PVS or other irreversible conditions would not be in their best interests, given the irreversibility and incurability of the condition, the futile and burdensome nature of CANH, the wishes of the caregivers of such persons, and the court's assessment of what such persons would themselves have wished had they possessed decision-making capacity. The learned counsel placed reliance on the following cases:

(i) Airdale NHS Trust v. Bland, reported in (1993) All ER 821,

(ii) County Durham and Darlington NHS Foundation Trust v PP and Ors, reported in [2014] EWCOP 9;

(iii) M v. Mrs. N and Ors., reported in 2015 EWCOP 76;

(iv) Cumbria NHS Clinical Commissioning Group v. Miss S, reported in [2016] EWCOP 32 (Fam);

(v) NHS Windsor And Maidenhead Clinical Commissioning Group v. SP, reported in [2018] EWCOP 11;

(vi) Hillingdon Hospitals NHS Foundation Trust v. IN & Ors, reported in [2023] EWCOP 32; and,

(vii) NHS South East London Integrated Care Board v. JP (by his litigation friend, the Official Solicitor), The Royal Hospital for Neuro-disability, TP, VP, OP reported in [2025] EWCOP 4 (T3).

(h) The learned counsel also submitted that this Court in Common Cause 2018 (supra) has recognised that doctors owe a duty of care to also determine whether certain kinds of medical treatments are warranted and are in the patient's best interests. This is drawn from the common law principle that any medical treatment constitutes a trespass to the person, and it therefore, must always be justified.

(i) The learned counsel also submitted that this Court in Common Cause 2018 (supra) firmly established the link between the right to dignity, the freedom from continuing in an undignified state like the one that the applicant is in and the removal of medical intervention that only artificially extends life and prolongs suffering.

(j) Lastly, the learned counsel raised certain serious concerns relating to the implementation of the guidelines as laid down in Common Cause (supra). She submitted that the guidelines have not been translated into on-ground action and that there is a considerable amount of legal uncertainty amongst medical professionals and hospitals regarding their obligations. As a result, harmful practices like routinely obtaining signatures on "Discharge against Medical Advice" forms, where patients are sent home without appropriate palliative and comfort care, get encouraged.

In light of this concern, the learned counsel urged that appropriate steps be directed to be taken by the respective Governments of the States and the Union Territories, in order to dispel the confusion faced by medical practitioners. In this regard, the learned counsel also put forth a suggestion that the following measures can be taken by the concerned government to implement the Common Cause Guidelines more effectively:

(i) The nomination of competent officials in local government as 'custodians' of AMD.

(ii) Issuing directions to hospitals to constitute primary and secondary medical boards or to establish clear-cut mechanisms for their constitution.

(iii) Issuing directions to the Chief Medical Officers (CMO) of each district to nominate or create a process for the nomination of registered medical practitioners to secondary medical boards.

24. In light of the aforesaid, the learned counsel prayed that the present Miscellaneous Application be allowed and the reliefs prayed for, be granted.

(C). SUBMISSIONS ON BEHALF OF THE UNION OF INDIA

25. Ms. Aishwarya Bhati, the learned ASG, assisted by Ms. Shivika Mehra and Ms. Shreya Jain, the learned counsels, appearing on behalf of the respondents, submitted as follows:

(a) On the issue of the permissibility of passive euthanasia, the learned ASG submitted that passive euthanasia, in law and in medical ethics, refers to the withdrawal or withholding of medical treatment, where such treatment no longer serves any therapeutic purpose and merely prolongs the dying process. She submitted that this Court in Common Cause 2018 (supra) recognised that where continued medical treatment is futile and serves no purpose except prolonging an irreversible condition, the withdrawal or withholding of such treatment would be constitutionally permissible.

(b) As regards the question whether CANH administered through medical devices constituted 'medical treatment', the learned ASG submitted that this Court in Common Cause 2018 (supra), by approving the principle laid down by the House of Lords in Airdale (supra), has recognised that CANH administered through medical devices indeed constitutes medical treatment and cannot be categorised as mere basic care.

(c) On the aspect of legal justification for the withdrawal of artificial feeding, the learned ASG submitted that this Court in Common Cause 2018 (supra) draws a clear and constitutionally significant distinction between an unlawful positive act causing death and the lawful withdrawal of futile medical treatment. She submitted that this Court in Common Cause 2018 (supra) held that the removal of artificial feeding mechanisms does not amount to causing death. Rather, it constitutes cessation of an artificial medical intervention, allowing death to ensue due to the underlying irreversible condition of the patient.

This, she submitted, was based on this Court's reasoning that the withdrawal of a nasogastric tube does not itself cause death, as the tube has no life-sustaining function independent of the medical regime it facilitates. Rather, upon such withdrawal or withholding, the patient ultimately succumbs to the natural consequences of the underlying fatal condition, and not to any positive act of the physician. Thus, in this backdrop, the withdrawal or withholding of CANH

would amount to an act of omission, falling within the permissible contours of passive euthanasia as recognised in Common Cause 2018 (supra).

(d) The learned ASG further highlighted that upon perusal of the reports of the primary medical board, the secondary medical board, and the subsequent deliberations dated 08.01.2025, respectively, it clearly emerges that the clinical assessment of the applicant has been done by applying established diagnostic criteria. What has emerged from the same is that the applicant is in an irreversible PVS. Furthermore, the medical opinion certifies that there is no hope of improvement of the applicant's neurological condition and that continuation of treatment constitutes medical futility.

(e) It was further submitted that the parents and the siblings who are the caregivers of the applicant, for the past 13 years, have exhibited a clear, categoric, and well-considered decision to allow the applicant a humane and kind passing away and thereby further his dignity.

(f) Thus, in view of the medical opinion and the settled constitutional position, the learned ASG submitted that this Court may consider permitting the withdrawal or withholding of CANH being provided to the applicant through the PEG tube.

(g) In the last, the learned ASG with a view to further the best interests of the applicant, prayed that appropriate arrangements for palliative care at home or at a choice of hospital indicated by the applicant's family, be permitted to be provided by the government to ensure dignity, humane support and comfort to the applicant in the course of implementation of the decision to withdraw the CANH.

(D). CORE CONCEPTS UNDERLYING THE DECISION IN COMMON CAUSE 2018

26. A detailed perusal of the facts makes it evident that this case revolves around one central issue: whether, when and on what legal basis can medical treatment be withdrawn or withheld? In addressing this issue, we are not writing on a clean slate. The definitive word on this subject lies in the decision rendered by a five-judge Constitution Bench of this Court in Common Cause 2018 (supra). As the aforesaid decision forms the essential foundation upon which our current decision must rest, we deem it not only important but absolutely necessary to begin by discussing the principles laid down and the line of reasoning adopted therein.

27. The decision in Common Cause 2018 (supra) arose from the reference by a three-judge bench of this Court which sought to inter alia resolve certain inconsistencies which existed in earlier judicial pronouncements and provide

some clarity on the "right to die with dignity" and other concomitant issues, such as euthanasia.

28. The primary contentions of the petitioners in Common Cause 2018 (supra) were two-fold: (i) declaration to the effect that the "right to die with dignity" forms an integral part of the "right to live with dignity" guaranteed under Article 21 of the Constitution of India, and (ii) legal recognition of Living Wills/AMD/Attorney Authorisation through which individuals could specify their wish to forgo medical treatment in the future, or authorize an attorney to make such decisions on their behalf should they lose the capacity to do so. While examining these contentions, this Court found it necessary to discuss the concepts of both active and passive euthanasia and determine their permissibility within our constitutional framework.

29. Succinctly put, this Court in Common Cause 2018 (supra), across the four concurring opinions, held the following: (i) the "right to live with dignity" under Article 21 of the Constitution of India inherently includes the "right to die with dignity" and (ii) passive euthanasia and AMD are both legal and permissible under the framework of Article 21, being rooted in the constitutional values of liberty, dignity, and individual privacy.

30. Dipak Misra, CJ., (as he then was), in his leading opinion, prescribed a detailed set of guidelines governing the execution and enforcement of AMDs. Furthermore, he laid down the mandatory procedure for deciding whether the medical treatment of an incompetent patient must be terminated, covering both scenarios in which an AMD existed and in which it was absent. These guidelines and the prescribed procedure received the concurrence of the other members of the Constitution Bench, who affirmed them through their respective opinions. It was directed that these guidelines would remain in force as the law of the land until the Parliament enacts a specific legislation on the subject. We note that, as of the date of this judgment, no such legislation has been brought into the field.

31. We must further observe that in the year 2023, an MA was moved before this Court in Common Cause 2018 (supra) seeking certain clarifications on the judgment, specifically regarding the challenges encountered in the practical implementation of the guidelines as laid down therein. Recognising the procedural difficulties faced by patients and medical practitioners alike, this Court modified and streamlined the guidelines to ensure that they remain workable. Throughout this judgment, we have taken care to refer to these updated and modified guidelines, wherever applicable.

32. We shall now delve deeper into certain substantive aspects that need to be duly addressed in any discussion surrounding euthanasia. While analyzing and

demystifying the reasoning adopted in Common Cause 2018 (supra) as regards several legal issues which have arisen in the matter before us, we wish to weave in some of our own views to the existing discourse as well. Our analysis will focus on the following core areas:

- (i) the conceptual distinction between active and passive euthanasia;
- (ii) the constitutional basis for permitting passive euthanasia under Article 21 of the Constitution of India;
- (iii) the impermissibility of active euthanasia under Article 21 of the Constitution of India;
- (iv) the permissibility of AMDs and
- (v) the procedure used to determine whether medical treatment ought to be withdrawn or withheld.

I. The Essential Distinction: Active and Passive Euthanasia

33. As D.Y. Chandrachud, J., has observed in his concurring opinion in Common Cause 2018 (supra), the discourse on euthanasia is rendered complex by the problems of the uncertain and shifting descriptions of key concepts. Therefore, he noted that in examining the legality of euthanasia, clarity on terminology is of absolute essence. This is more so now, where there is a clear ruling to the effect that only passive euthanasia is permissible.

The legality of a medical professional's action often depends entirely on which side of this conceptual line their action falls. If our understanding of active and passive euthanasia is imprecise, it would breed a precarious environment and, consequently, render any decisionmaking ambiguous. More critically, such confusion leaves medical practitioners in constant danger of unwittingly violating the law, or conversely, withholding necessary care out of an unfounded fear of legal reprisal. We, therefore, find it imperative to delineate the boundaries between active and passive euthanasia with absolute clarity.

34. At this juncture, it is essential to examine the meaning attributed to the terms active and passive euthanasia in Common Cause 2018 (supra) in each of the four concurring opinions. The relevant extracts are reproduced below:

Dipak Misra, C.J.,

"178. It is to be borne in mind that passive euthanasia fundamentally connotes absence of any overt act either by the patient or by the doctors. 202.6. In active euthanasia, a specific overt act is done to end the patient's life whereas in

passive euthanasia, something is not done which is necessary for preserving a patient's life."

Dr. A.K. Sikri, J.,

"219. Contrary to the above, in legal parlance, euthanasia has since come to be recognised as of two distinct types: the first is active euthanasia, where death is caused by the administration of a lethal injection or drugs. Active euthanasia also includes physician-assisted suicide, where the injection or drugs are supplied by the physician, but the act of administration is undertaken by the patient himself. Passive euthanasia occurs when medical practitioners do not provide life-sustaining treatment (i.e. treatment necessary to keep a patient alive) or remove patients from life-sustaining treatment. This could include disconnecting life support machines or feeding tubes or not carrying out life-saving operations or providing life-extending drugs."

Dr. D.Y. Chandrachud, J.,

"384 [...]"

(iv) active euthanasia refers to a positive contribution to the acceleration of death; (v) passive euthanasia refers to the omission of steps which might otherwise sustain life.

385. The expression "passive" has been used to denote the withdrawal or withholding of medical treatment."

Ashok Bhushan, J.,

"602. Euthanasia, as noted above, as the meaning of the word suggest is an act which leads to a good death. Some positive act is necessary to characterise the action as euthanasia. 603. Withdrawal of medical assistance or withdrawal of medical devices which artificially prolong the life cannot be regarded as an act to achieve a good death."

(Emphasis Supplied)

35. On a close examination of the excerpts above, it is apparent that while the descriptions of the terms active and passive euthanasia vary at a granular level across the four concurring opinions, they converge on a single, broader understanding. The Constitution Bench consistently characterises 'Active Euthanasia' as involving a positive or overt act, such as the administration of a lethal injection or drugs, which serves to either cause death or directly accelerate it. In contrast, 'Passive Euthanasia' is defined by the absence of such an overt act. It is characterised by an omission (a decision not to intervene) and

primarily encompasses the withdrawal or withholding of medical treatments that would otherwise sustain and/or preserve life.

36. At first blush, it would appear that the primary distinction between active and passive euthanasia rests solely on the binary of "acts" versus "omissions". Such an understanding is only natural. Indeed, in the preceding paragraph, we ourselves have used phrases like "positive or overt acts" to describe active euthanasia, while characterising passive euthanasia through terms such as "omission", "absence of an overt act", or "decision not to intervene". However, we must caution that a distinction between the two based on the simplistic dichotomy of "act" versus "omission" would be problematic.

37. While passive euthanasia is defined by the withdrawal or withholding of medical treatment, the physical process of withdrawing such treatment, for instance, switching off a ventilator or removing a feeding tube, requires a positive, physical movement. If we were to apply the simplistic act versus omission test, such necessary steps could be misconstrued as active measures, i.e., acts. This would potentially place them outside the legal protections afforded to passive euthanasia. This dilemma had also been brought forth in the concurring opinion of D.Y. Chandrachud, J., in *Common Cause 2018* (supra).

38. The complexity of this issue is further compounded by the extensive academic discourse regarding the precise meaning to be attributed to the terms "acts" and "omissions". We need not delve into this debate here, as doing so would only further obscure the jurisprudence surrounding active and passive euthanasia. For our present purposes, it is sufficient to observe that while the distinction between the two forms of euthanasia is partially rooted in the conventional understanding of acts and omissions, that the binary alone does not complete the legal picture.

39. It is clear that a more nuanced approach is required in order to understand the difference between active and passive euthanasia, one that allows for the difference on the basis of act and omission to exist broadly, but one that also provides more grounding on other facets. What would these other facets include? A closer look at some of the observations made in *Common Cause 2018* (supra) would provide additional guidance. The relevant extracts are reproduced below:

Dipak Misra, CJ.,

"49. While scrutinising the distinction between active and passive euthanasia, the paramount aspect is "foreseeing the hastening of death". The said view has been propagated in several decisions all over the world. The Supreme Court of

Canada, in *Rodriguez v. Attorney General of Canada*, drew the distinction between these two forms of euthanasia on the basis of intention.

Echoing a similar view, the Supreme Court of the United States affirmed the said distinction on the basis of "intention" in *Vacco* wherein Rehnquist, C.J. observed that the said distinction coheres with the fundamental legal principles of causation and intention. In case when the death of a patient occurs due to removal of life-supporting measures, the patient dies due to an underlying fatal disease without any intervening act on the part of the doctor or medical practitioner, whereas in the cases coming within the purview of active euthanasia, for example, when the patient ingests lethal medication, he is killed by that medication.

202.5. There is an inherent difference between active euthanasia and passive euthanasia as the former entails a positive affirmative act, while the latter relates to withdrawal of life-support measures or withholding of medical treatment meant for artificially prolonging life."

Dr. A.K. Sikri, J.,

"219. Passive euthanasia occurs when medical practitioners do not provide life-sustaining treatment (i.e. treatment necessary to keep a patient alive) or remove patients from life-sustaining treatment. This could include disconnecting life support machines or feeding tubes or not carrying out life-saving operations or providing lifeextending drugs. In such cases, the omission by the medical practitioner is not treated as the cause of death; instead, the patient is understood to have died because of his underlying condition."

Dr. D.Y. Chandrachud, J.,

"388. The correctness of this precept may be questioned by pointing out that there is a qualitative difference between a positive medical intervention (such as a lethal injection) which terminates life and a decision to not put a patient on artificial life support, which will not artificially prolong life. The former brings a premature extinction of life. The latter does not delay the end of life beyond its natural end point.

398. Moreover, passive euthanasia is conceived with a purpose of not prolonging the life of the patient by artificial medical intervention. Both in the case of a withdrawal of artificial support as well as in nonintervention, passive euthanasia allows for life to ebb away and to end in the natural course. In contrast, active euthanasia results in the consequence of shortening life by a positive act of medical intervention.

450. necessary to distinguish between active and passive euthanasia in terms of the underlying constitutional principles as well as in relation to the exercise of judicial power. Passive euthanasia-whether in the form of withholding or withdrawing treatment-has the effect of removing, or as the case may be, not providing supportive treatment. Its effect is to allow the individual to continue to exist until the end of the natural span of life. On the other hand, active euthanasia involves hastening of death : the lifespan of the individual is curtailed by a specific act designed to bring an end to life"

Ashok Bhushan, J.,

606. Withdrawal of life-saving devices, leads to natural death which is arrested for the time being due to above device and the act of withdrawal put the life on the natural track. Decision to withdraw life-saving devices is not an act to cause good death of the person rather, decision to withdraw or not to initiate life-supporting measures is a decision when treatment becomes futile and unnecessary."

(Emphasis Supplied)

40. A deeper analysis of the above extracts from Common Cause 2018 (supra) reveals that, according to the Constitution Bench, the true distinction between active and passive euthanasia lies not merely in the nature of the conduct, i.e., acts or omissions, but also in the source of the harm that leads to death. Active euthanasia is characterised as causing death because it introduces a new, external agency of harm, such as a lethal injection, that was not previously present. In such cases, death is not the result of the patient's underlying illness, but of an intervention that sets a new chain of events in motion. It is for this reason that active euthanasia is understood as an intervention that disrupts the natural path towards death.

41. Conversely, passive euthanasia is understood as allowing death to occur. By withdrawing or withholding life support, the physician is not creating a new risk of death. Rather, they are choosing to allow the underlying fatal condition to take its natural course by no longer continuing the medical interventions that were artificially prolonging life. In this sense, the doctor simply allows the original harm-causing event to run its natural course, returning the patient to their natural path towards death. The undeniable fact remains that the patient's affliction, i.e., the underlying medical condition, is not caused by any act or omission of the doctor. Rather, the underlying condition is due to factors independent of the doctor or their actions.

42. Having said so, one must also remain vigilant and qualify the aforesaid reasoning, i.e., that it is the original affliction of the patient which is allowed to

resume its control over the patient, with a sufficient condition. The sufficient condition being that there must be no violation of the duty of care that a doctor would otherwise, in all circumstances, owe to the patient. In other words, the surrendering of any medical effort must not be at loggerheads with the duty of care which joists all medical action.

A more detailed perspective of the passive euthanasia dilemma from a "duty of care" lens and when the withdrawal or withholding of medical intervention would be in consonance with the duty of care expected of doctors, has been provided in the later paragraphs of our discussion. We have simply alluded to the same in our current discussion on the broad conceptual distinction between active and passive euthanasia, to aid better context-setting.

43. Coming back to the focal point of our discussion herein, when viewed through the lens of "causing death" versus "allowing death to occur", the traditional distinction between acts and omissions also begins to acquire significance. While admittedly the physical withdrawal of treatment involves a willed bodily movement, conventionally viewed as an 'act', the consequence of that movement is simply the termination of life-saving medical treatment.

If the focus is shifted from the nature of the conduct to the ultimate effect of the conduct, the same course of action could be correctly characterised as an omission. Even when "allowing death to occur" is initiated by a physician's physical action, it remains an omission in the eyes of the law because the essence of the conduct is a decision not to do something, i.e., 'omission to treat' or 'omission to ventilate'. Thus, at a broader level, passive euthanasia is defined by this refusal to impede the natural progress of death.

44. The aforesaid discussion also finds support in the reasoning given by both, the Court of Appeals and the House of Lords respectively in Airedale (supra). Butler-Sloss L.J., Hoffmann L.J., Lord Goff, and Lord Browne-Wilkinson, respectively, drew a distinction between active and passive euthanasia on similar grounds. It is important to note, however, that the House of Lords did not explicitly frame the issue as a choice between active and passive euthanasia. For their Lordships, the term 'euthanasia' was reserved exclusively for 'Active Euthanasia'. What all the four concurring opinions in Common Cause 2018 (supra) categorised as passive euthanasia was referred to by the House of Lords simply as the withholding or withdrawal of medical treatment. The relevant extracts are reproduced below:

Butler-Sloss L.J. (in the Court of Appeal)

"The position of Dr. Cox is different (Reg. v. Cox , 18 September 1992, Ognall J.). He injected a lethal dose which was designed to cause death and was an

external and intrusive act committed by an outsider and was not in accordance with his duty of care as a doctor. The effect of the cessation of artificial feeding is to place the patient in the position he would have been in before the nasogastric tube was inserted. Without the tube he would have died from his medical condition and with it he has been artificially kept alive despite that condition until now. Whether this is an act or omission carries the matter no further. The distinction between Mr. Bland's doctors and Dr. Cox is between an act or omission which allows causes already present in the body to operate and the introduction of an external agency of death."

Hoffmann L.J. (in the Court of Appeal)

"On the other hand, we recognise that, one way or another, life must come to an end. We do not impose on outsiders an unqualified duty to do everything possible to prolong life as long as possible. I think that the principle of inviolability explains why, although we accept that in certain cases it is right to allow a person to die (and the debate so far has been over whether this is such a case) we hold without qualification that no one may introduce an external agency with the intention of causing death. I do not think that the distinction turns upon whether what is done is an act or omission. This leads to barren arguments over whether the withdrawal of equipment from the body is a positive act or an omission to keep it in place. The distinction is between an act or omission which allows an existing cause to operate and the introduction of an external agency of death."

Lord Goff

"I agree that the doctor's conduct in discontinuing life support can properly be categorised as an omission. It is true that it may be difficult to describe what the doctor actually does as an omission, for example where he takes some positive step to bring the life support to an end. But discontinuation of life support is, for present purposes, no different from not initiating life support in the first place. In each case, the doctor is simply allowing his patient to die in the sense that he is desisting from taking a step which might, in certain circumstances, prevent his patient from dying as a result of his pre-existing condition; and as a matter of general principle an omission such as this will not be unlawful unless it constitutes a breach of duty to the patient.

I also agree that the doctor's conduct is to be differentiated from that of, for example, an interloper who maliciously switches off a life support machine because, although the interloper may perform exactly the same act as the doctor who discontinues life support, his doing so constitutes interference with the life-prolonging treatment then being administered by the doctor. Accordingly, whereas the doctor, in discontinuing life support, is simply

allowing his patient to die of his preexisting condition, the interloper is actively intervening to stop the doctor from prolonging the patient's life, and such conduct cannot possibly be categorised as an omission"

Lord Browne-Wilkinson

"The positive act of removing the nasogastric tube presents more difficulty. It is undoubtedly a positive act, similar to switching off a ventilator in the case of a patient whose life is being sustained by artificial ventilation. But in my judgment in neither case should the act be classified as positive, since to do so would be to introduce intolerably fine distinctions. If, instead of removing the nasogastric tube, it was left in place but no further nutrients were provided for the tube to convey to the patient's stomach, that would not be an act of commission.

Again, as has been pointed out (Skegg, Law, Ethics and Medicine (1984), p.169 et seq.) if the switching off of a ventilator were to be classified as a positive act, exactly the same result can be achieved by installing a time-clock which requires to be reset every 12 hours: the failure to reset the machine could not be classified as a positive act. In my judgment, essentially what is being done is to omit to feed or to ventilate: the removal of the nasogastric tube or the switching off of a ventilator are merely incidents of that omission: see Glanville Williams, Textbook of Criminal Law , p.282; Skegg , pp.169 et seq."

(Emphasis Supplied)

45. In summation, the essential distinction between active and passive euthanasia transcends the simplistic binary of acts and omissions. Active euthanasia is characterised as "causing death" because it introduces an external, intrusive agency, such as a lethal injection, an intervention that disrupts the natural path towards death. Conversely, passive euthanasia is understood as "allowing death to occur" or "letting die".

By withdrawing or withholding medical treatment that was otherwise prolonging life, the physician allows the original harm causing event to run its natural course, returning the patient to their natural path toward death. When viewed through this lens, the role of acts and omissions also becomes clear. While the physical withdrawal of treatment may involve an 'act', its effect is an omission, i.e., omission to treat. By shifting the focus from the muscle movement to the conduct's ultimate effect, there is a recognition that such interventions are, in substance, omissions.

II. Permissibility of Passive Euthanasia under Article 21 of the Constitution of India

46. Our preceding analysis establishes that the Constitution Bench in Common Cause 2018 (supra) envisaged passive euthanasia as being synonymous with the withdrawal or withholding of medical treatment. For the Constitution Bench, these two concepts are functionally identical, i.e., withdrawing and withholding medical treatment constitute the very essence of passive euthanasia.

To comprehend the legal logic that renders such conduct permissible under Article 21 of the Constitution of India, while simultaneously holding that active euthanasia is not permissible, it is essential to examine how the Court interpreted the fundamental concepts of life, dignity, privacy and autonomy. It is through the intricate interlinking of these core constitutional values that the Bench established the "right to die with dignity" and the permissibility of passive euthanasia under the framework of Article 21 of the Constitution of India.

(a) The unifying and omnipresent force of 'dignity' in the discourse on 'right to die with dignity'

47. Article 21 of the Constitution of India mandates that no person shall be deprived of their life or personal liberty except according to the procedure established by law. In interpreting this guarantee, this Court in Common Cause 2018 (supra) unequivocally held that "life" cannot be reduced to mere animal existence or a state of continued drudgery.

Instead, it was observed that the expression "life" has a much wider meaning, with the non-negotiable element of "dignity" being at its very core. Dignity is viewed as the unifying force of all fundamental rights, as these rights collectively seek to secure for every individual a dignified existence. In acting as this unifying force, dignity acts as the normative basis for the fundamental rights enshrined in the Constitution of India, and as an essential interpretative principle for determining the true scope and reach of those rights.

48. Despite its central importance, dignity remains a malleable concept, difficult to define and perhaps best left undefined. This inherent conceptual flexibility allows proponents of varying, and often contradicting, legal perspectives to invoke dignity as the primary justification for their respective positions. D.Y. Chandrachud, J., and A.K. Sikri, J., in their respective concurring opinions, acknowledge that this conceptual tension also arises in the debate over euthanasia and the right to die with dignity.

49. On one side are the proponents of a rather strict "Sanctity of Life" principle, who argue that because every individual possesses dignity by the mere virtue of their existence, life must be preserved at all times. From this

perspective, any intentional ending of life is viewed as an act against that person's inherent dignity. This sanctity of life principle forms the very core of the Article 21 framework.

It is rooted in the understanding that the preservation of life is of paramount importance and that the intrinsic worth of life is not conditional upon what it seeks to or is capable of achieving. Rather, life is valuable simply because it is. Under the Constitution, this right to life is protected as a supreme right, inalienable and inviolable even during an Emergency, envisaging only the most limited and strictly defined circumstances where a person may be deprived of it [See *Parmanand Katara v. Union of India*, reported in (1989) 4 SCC 286].

50. Conversely, the concept of dignity is also invoked to support the "Quality of Life" proposition. For those who hold this view, the constitutional guarantee of a dignified life extends beyond mere biological persistence to include the right to leave the world in a peaceful and dignified manner. Under this interpretation, living with dignity is seen as the right to a meaningful existence characterised by certain essential qualities.

51. Acknowledging this profound jurisprudential conflict, D.Y. Chandrachud, J., in his concurring opinion, probed the very essence of these competing values. While accepting that the preservation of life is fundamentally rooted in the recognition of human dignity, he raised critical inquiries regarding the point at which this dignity might be compromised by the realities of terminal suffering.

He questioned whether the progressive loss of bodily and mental functions, coupled with the imminence of death, does not itself erode the dignity that the law seeks to protect. This led him to the following pivotal questions: What constitutes the core of life that the law is bound to protect? Does a severely diminished quality of life, cast in the shadow of impending death, impact the value of that life to such an extent that it reduces the protection traditionally offered by the sanctity of life doctrine? And ultimately, are there constitutional limits to the principle of sanctity itself?

52. It was in the pursuit of answers to these questions and dilemmas that the Constitution Bench, across all four opinions, arrived at a seminal conclusion. The Bench unequivocally held that the 'right to live with dignity' under Article 21 extends beyond the preservation of life to encompass the 'right to die with dignity'.

53. In his opinion, Dipak Misra, CJ., anchored the right to die with dignity on the observations of the Constitution Bench in *Gian Kaur v. State of Punjab*, reported in (1996) 2 SCC 648. He reasoned that the fundamental right to life

under Article 21 is not merely a guarantee of biological survival but a right to live with dignity. Crucially, this entitlement does not cease as life nears its end. Rather, it extends to the very terminus of existence. Consequently, it was held that the "right to live with dignity" inherently embraces the right to dignity until the moment of death, including a right to have a dignified process of death. To fully comprehend the weight of this reasoning, it is apposite that we look closely at the specific context in which Gian Kaur (supra) held that the 'right to live with dignity' could encompass a 'right to die with dignity'.

54. The Constitution Bench in Gian Kaur (supra) held that the right to life under Article 21 of the Constitution of India does not include the right to die in its absolute sense. In coming to the conclusion, the Court in Gian Kaur (supra) emphasized on two strands: (i) that the extinction of life or the extinguishment of life would violate the sanctity of life, and consequently be in teeth with Article 21 itself, which recognizes the said sanctity of life, and (ii) that the right to life is a natural right and suicide as an unnatural extinction of life is incompatible with it.

Further, while dealing with the issue therein, the Court took note of the debate on euthanasia in the context of individuals in PVS and observed that: (i) the right to live with human dignity would mean the existence of such a right up to the end of natural life and may include the right of a dying man to a die with dignity when his life is ebbing out; and (ii) in such cases, premature termination of life would not amount to extinguishing life but only constitute accelerating the conclusion of the process of natural death which has already commenced. However, this Court sounded a clear note of caution that such cases should not be equated with the right to die an unnatural death i.e., one that curtails the natural span of life. The relevant observations made by this Court in Gian Kaur (supra) are reproduced as follows:

"22. When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the "right to life" under Article 21. The significant aspect of "sanctity of life" is also not to be overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can "extinction of life" be read to be included in "protection of life". Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the "right to die" as a part of the fundamental right guaranteed therein. "Right to life" is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life, and therefore, incompatible and inconsistent with the concept of "right to life."

23. To give meaning and content to the word "life" in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The "right to die", if any, is inherently inconsistent with the "right to life" as is "death" with "life".

24. Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of "sanctity of life" or the "right to live with dignity" is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of "right to life" therein includes the "right to die". The "right to life" including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the "right to die" with dignity at the end of life is not to be confused or equated with the "right to die" an unnatural death curtailing the natural span of life.

25. A question may arise, in the context of a dying man who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the "right to die" with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced.

These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician-assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life."

(Emphasis Supplied)

55. Building upon this fine distinction between 'extinguishing life' and merely 'accelerating the conclusion of the natural process of death' as expounded in Gian Kaur (supra), Dipak Misra, CJ., in his opinion in Common Cause 2018 (supra), proceeded to hold that passive euthanasia falls firmly within the ambit of Article 21 of the Constitution of India. He reasoned that the withdrawal or withholding of medical treatment of a person in PVS would not be considered

as suicide or abetment of suicide but rather as an acceleration of the process of natural death, which has already commenced.

56. We must, however, hasten to clarify that the use of the words "acceleration of the process of natural death" in the aforesaid context must not again be confused and pitted against any debate on active euthanasia. The word "accelerate" has essentially been used to connote the phenomenon of "allowing natural death to occur" which is central to passive euthanasia. The same clarification inheres in the use of the phrase "premature extinction of life" which has been used in Common Cause 2018 (supra). On a cursory reading, these phrases may appear to blur the lines with active euthanasia, which is also described as an act that "hastens death".

However, the use of these expressions must be understood in their appropriate context. In active euthanasia, the acceleration curtails the natural lifespan. In contrast, the acceleration referred to in passive euthanasia is only relative to the artificially prolonged existence sustained by medical technology. For instance, when a ventilator is withdrawn, death is 'accelerated' only in the sense that the patient dies sooner than they would have if the machine had remained and not been withdrawn. However, viewed in light of the underlying ailment, this withdrawal is not an acceleration but rather the removal of an artificial barrier, allowing the natural trajectory of life to resume and reach its inevitable conclusion.

57. Having clarified the same, what then follows is that the opinion of Dipak Misra, CJ., roots the withdrawal and withholding of medical treatment as a mode and mechanism that furthers the dying person's dignity. The relevant observations made in his opinion are reproduced as follows:

"164. In *Gian Kaur*, the Constitution Bench indicates acceleration of the conclusion of the process of death which has commenced and this indication, as observed by us, allows room for expansion. In the said case, the Court was primarily concerned with the question of constitutional validity of Sections 306 and 309 IPC. The Court was conscious of the fact that the debate on euthanasia was not relevant for deciding the question under consideration.

The Court, however, in no uncertain terms expounded that the word "life" in Article 21 has been construed as life with human dignity and it takes within its ambit the "right to die with dignity" being part of the "right to live with dignity". Further, the "right to live with human dignity" would mean existence of such a right up to the end of natural life which would include the right to live a dignified life up to the point of death including the dignified procedure of death.

While adverting to the situation of a dying man who is terminally ill or in a persistent vegetative state where he may be permitted to terminate it by a premature extinction of his life, the Court observed that the said category of cases may fall within the ambit of "right to die with dignity" as part of the right to live with dignity when death due to the termination of natural life is certain and imminent and the process of natural death has commenced, for these are not cases of extinguishing life but only of accelerating the conclusion of the process of natural death which has already commenced.

165. In the context of the issue under consideration, we must make it clear that as part of the right to die with dignity in case of a dying man who is terminally ill or in a persistent vegetative state, only passive euthanasia would come within the ambit of Article 21 and not the one which would fall within the description of active euthanasia in which positive steps are taken either by the treating physician or some other person. That is because the right to die with dignity is an intrinsic facet of Article 21. The concept that has been touched deserves to be concretised, the thought has to be realised. It has to be viewed from various angles, namely, legal permissibility, social and ethical ethos and medical values.

166. The purpose of saying so is only to highlight that the law must take cognizance of the changing society and march in consonance with the developing concepts. The need of the present has to be served with the interpretative process of law. However, it is to be seen how much strength and sanction can be drawn from the Constitution to consummate the changing ideology and convert it into a reality. The immediate needs are required to be addressed through the process of interpretation by the Court unless the same totally falls outside the constitutional framework or the constitutional interpretation fails to recognise such dynamism. The Constitution Bench in *Gian Kaur*, as stated earlier, distinguishes attempt to suicide and abetment of suicide from acceleration of the process of natural death which has commenced.

202.1. A careful and precise perusal of the judgment in *Gian Kaur* case reflects the right of a dying man to die with dignity when life is ebbing out, and in the case of a terminally-ill patient or a person in PVS, where there is no hope of recovery, accelerating the process of death for reducing the period of suffering constitutes a right to live with dignity."

(Emphasis Supplied)

(b) Viewing the "right to die with dignity" through the prism of self-determination, individual autonomy and privacy.

58. The Constitution Bench in *Common Cause 2018* (supra) has charted out the "right to die with dignity" in the context of passive euthanasia by also interlinking key facets of the right to life that have already been cemented in Article 21 jurisprudence, i.e., through a combined interpretation of the right to self-determination, individual autonomy and privacy.

59. Dipak Misra, CJ., builds this reasoning by opining that, when the treatment is administered only as a procrastinating effort, the patient would be condemned to a continuum of pain and suffering which would violate the preserved concepts of bodily autonomy and right to privacy. He further pinpoints that, especially in relation to health and medical care decisions, a person's exercise of self-determination and autonomy would involve the exercise of their right to decide whether and to what extent they are willing to subject themselves to medical procedures and treatments. In exercising such a freedom in decision-making, one may choose to opt out of any treatment which is not in consonance with their own individual aspirations and values. This is precisely how adults with the capacity to consent manifest their right to self-determination in the medical context. The relevant observations in the opinion of Dipak Misra, CJ., which evince the same are reproduced thus:

"166. The concept is based on non-prolongation of life where there is no cure for the state the patient is in and he, under no circumstances, would have liked to have such a degrading state. The words "no cure" have to be understood to convey that the patient remains in the same state of pain and suffering or the dying process is delayed by means of taking recourse to modern medical technology. It is a state where the treating physicians and the family members know fully well that the treatment is administered only to procrastinate the continuum of breath of the individual and the patient is not even aware that he is breathing.

Life is measured by artificial heartbeats and the patient has to go through this undignified state which is imposed on him. The dignity of life is denied to him as there is no other choice but to suffer an avoidable protracted treatment thereby thus indubitably casting a cloud and creating a dent in his right to live with dignity and face death with dignity, which is a preserved concept of bodily autonomy and right to privacy. In such a stage, he has no old memories or any future hopes but he is in a state of misery which nobody ever desires to have.

169. In the context of health and medical care decisions, a person's exercise of self-determination and autonomy involves the exercise of his right to decide whether and to what extent he/she is willing to submit himself/herself to medical procedures and treatments, choosing amongst the available alternative treatments or, for that matter, opting for no treatment at all which, as per his or

her own understanding, is in consonance with his or her own individual aspirations and values.

174. Thus, enquiring into Common Law and statutory rights of terminally ill persons in other jurisdictions would indicate that all adults with the capacity to consent have the Common Law right to refuse medical treatment and the right of self-determination."

(Emphasis Supplied)

60. A.K. Sikri, J., in his concurring opinion, begins by noting that the "personal autonomy" of an individual, as a part of human dignity, can be pressed into service in the context of euthanasia. He combines this with other facets of human dignity namely selfexpression and the right to self-determination, to buttress that the choice to receive or not receive treatment must be made available to patients. By weaving these multiple facets together, A.K. Sikri, J., took the view that dignity envisions within itself a quality of life consistent with the ability to exercise self-determined and autonomous choices. However, this comes with the obvious caveat that such a freedom in decision-making would not include the intentional curtailment or extinguishment of the natural span of one's life. The relevant observations are reproduced as follows:

"305. In the context of euthanasia, "personal autonomy" of an individual, as a part of human dignity, can be pressed into service. In *National Legal Services Authority v. Union of India*, this Court observed: (SCC p. 491, para 75)

"75. Article 21, as already indicated, guarantees the protection of "personal autonomy" of an individual. In *Anuj Garg v. Hotel Assn. of India*, this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and selfexpression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India."

306. In addition to personal autonomy, other facets of human dignity, namely, "self-expression" and "right to determine" also support the argument that it is the choice of the patient to receive or not to receive treatment.

308. Dignity is, thus, the core value of life and dying in dignity stands recognised in *Gian Kaur*. It becomes a part of right of self-determination.

310. Taking into consideration the conceptual aspects of dignity and the manner in which it has been judicially adopted by various judgments, the

following elements of dignity can be highlighted (in the context of death with dignity):

310.1. Encompasses self-determination; implies a quality of life consistent with the ability to exercise selfdetermined choices;

310.2. Maintains/ability to make autonomous choices; high regard for individual autonomy that is pivotal to the perceived quality of a person's life;

310.3. Self-control (retain a similar kind of control over dying as one has exercised during life-a way of achieving death with dignity);

310.4. Law of consent: The ability to choose- orchestrate the timing of their own death; 310.9. Dignity commands emphatic respect:

310.9.1. Reason and emotion are both significant in treatment decisions, especially at the end of life where compassion is a natural response to appeals made on the basis of stifled self-determination;

310.11.2. Dignity clearly does play a valuable role in contextualising people's perceptions of death and dying, especially as it appears to embody a spirit of selfdetermination that advocates of voluntary euthanasia crave.

311. Once we examine the matter in the aforesaid perspective, the inevitable conclusion would be that passive euthanasia and death with dignity are inextricably linked, which can be summed up with the following pointers:

311.1. The opportunity to die unencumbered by the intrusion of medical technology and before experiencing loss of independence and control, appears to many to extend the promise of a dignified death. When medical technology intervenes to prolong dying like this it does not do so unobtrusively;

311.2. Today many patients insist on more than just a right to healthcare in general. They seek a right to choose specific types of treatment, able to retain control throughout the entire span of their lives and to exercise autonomy in all medical decisions concerning their welfare and treatment;

311.3. A dreadful, painful death on a rational but incapacitated terminally-ill patient are an affront to human dignity."

(Emphasis Supplied)

61. D.Y. Chandrachud, J., in his concurring opinion, further expanded this jurisprudential horizon by situating the right to die with dignity at the intersection of dignity, privacy, autonomy and liberty. Dignity, he held, must

infuse every stage of human existence, including the closing chapters of one's life. Crucially, D.Y. Chandrachud, J., brought the "protective mantle of privacy" to the forefront, ruling that decisions regarding death are as intimate and protected as decisions regarding birth, marriage, or procreation. Further, he unequivocally recognised that a competent individual possesses an unconditional right to refuse medical treatment, a choice that requires no justification to the State and is not subject to the supervisory control of any outside entity. The relevant observations made by D.Y. Chandrachud, J., are reproduced as follows:

"434. Liberty and autonomy promote the cause of human dignity. Arguments about autonomy are often linked to human dignity. Gostin evaluates the relationship between the dignity of dying with autonomy thus:

"The dying process, after all, is the most intimate, private and fundamental of all parts of life. It is the voice that we, as humans, assert in influencing this autonomous part of our life. At the moment of our death, this right of autonomy ought not to be taken from us simply because we are dying. An autonomous person should not be required to have a good reason for the decision that he or she will make; that is the nature of autonomy. We do not judge for other competent human beings what may be in their best interest, but instead allow them to determine that for themselves.

As such, an autonomous person does not need to have a good understanding or even good reasons. All they need is an understanding of what they are confronting. There is no reason to believe that when a person faces imminent death that they have less human understanding, or less ability to fathom what they will face, than other people. Of course, death is a mystery. But death is what we will all confront sooner or later, and we all may wish to assert our interests in how we may die."

436. An article titled

"Euthanasia: A Social Science Perspective" in the Economic & Political Weekly has suggested that the discourses on death with dignity "need to be situated within processes of living with dignity in everyday contexts". The end of life must not be seen as "human disposal", but, as "the enhancement of human dignity by permitting each man's last act to be an exercise of his free choice between a tortured, hideous death and a painless, dignified one."

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.

439. From Maneka Gandhi to Puttaswamy, dignity is the element which binds the constitutional quest for a meaningful existence. Dignity in death has a sense of realism that permeates the right to life. It has a basic connect with the autonomy of the individual and the right to self-determination. Loss of control over the body and the mind are portents of the deprivation of liberty. As the end of life approaches, a loss of control over human faculties denudes life of its meaning.

Terminal illness hastens the loss of faculties. Control over essential decisions about how an individual should be treated at the end of life is hence an essential attribute of the right to life. Corresponding to the right is a legitimate expectation that the State must protect it and provide a just legal order in which the right is not denied. In matters as fundamental as death and the process of dying, each individual is entitled to a reasonable expectation of the protection of his or her autonomy by a legal order founded on the rule of law. A constitutional expectation of providing dignity in death is protected by Article 21 and is enforceable against the State.

440. The nine-Judge Bench decision of this Court in *K.S. Puttaswamy v. Union of India* held privacy to be the constitutional core of human dignity. The right to privacy was held to be an intrinsic part of the right to life and liberty under Article 21 and protected under Part III of the Constitution.

441. The protective mantle of privacy covers certain decisions that fundamentally affect the human life cycle. It protects the most personal and intimate decisions of individuals that affect their life and development. 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. The right to privacy protects autonomy in making decisions related to the intimate domain of death as well as bodily integrity. Few moments could be of as much importance as the intimate and private decisions that we are faced regarding death. Continuing treatment against the wishes of a patient is not only a violation of the principle of informed consent, but also of bodily privacy and bodily integrity that have been recognised as a facet of privacy by this Court.

442. Just as people value having control over decisions during their lives such as where to live, which occupation to pursue, whom to marry, and whether to have children, so people value having control over whether to continue living when the quality of life deteriorates.

517. The entitlement of each individual to a dignified existence necessitates constitutional recognition of the principle that an individual possessed of a free and competent mental state is entitled to decide whether or not to accept medical treatment. The right of such an individual to refuse medical treatment is unconditional. Neither the law nor the Constitution compel an individual who is competent and able to take decisions, to disclose the reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity;"

(Emphasis Supplied)

62. On a holistic reading of the above extracted paragraphs across the various concurring opinions in Common Cause 2018 (supra), a clear basis for allowing passive euthanasia in cases involving competent patients is made out (otherwise commonly referred to as voluntary passive euthanasia). For individuals who have the capacity to make decisions, the justification rests on the convergence of two legal principles: (i) the common law right to refuse medical treatment (ii) the constitutional guarantees of dignity, liberty, privacy and self-determination.

In this framework, withdrawing or withholding treatment is not just a medical decision but a fundamental exercise of the patient's right to choose, rooted in one's rights to dignity, autonomy, liberty, and self-determination. For a competent individual, this choice is absolute and free from the State's or any external entity's supervisory control. Such a person is under no legal obligation to provide reasons for refusing medical treatment. Their autonomy is paramount, and their decision to reject treatment is a protected expression of

their dignity which even trumps traditional notions regarding the Sanctity of Life. Hoffmann L.JJ pithily captures this point in the Court of Appeals decision of Airedale (supra) in the following manner:

"A conflict between the principles of the sanctity of life and the individual's right of self-determination may therefore require a painful compromise to be made. In the case of the person who refuses an operation without which he will certainly die, one or other principle must be sacrificed. We may adopt a paternalist view, deny that his autonomy can be allowed to prevail in so extreme a case, and uphold the sanctity of life. Sometimes this looks an attractive solution, but it can have disturbing implications. Do we insist upon patients accepting lifesaving treatment which is contrary to their strongly held religious beliefs? Should one force-feed prisoners on hunger strike? English law is, as one would expect, paternalist towards minors. But it upholds the autonomy of adults. A person of full age may refuse treatment for any reason or no reason at all, even if it appears certain that the result will be his death."

63. Where then does this jurisprudence place incompetent patients, i.e., those who, due to their condition, lack the capacity to make decisions for themselves? A careful reading of Common Cause 2018 (supra) clarifies that the permission for passive euthanasia, i.e., withholding or withdrawing of medical treatment, is not the exclusive preserve of the competent. It extends to incompetent patients as well, including those patients who may not have appointed proxies or executed AMD. However, some careful attention must be paid to how the constitutional basis for cases involving non-voluntary passive euthanasia, or in simple terms, for incompetent patients, has been charted out.

(c) Recognising non-voluntary passive euthanasia within the framework of Article 21

64. On a bare overview, it may seem as though the Constitution Bench in Common Cause 2018 (supra) has rooted its constitutional permissibility of voluntary and non-voluntary passive euthanasia respectively, on identical foundations. In other words, the rooting of the right to refuse medical treatment in the combined guarantees of dignity, liberty, privacy, self-determination, individual autonomy and freedom from bodily invasion, could appear to have been echoed for both, competent and incompetent patients alike.

However, such a reading would give way to criticisms which point out that the specific constitutional protections of the right to privacy, self-determination and individual autonomy would only be available for 'voluntary' passive euthanasia and be unavailable for non-voluntary passive euthanasia. According to them, this would be so, since, privacy, self-determination or individual autonomy form part of those bouquet of rights which can be exerted or

exercised in pursuance of something 'by the patient alone' and not vicariously. Hence, in a case where the patient is in PVS, since there is no exercise of choice on his part, it may not entirely be appropriate to strictly tether the permissibility of passive euthanasia to the values of privacy or individual autonomy.

65. D.Y. Chandrachud, J., briefly alludes to this criticism¹ which seems to have gained some momentum in the aftermath of the decision of the New Jersey Supreme Court in *In re Quinlan*, reported in 70 N. J. 10. Therein, the Court while holding that the incompetent patient's right to make a private decision supersedes the State's interest in preserving life, also reasoned that since the patient herself was not competent to assert her right to privacy, it may be asserted by her parents who would qualify as persons who had been intimately involved in the patient's life.

66. Viewed from the perspective of autonomy as well, such criticisms may assume the forefront. In a very literal sense, autonomy means 'self-government'. People are autonomous to the extent to which they are able to control their own choices by the exercise of their own faculties, free from any arbitrary or otherwise unjustified interference. ² Capacity is, therefore, often described as the gatekeeper and agent for autonomy. The exercise of the right to self-determination and autonomy may, again, be so intimate to the specific individual or patient that it may never come to be appropriately exercised by another on the patient's behalf.

67. However, this is not to say that autonomy must always be viewed from this angle. We would be remiss not to acknowledge that, on the other side of the spectrum, there are views propounding that in situations where the patient themselves are unable to make a decision, autonomy morphs into 'relational autonomy' - it transforms from being an individualistic concept to a relational one. ³ Autonomy is relational owing to the fact that a person's decision-making is shaped by their environment and relationships, and therefore, family members or the next of kin can fill in when autonomy in its traditional understanding becomes vulnerable on account of the unconscious state of the patient.

68. Having duly acknowledged such perspectives on the right to privacy and self-determination and its rather complex relationship with non-voluntary passive euthanasia, we are nevertheless of the view that they don't muddy the waters insofar as the constitutional recognition of the right to die with dignity, through the withdrawal or withholding of medical treatment for incompetent patients, is concerned. This is because its permissibility can be fastened upon the standalone basis of dignity and bodily integrity as well, one that may not

necessarily closely intersect with the elements of privacy, autonomy and self-determination.

(i) 'Dignity' as the standalone basis for the recognition of nonvoluntary passive euthanasia.

69. Dignity is the most sacred possession of a human being. Its possession can neither be said to lose its sanctity in the process of death nor when death occurs. Across the four concurring opinions in Common Cause 2018 (supra), there is an absolute convergence on the view that the process of death must not be characterised with a continuum of cruel, degrading and inhuman treatment, especially when medical intervention is conferring no benefit to the patient and only exacerbating pain and suffering. This would go against the assurance of basic human dignity to all.

70. Temporarily keeping alive a terminally ill patient who is brain dead or in PVS, solely because doctors are able to leverage the technological advancements in medicine, and compelling such patients to endure a slow, agonising death, cannot fully be compatible with the constitutional ideal of dignity. There would arise a point of precipice where such prolonged medical treatment would stand as an affront to basic human dignity. Ascertaining when such a point of precipice has arisen for an unconscious/incompetent patient, i.e., where any further continuation of medical treatment comes with a serious risk of infringing dignity, is undoubtedly a complex task. This Court recognized the complicated nature of such decision-making and accordingly provided clear guidance for the same in Common Cause 2018 (supra).

71. The exercise of the right to die with dignity in the form of passive euthanasia for competent and incompetent patients, i.e., for voluntary and non-voluntary passive euthanasia, respectively, differs significantly. Unlike competent patients, whose right to refuse treatment is unencumbered and absolute, the path for incompetent patients is far more restricted and arduous.

It is hedged by strict procedural safeguards and, crucially, can only be initiated if specific threshold conditions are met. Once these threshold conditions are met, it could be said that the point of precipice, as referred to above, has been reached. Drawing from the opinions of Dipak Misra, CJI., and A.K. Sikri, J., this Court in Common Cause 2018 (supra) established that passive euthanasia for incompetent patients can only be entertained when the following three prerequisites/medical parameters are satisfied:

a) The patient must be diagnosed to be suffering from a medical ailment and be classified as either terminally ill, in a PVS, or like conditions;

b) The patient must be undergoing prolonged medical treatment with respect to the said ailment, indicating that the intervention has ceased to be temporary; and

c) The ailment must be irreversible, meaning:

i. the condition is incurable; or

ii. there is no hope of the patient being cured.

72. When the aforesaid threshold conditions/medical parameters are met, any medical intervention would prove to be futile and not afford any benefit to the patient. In such a situation, merely prolonging an inevitable death comes with the heavy cost of pain and suffering, which directly impacts the right to die with dignity. For incompetent patients who cannot directly express their wishes, it is at this stage that constitutional morality, underscored by dignity, must take over. This direct relationship between the prolonged administration of futile and invasive treatment that does not confer any benefit or which is sans any purpose to the patient, and the infringement of dignity, comes across from the opinions of Dipak Misra, CJ., Sikri, J., and Chandrachud, J., respectively, in Common Cause 2018 (supra) as follows:

(i). Dipak Misra, CJ., while discussing social morality, medical ethicality and the State interest under the constitutional backdrop, emphasised that withdrawal of treatment in an 'irreversible' situation or when life is ebbing out, must not give way to social morality or the doctor's dilemma about their Hippocratic Oath. "When prolongation is done sans purpose", the aforesaid considerations must not assume the forefront, but rather, it is the sustenance of dignity and self-respect of an individual, which is inherent in Article 21, that needs protection. Moreover, passive euthanasia, in such cases, essentially involves the prevention of unnecessary intrusion into the physical frame of a person in order to enable a smooth exit from life, one that is without pain, suffering and most importantly, indignity. The relevant observations are reproduced as thus:

"M. Social morality, medical ethicality and State interest

176. Having dwelt upon the issue of self-determination, we may presently delve into three aspects, namely, social morality, medical ethicality and the State interest. The aforesaid concepts have to be addressed in the constitutional backdrop. We may clearly note that the society at large may feel that a patient should be treated till he breathes his last breath and the treating physicians may feel that they are bound by their Hippocratic oath which requires them to provide treatment and save life and not to put an end to life by not treating the patient.

The members of the family may remain in a constant state of hesitation being apprehensive of many a social factor which include immediate claim of inheritance, social stigma and, sometimes, the individual guilt. The Hippocratic oath taken by a doctor may make him feel that there has been a failure on his part and sometimes also make him feel scared of various laws. There can be allegations against him for negligence or criminal culpability.

177. In this regard, two aspects are to be borne in mind. First, withdrawal of treatment in an irreversible situation is different from not treating or attending to a patient and second, once passive euthanasia is recognised in law regard being had to the right to die with dignity when life is ebbing out and when the prolongation is done sans purpose, neither the social morality nor the doctors' dilemma or fear will have any place.

It is because the sustenance of dignity and self-respect of an individual is inhered in the right of an individual pertaining to life and liberty and there is necessity for this protection. And once the said right comes within the shelter of Article 21 of the Constitution, the social perception and the apprehension of the physician or treating doctor regarding facing litigation should be treated as secondary because the primacy of the right of an individual in this regard has to be kept on a high pedestal.

178. It is to be borne in mind that passive euthanasia fundamentally connotes absence of any overt act either by the patient or by the doctors. It also does not involve any kind of overt act on the part of the family members. It is avoidance of unnecessary intrusion in the physical frame of a person, for the inaction is meant for smooth exit from life. It is paramount for an individual to protect his dignity as an inseparable part of the right to life which engulfs the dignified process of dying sans pain, sans suffering and, most importantly, sans indignity.

179. There are philosophers, thinkers and also scientists who feel that life is not confined to the physical frame and biological characteristics. But there is no denial of the fact that life in its connotative expanse intends to search for its meaning and find the solution of the riddle of existence for which some lean on atheism and some vouchsafe for faith and yet some stand by the ideas of an agnostic. However, the legal fulcrum has to be how Article 21 of the Constitution is understood. If a man is allowed to or, for that matter, forced to undergo pain, suffering and state of indignity because of unwarranted medical support, the meaning of dignity is lost and the search for meaning of life is in vain."

(Emphasis Supplied)

(ii). A.K. Sikri, J., while discussing the "morality of euthanasia" underscored that euthanasia is one such issue where law cannot be divorced from morality. Viewed from this lens, he proposes that the "sanctity of life" principle might not strictly require that life be preserved "at all costs". The principle only requires that there should not be a deliberate destruction of human life. Therefore, when a certain brink is reached, withdrawal of life-prolonging treatment might very well be in consonance with the preservation of the sanctity of life in its fullest form. He opines that the right to life with dignity subsumes within itself the right to die a natural death and therefore, would permit the withdrawal of prolonged treatment which has no curative effect. The relevant observations are reproduced as thus:

"263. Influenced primarily by the aforesaid considerations, I deem it relevant to indulge into discussion on morality.

266. The moral dilemma is that it projects both the sides-protracted as well as intractable. On the one hand, it is argued by those who are the proponents of a liberal view that a right to life must include a concomitant right to choose when the life becomes unbearable and not so worth living, when such a stage comes and the sufferer feels that that the life has become useless, he should have right to die. Opponents, on the other hand, project "Sanctity of Life" (SOL) as the most important factor and argue that this "SOL" principle is violated by self-styled angles of death. Protagonists on "SOL" principle believe that life should be preserved at all costs and the least which is expected is that there should not be a deliberate destruction of human life, though it does not demand that life should always be prolonged as long as possible.

267. It might therefore be argued, as Emily Jackson (2008) cogently does, that the law's recognition that withdrawal of life-prolonging treatment is sometimes legitimate is not so much an exception to the SOL principle, as an embodiment of it.

268. In the most secular judicial interpretation of the SOL doctrine yet, Denman, J. of UKHL explicated thus:

"in respect a person's death, we are also respecting their life - giving it sanctity A view that life must be preserved at all costs does not sanctify life., to care for the dying, to love and cherish them, and to free them from suffering rather than simply to postpone death is to have fundamental respect for the sanctity of life and its end."

269. Hence, as the process of dying is an inevitable consequence of life, the right to life necessarily implies the right to have nature take its course and to die a natural death. It also encompasses a right, unless the individual so wishes,

not to have life artificially maintained by the provision of nourishment by abnormal artificial means which have no curative effect and which are intended merely to prolong life.

310. Taking into consideration the conceptual aspects of dignity and the manner in which it has been judicially adopted by various judgments, the following elements of dignity can be highlighted (in the context of death with dignity):

310.5. Dignity may be compromised if the dying process is prolonged and involves becoming incapacitated and dependent;

310.6. Respect for human dignity means respecting the intrinsic value of human life;

310.7. Avoidance of dependency;

310.8. Indefinite continuation of futile physical life is regarded as undignified;

311. Once we examine the matter in the aforesaid perspective, the inevitable conclusion would be that passive euthanasia and death with dignity are inextricably linked, which can be summed up with the following pointers:

311.3. A dreadful, painful death on a rational but incapacitated terminally-ill patient are an affront to human dignity."

(Emphasis Supplied)

(iii). D.Y. Chandrachud, J., also echoes the view taken by A.K. Sikri, J., insofar as the interpretation of the "Sanctity of Life" principle is concerned, and elaborates that the said principle does not require that life always be prolonged for as long as possible. He also dissuades the adoption of an absolutist interpretation of Sanctity of Life and states that a dignified existence is the cornerstone that sanctifies life. When medical treatment can do nothing to restore those in a PVS to a state of health, it would largely be futile. The growth of modern medicine has found innovative ways to delay death and prolong mere biological existence during the act of dying. However, in his opinion, when the same medical knowledge indicates a point of no return, endlessly continuing artificial medical support would only protract indignity. The relevant observations are thus:

"413. Though the sanctity principle prohibits "the deliberate destruction of human life, it does not demand that life should always be prolonged for as long as possible". While providing for an intrinsic sacred value to life "irrespective of the person's capacity to enjoy life and notwithstanding that a person may

feel their life to be a great burden", the principle holds that "life should not always be maintained at any and all cost". Ethical proponents of the sanctity of life tend to agree that when "medical treatment, such as ventilation and probably also antibiotics, can do nothing to restore those in permanent vegetative state to a state of health and well-functioning, it is futile and need not be provided". Rao has thus suggested that "the law's recognition that withdrawal of life-prolonging treatment is sometimes legitimate" is not generally an exception to the sanctity principle, but is actually "an embodiment of it".

423. Modern medicine has found ways to prolong life and to delay death. But, it does not imply that modern medicine "necessarily prolongs our living a full and robust life because in some cases it serves only to prolong mere biological existence during the act of dying". This may, in certain situations result in a mere "prolongation of a heartbeat that activates the husk of a mindless, degenerating body that sustains an unknowing and pitiable life-one without vitality, health or any opportunity for normal existence-an inevitable stage in the process of dying". Prolonging life in a vegetative state by artificial means or allowing pain and suffering in a terminal state would lead to questioning the belief that any kind of life is so sanctified as to be preferred absolutely over death.

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."

(Emphasis Supplied)

73. When the degree of bodily invasion progressively increases, and the prognosis for recovery progressively decreases, there arises a certain point when the State's absolute interest in preserving life must become subservient to the dignity of the said individual, though he is unconscious or incompetent. The State's interest must not be allowed to overpower the dignity which must be equally assured to all individuals in the process of life and in the process of death. To obviate any confusion, we must clarify that there is no real conflict between the patient's right to dignity and the State's interest from the get-go when the patient is subjected to medical treatment.

This is because it is initially administered with a view to confer some benefit to the patient and to secure or safeguard his right to life with dignity. It is only post the fulfilment of the aforesaid threshold prerequisites/medical parameters that this conflict becomes apparent, particularly with reference to unconscious or incompetent patients who are unable to exercise any choice in the matter. That the vigour of the State interest is diluted in such a situation has also been expounded by Dipak Misra, CJ., in his opinion as follows:

"O. Submissions of Intervenor (Society for the Right to Die with Dignity)

182. It is his submission that in the modern State, the State interest should not overweigh the individual interest in the sphere of a desire to die a peaceful death which basically conveys refusal of treatment when the condition of the individual suffering from a disease is irreversible. The freedom of choice in this sphere, as Mr Mohta would put it, serves the cause of humanitarian approach which is not the process to put an end to life by taking a positive action but to allow a dying patient to die peaceably instead of prolonging the process of dying without purpose that creates a dent in his dignity.

183. The aforesaid argument, we have no hesitation to say, has force. It is so because it is in accord with the constitutional precept and fosters the cherished value of dignity of an individual. It saves a helpless person from uncalled for and unnecessary treatment when he is considered as merely a creature whose breath is felt or measured because of advanced medical technology. His "being" exclusively rests on the mercy of the technology which can prolong the condition for some period. The said prolongation is definitely not in his interest. On the contrary, it tantamounts to destruction of his dignity which is the core value of life. In our considered opinion, in such a situation, an individual interest has to be given priority over the State interest."

(Emphasis Supplied)

74. In the aforesaid excerpt, it may seem as though the view that State interest must not outweigh individual interest, is specific to a context wherein the individual himself has expressed his desire to die a peaceful death through the refusal of further invasive treatment when the condition is irreversible. However, that would be a rather restrictive outlook that ignores the depth of what was sought to be conveyed by Dipak Misra, CJ.

We say so because whether the affliction of the patient is reversible or not would be a hurdle for a conscious patient who has expressed a desire to withdraw or withhold medical treatment. Competent individuals have an unconditional right to refuse medical treatment, and this has been particularly emphasised in the opinion of D.Y. Chandrachud, J., as we had already

previously stated. It is under such circumstances that we are of the view that the aforesaid inverse relationship between state interest and withdrawal of withholding of medical treatment must necessarily be understood in the context of incompetent patients as well.

75. A sceptic might further argue that, because incompetent patients are themselves unable to convey their decision on whether medical treatment must be continued or withheld/withdrawn, a 'choice' is being made for them by external individuals who have thought it fit to calculate the subjective worth of the patient's life. However, such an argument would itself be built on shaky foundation as it conveniently ignores the reality that the commencement of any medical intervention already begins with a 'choice'. More often than not, this initial 'choice' to intervene commences with validation i.e., through the informed consent expressed by the patient himself. If the 'choice' to 'treat', by any chance, is not set in motion with such consent, it begins with necessity - the necessity to restore the patient to health that combines itself with the Hippocratic Oath that doctors always bind themselves to.

76. However, a crucial question that then arises is, how long can we keep such medical intervention ongoing? Especially when the grounding of the medical intervention in necessity slowly begins to fade away, owing to it being sans any purpose? Even if the consent to intervene was initially expressed by the patient himself, the issue still remains complex because one cannot endlessly assume continuous consent despite the circumstances of the patient undergoing myriad changes during the period of unconsciousness. Assuming the existence of such a continuous and endless consent would be problematic for several obvious reasons.

77. In such circumstances, continuing medical treatment or withholding/withdrawing the same would both necessarily include a 'choice'. Any averment that only its discontinuation would involve a moral, legal and ethical dilemma and its continuation would not, is seriously misplaced. This aspect has been very pithily captured by the following observations made by Hoffmann L.J. in the Court of Appeals decision of Airedale (supra):

"Does this mean that people who have not expressed their wishes in advance and are now incapable of expression must lose all right to have treatment discontinued and that those caring for them are in every case under a corresponding duty to keep them alive as long as medical science will allow? Counsel for the Official Solicitor said that this was so. If they have not chosen, the court has no right to choose on their behalf. I think that the fallacy in this argument is that choice cannot be avoided. To continue treatment is as much a choice as to discontinue it.

Why is it not an act of choice to decide to continue to invade the privacy of Anthony Bland's body with tubes, catheters, probes and injections? If on account of his unconsciousness he is obliged to submit to such treatment, one cannot say that it is because the court is refusing to choose on his behalf. One way or the other, a choice is being made. It is only if one thinks it natural and normal to want treatment that continuing to provide it seems not so much a choice as a given state of affairs.

And of course in most cases this would be true. In a case in which it was being said that a person should not be given treatment which would avoid death and restore him to full health, one would want to know that this was his personal choice and that it had been expressed very clearly indeed. But Anthony Bland's is not a normal case. The continuation of artificial sustenance and medical treatment will keep him alive but will not restore him to having a life in any sense at all.

In my view the choice which the law makes must reassure people that the courts do have full respect for life, but that they do not pursue the principle to the point at which it has become almost empty of any real content and when it involves the sacrifice of other important values such as human dignity and freedom of choice. I think that such reassurance can be provided by a decision, properly explained, to allow Anthony Bland to die. It does not involve, as counsel for the Official Solicitor suggested, a decision that he may die because the court thinks that his "life is not worth living."

(Emphasis Supplied)

78. Hoffmann L.J. was addressing a dilemma that preoccupied the minds of this Court in *Common Cause 2018* (supra) as well - when patients have not expressed their wishes in advance, either expressly through their informed consent during the commencement of the medical intervention or by executing an AMD, and have been subsequently rendered unconscious, whether they must always succumb to the choice of continuing treatment rather than the choice of bringing it to a halt?

This was answered with an emphatic 'No', by highlighting that one cannot escape the reality of the fact that there resides a choice in every action or omission that is made in relation to the patient, and that the same is true also as regards the unending continuation of medical treatment. Therefore, when we are confronted with the truth that both continuation and withdrawal of treatment are based on a 'choice', the duty of the court and the doctors alike, must be to ensure that the scales tilt in favour of safeguarding the full respect for life and its avowed values of human dignity.

(ii) Unconscious or incompetent patients and their right to bodily integrity.

79. This 'choice' which has preoccupied our aforesaid discussion can be looked at in relation to the concept of bodily integrity as well. Before proceeding any further, it has to be clarified that bodily integrity and bodily autonomy have a notable yet nuanced conceptual difference. It may not be appropriate for us to equate them to mean one and the same, under all circumstances. We understand 'bodily integrity' as a right that exists with a separate identity.

It serves as one of the foundational bases upon which the idea of 'bodily autonomy' rests. In other words, it is because one enjoys the right to bodily integrity (amongst other personal rights), that they are able to exercise the right to bodily autonomy. Now, why is it important for us to highlight any distinction that may exist between them? Once it is established that the right to bodily integrity is neither a mere sub-set of autonomy nor its mirror reflection, we may be able to strongly cement that its strength is not diluted for unconscious or incompetent patients.

80. The most common definition of bodily integrity is the "right to be free from physical interference"⁴. Jonathan Herring argues that the right to bodily integrity provides for the exclusive use and control over our own bodies on the basis that our bodies are the "site" and "location" of where our subjectivity engages with the world.⁵ Therefore, the right carries with it, the concomitant right to exclude all others from the body. If there existed no right to bodily integrity and no right to exclude, then any right to either invite or deny would lose its value.⁶ Bodily autonomy, on the other hand, protects a person's capacity to make his or her own decisions in relation to his or her body.

Therefore, when there is an infringement upon the bodily integrity of another, the same would amount to a disrespect that is broader than the disrespect for the person's capacity to live life according to their own reasons, motivations and terms. Bodily integrity reflects a focus on the welfare, well-being and respect for one's personhood rather than a myopic focus on his rational decision-making capacity. Such a right carries with it strict duties of non-interference against an open set of persons and makes any infringement actionable.

81. We also wish to elucidate the existence of the aforesaid conceptual difference between bodily autonomy and bodily integrity through certain observations made by A.K. Sikri, J. and Ashok Bhushan J., respectively. The relevant observations are reproduced as follows:

A.K. Sikri, J.,

"315. I had indicated at the earlier stage that Hippocratic Oath, coupled with ethical norms of medical profession, stand in the way of euthanasia. It brings about a situation of dilemma insofar as medical practitioner is concerned. On the one hand his duty is to save the life of a person till he is alive, even when the patient is terminally ill and there are no chances of revival. On the other hand, the concept of dignity and right to bodily integrity, which recognises legal right of autonomy and choice to the patient (or even to his relations in certain circumstances, particularly when the patient is unconscious or incapacitated to take a decision) may lead to exercising his right of euthanasia.

316. Dignity implies, apart from a right to life enjoyment of right to be free of physical interference. At common law, any physical interference with a person is, prima facie, tortious. If it interferes with freedom of movement, it may constitute a false imprisonment. If it involves physical touching, it may constitute a battery. If it puts a person in fear of violence, it may amount to an assault. For any of these wrongs, the victim may be able to obtain damages.

317. When it comes to medical treatment, even there the general common law principle is that any medical treatment constitutes a trespass to the person which must be justified, by reference either to the patient's consent or to the necessity of saving life in circumstances where the patient is unable to decide whether or not to consent Ashok Bhushan, J.,

"611. The rights of bodily integrity and self-determination are the rights which belong to every human being. When an adult person having mental capacity to take a decision can exercise his right not to take treatment or withdraw from treatment, the above right cannot be negated for a person who is not able to take an informed decision due to terminal illness or being in a persistent vegetative state (PVS). The question is who is competent to take decision in case of terminally ill or PVS patient, who is not able to take decision.

In case of a person who is suffering from a disease and is taking medical treatment, there are three stakeholders; the person himself, his family members and doctor treating the patient. The American Courts give recognition to opinion of "surrogate" where person is incompetent to take a decision. No person can take decision regarding life of another unless he is entitled to take such decision authorised under any law. The English Courts have applied the "best interests" test in case of an incompetent person. The best interests of the patient have to be found out not by doctor treating the patient alone but a team of doctors specifically nominated by the State Authority."

(Emphasis Supplied)

82. Firstly, A.K. Sikri, J., identifies that it is the concept of dignity and the right to bodily integrity, which in turn recognises the legal right of autonomy and choice afforded to the patient. Therefore, he aptly places the right to bodily integrity at a core and higher conceptual standing instead of viewing it as a subset of autonomy. Recognising this hierarchical relationship, he then alludes to the idea that, despite unconscious or incapacitated patients being unable to exercise their choice, they may still secure their right to bodily integrity through their relations/kin. This reinforces the broader normative basis that we have assigned to bodily integrity - one that is not necessarily to be conflated with bodily autonomy or the individual's choice. He echoes that everyone enjoys the right to be free from physical interference and that in common law, any infringement is tortious.

83. Secondly, Ashok Bhushan, J., while stating that the rights of bodily integrity and self-determination belong to every human being, also does not commingle the two. He carries forward the same idea propounded by A.K. Sikri, J., that the option not to take treatment or withdraw from treatment, which would thereby secure bodily integrity, cannot be made unavailable for a patient who is in a PVS state. It is in this regard that he identifies three key stakeholders in the process - the patient himself, his family members and the doctor treating the patient. Therefore, when a patient is incompetent, it would be the remaining stakeholders who would be assigned the responsibility to safeguard the bodily integrity of the patient from a well-being point of view.

84. It is to ensure that the other stakeholders conscientiously safeguard the dignity and right to bodily integrity of the patient that the "best interest" standard has been jurisprudentially developed, especially to answer legal issues surrounding non-voluntary passive euthanasia. This doctrine or standard would bind both the remaining stakeholders as identified by Ashok Bhushan, J., i.e., the family/kin and the treating doctors, respectively. This is precisely why they both play a key role in the procedure laid down by Common Cause 2018 (supra) in the process of determining whether the medical treatment must be withheld or withdrawn. We have briefly contextualised the 'best interest' doctrine here but have deemed it appropriate to discuss the same separately under another section to afford the doctrine the detailed discussion that it deserves.

(iii) 'Authorized omission' in consonance with the duty of care of doctors

85. Despite the constitutional permissibility of passive euthanasia under Article 21, the fear of criminal liability creates a hurdle in its rightful exercise and implementation. The looming threat that a doctor could be charged with a crime for withdrawing life support creates a chilling effect. Physicians, wary of prosecution, may hesitate to withhold futile treatment, even when continuing it

prolongs the patient's suffering and indignity. Such an environment risks relegating the rights and dignity of incompetent patients to the background in favour of legal wariness.

This Court in *Common Cause 2018* (supra), while addressing this issue, explicitly ruled that when treatment is withdrawn or withheld in strict adherence to the prescribed procedural safeguards, no criminal liability could be attached to the physician. While this Court explored various legal justifications for this immunity, including the lack of intent and causation, we are of the considered opinion that the most robust defence lies in the absence of an 'illegal omission', as once the same is established, the doctor cannot be held liable, rendering further inquiries into intent or causation unnecessary.

The observation made by Dipak Misra, CJ., that such a withdrawal or withholding either comes within the protection of informed consent (in cases of voluntary passive euthanasia) or "authorised omission" (in cases of non-voluntary passive euthanasia) respectively, and hence, no criminal liability can be attached, captures this perfectly. The same is reproduced thus:

"166. The authorities, we have noted from other jurisdictions, have observed the distinctions between the administration of lethal injection or certain medicines to cause painless death and non-administration of certain treatment which can prolong the life in cases where the process of dying that has commenced is not reversible or withdrawal of the treatment that has been given to the patient because of the absolute absence of possibility of saving the life. To explicate, the first part relates to an overt act whereas the second one would come within the sphere of informed consent and authorised omission. The omission of such a nature will not invite any criminal liability if such action is guided by certain safeguards."

(Emphasis Supplied)

86. It is true that under the Indian penal law, the definition of an 'act' encompasses illegal omissions. Further, it is fairly well established that the fiduciary relationship between a doctor and a patient generally imposes a duty of care on the doctor to preserve life. Consequently, a failure to treat would, in normal circumstances, constitute a breach of this duty, thereby inviting liability. However, this duty does not translate into a mandate to artificially prolong life ad infinitum or to avert death at all costs. It is recognised that 'to be is to die' and that death is the inevitable conclusion of existence.

In such circumstances, it would be legally and logically unreasonable to impose upon doctors a duty to perpetually prevent the unpreventable. Therefore, the scope of this duty of care shifts shape when a patient meets the

threshold conditions/medical parameters previously discussed, i.e., when they are terminally ill or in a PVS, undergoing prolonged medical treatment with no hope of cure.

In such scenarios, where continued intervention ceases to be 'treatment' and becomes merely a mechanism for prolonging physical life, causing harm to the patient's dignity, the duty to avert death ceases to exist. Simply put, in such cases, if the doctor withdraws or withholds treatment in accordance with the prescribed procedure, then such omission to treat will not constitute a breach of their duty of care. It, in fact, becomes the truest manifestation of the duty of care. Consequently, the act of withdrawing or withholding medical treatment, in such scenarios, will not be held to be an 'illegal omission'.

87. D.Y. Chandrachud. J., in his concurring opinion in Common Cause 2018 (supra), stated that the treatment of the human body involves a "continuous association" between the caregiver and the receiver. He further stated that the expert caregiver is involved in a continuous process where medical knowledge, the condition of the patient, and the relevant circumstances, require them to constantly evaluate choices, i.e., choices on the nature and extent of medical intervention, the wisdom regarding a course of action, and about what should or should not be done. This perspective was also expressed by Sir Thomas in Airedale (supra), wherein he held that what is involved is not just medical treatment, but medical treatment in accordance with the doctor's best judgment as to what is in the patient's best interests. Dr. Atul Gawande, in his acclaimed book, Being Mortal, brings to the fore this point in a beautiful manner:

"If to be human is to be limited, then the role of caring professions and institutions-from surgeons to nursing homes-ought to be aiding people in their struggle with those limits. Sometimes we can offer a cure, sometimes only a salve, sometimes not even that. But whatever we can offer, our interventions, and the risks and sacrifices they entail, are justified only if they serve the large aims of a person's life. When we forget that, the suffering we inflict can be barbaric. When we remember it, the good we do can be breathtaking."

88. Thus, when a doctor, on the basis of the best interests of their patient and in accordance with the procedural safeguards prescribed under Common Cause 2018 (supra), withholds or withdraws medical treatment, it can very well be termed as a step taken in furtherance of their duty of care, not in contradiction to it. In fact, the procedural safeguards prescribed in Common Cause 2018 (supra), especially the establishment of two independent medical boards, were intended to ensure that any act taken in accordance with that procedure would best take care of two things simultaneously - ensure that patient interests are kept at the forefront and also that the doctors are not exposed to any liability.

89. It could be argued that, in essence, withdrawing support places the patient back into the "zone of danger" from which they were initially rescued. Does this not constitute a breach of the duty of care? By exposing the patient to the potential pain and agony associated with the removal of life support, such as a ventilator or feeding tube, are we not contradicting the very principles of dignity that support passive euthanasia in the first place?

To answer this, it is important to understand passive euthanasia as a termination of a 'rescue operation' and not as the 'abandonment' of a patient. As noted above, the duty of care does not cease. It merely shifts from curative treatment to palliative care. In cases where medical treatment is withdrawn or withheld, the doctor's duty entails providing robust palliative care (as discussed in further detail in the later parts of this judgment) and ensuring that the act of withdrawal does not result in a situation in which the patient's dignity is further compromised.

III. Impermissibility of Active Euthanasia under Article 21 of the Constitution of India

90. One of the many aspects that have been highlighted by us in the preceding paragraphs is the concurrence in the opinions of A.K. Sikri, J., and Chandrachud, J., that the right to a dignified death cannot be said to be at loggerheads with the conception of sanctity of life. If one accepts the nuanced interpretation where the quality of life breathes meaning into the sanctity of life, a natural corollary might suggest that active euthanasia should also be permissible.

Indeed, in their respective opinions, both A.K. Sikri, J., and Chandrachud, J., have themselves acknowledged the existence of a body of scholarship arguing that, on moral grounds, the distinction between active and passive euthanasia is tenuous, and that, if any difference exists, it is purely a matter of policy. However, the Court noted that its role was not to test the touchstone of morality, but to apply the yardstick of constitutional principles inherent in Article 21. Consequently, while the moral divide between the two may be blurred for philosophers, for the Bench in *Common Cause 2018* (supra), the constitutional divide remained clear.

91. To understand the basis for the constitutional divide between active and passive euthanasia, it is apposite to look at the observations made by this Court in *Common Cause 2018* (supra), which are as follows:

Dipak Misra, C.J.,

"165. In the context of the issue under consideration, we must make it clear that as part of the right to die with dignity in case of a dying man who is

terminally ill or in a persistent vegetative state, only passive euthanasia would come within the ambit of Article 21 and not the one which would fall within the description of active euthanasia in which positive steps are taken either by the treating physician or some other person. That is because the right to die with dignity is an intrinsic facet of Article 21."

Dr. A.K. Sikri, J.,

"220. Thus, insofar as active euthanasia is concerned, this has to be treated as legally impermissible, at least for the time being. It is more so, as there is absence of any statutory law permitting active euthanasia. If at all, legal provisions in the form of Sections 306 and 307 IPC, etc. point towards its criminality."

Dr. D.Y. Chandrachud, J.,

"398. Voluntary passive euthanasia, where death results from selective non-treatment because consent is withheld, is therefore legally permissible while voluntary active euthanasia is prohibited. Moreover, passive euthanasia is conceived with a purpose of not prolonging the life of the patient by artificial medical intervention. Both in the case of a withdrawal of artificial support as well as in non-intervention, passive euthanasia allows for life to ebb away and to end in the natural course. In contrast, active euthanasia results in the consequence of shortening life by a positive act of medical intervention. It is perhaps this distinction which necessitates legislative authorisation for active euthanasia, as differentiated from the passive.

450. While noticing this criticism, it is necessary to distinguish between active and passive euthanasia in terms of the underlying constitutional principles as well as in relation to the exercise of judicial power. Passive euthanasia-whether in the form of withholding or withdrawing treatment-has the effect of removing, or as the case may be, not providing supportive treatment. Its effect is to allow the individual to continue to exist until the end of the natural span of life.

On the other hand, active euthanasia involves hastening of death: the lifespan of the individual is curtailed by a specific act designed to bring an end to life. Active euthanasia would on the state of the penal law as it stands constitute an offence. Hence, it is only Parliament which can in its legislative wisdom decide whether active euthanasia should be permitted. Passive euthanasia on the other hand would not implicate a criminal offence since the decision to withhold or withdraw artificial life support after taking into account the best interest of the patient would not constitute an illegal omission prohibited by law.

451. Moreover, it is necessary to make a distinction between active and passive euthanasia in terms of the incidents of judicial power. "Parliament was and is entitled to decide that the clarity of such a moral position could only be achieved by means of such a rule. Although views about this vary in society, we think that the legitimacy of Parliament deciding to maintain such a clear line that people should not seek to intervene to hasten the death of a human is not open to serious doubt.

Parliament is entitled to make the assessment that it should protect moral standards in society by issuing clear and unambiguous laws which reflect and embody such standards." In taking the view which has been taken in the present judgment, the Court has been conscious of the need to preserve to Parliament, the area which properly belongs to its legislative authority. Our view must hence be informed by the impact of existing legislation on the field of debate in the present case."

Ashok Bhushan, J.,

"606. Withdrawal of life-saving devices, leads to natural death which is arrested for the time being due to above device and the act of withdrawal put the life on the natural track. Decision to withdraw life-saving devices is not an act to cause good death of the person rather, decision to withdraw or not to initiate life-supporting measures is a decision when treatment becomes futile and unnecessary. Practice of euthanasia in this country is prohibited and for medical practitioners it is already ordained to be unethical conduct."

(Emphasis Supplied)

92. A close scrutiny of the above-quoted paragraphs reveals that the Court's distinction between active and passive euthanasia in Common Cause (supra) was based on the constitutional principles underlying Article 21. This Court reasoned that active euthanasia involves a positive, overt act which is designed to curtail the natural lifespan and extinguish life. Under the mandate of Article 21, no person can be deprived of their life except in accordance with a procedure established by law. Consequently, for active euthanasia to be legally permissible, there must be an explicit legislative enactment authorizing such deprivation.

The Bench noted the absence of such a statute and observed that active euthanasia in such circumstances would constitute a penal offence under the existing laws of our country. Further, this Court held that it is Parliament's call to decide whether active euthanasia should be allowed, as it is the proper forum to address such fundamentally contentious moral issues, and the Court cannot usurp powers properly belonging to the legislature. In stark contrast to active

euthanasia, the legal permissibility of passive euthanasia rests on a fundamentally different premise.

IV. Establishing the Permissibility of Advanced Medical Directives

93. Beyond establishing the constitutional permissibility of passive euthanasia, this Court in Common Cause 2018 (supra) also validated the legal status of AMDs. This Court held that these instruments are not void or legally unenforceable but are, in fact, a permissible exercise of rights under the Constitution of India. However, before delving into the Court's rationale for establishing their validity, it is essential to clarify what the Bench understood by the term 'Advanced Medical Directive' or 'Advanced Directive'.

A review of the concurring opinions reveal convergence on the view that an AMD is a mechanism that effectively bridges the gap between present competence and future incapacity. It is characterised as a document executed by a person while they are still in possession of their mental faculties and decision-making capacity, specifying their instructions regarding medical treatment or appointment of a trusted surrogate to make medical decisions on their behalf, upon the occurrence of a specific future event, and them being unable to communicate their wishes. The relevant observations made by this Court are as follows:

Dipak Misra, CJ.

"185. Advance Directives for healthcare go by various names in different countries though the objective by and large is the same, that is, to specify an individual's healthcare decisions and to identify persons who will take those decisions for the said individual in the event he is unable to communicate his wishes to the doctor.

186. Black's Law Dictionary defines an Advance Medical Directive as, "a legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate". A living will, on the other hand, is a document prescribing a person's wishes regarding the medical treatment the person would want if he was unable to share his wishes with the healthcare provider.

187. Another type of Advance Medical Directive is medical power of attorney. It is a document which allows an individual (principal) to appoint a trusted person (agent) to take healthcare decisions when the principal is not able to take such decisions. The agent appointed to deal with such issues can interpret the principal's decisions based on their mutual knowledge and understanding.

Dr. A.K. Sikri, J.

"335. Advance Directives are instruments through which persons express their wishes at a prior point in time, when they are capable of making an informed decision, regarding their medical treatment in the future, when they are not in a position to make an informed decision, by reason of being unconscious or in a PVS or in a coma. A medical power of attorney is an instrument through which persons nominate representatives to make decisions regarding their medical treatment at a point in time when the persons executing the instrument are unable to make informed decisions themselves."

Dr. D.Y. Chandrachud, J.

"471. Broadly, there are two forms of Advance Directives:

(i) A Living Will which indicates a person's views and wishes regarding medical treatment.

(ii) A Durable Power of Attorney for Health Care or healthcare proxy which authorises a surrogate decisionmaker to make medical care decisions for the patient in the event she or he is incapacitated.

Although there can be an overlap between these two forms of Advance Directives, the focus of a durable power is on who makes the decision while the focus of a living will is on what the decision should be. A "living will" has also been referred to as "a declaration determining the termination of life", "testament permitting death", "declaration for bodily autonomy", "declaration for ending treatment", "body trust", or other similar reference. Living wills are not a new entity and were first suggested by US attorney, Luis Kutner, in late 1960s.

472. Advance Directives have evolved conceptually to deal with cases where a patient who subsequently faces a loss of the mental faculty to decide has left instructions, when he or she was possessed of decision-making capacity, on how future medical decisions should be made."

(Emphasis Supplied)

94. In *Common Cause* 2018 (supra), this Court held that AMDs are legal and valid instruments, as they facilitate the exercise of the right to die with dignity, specifically for patients who have lost their decision-making capacity. The reasoning was that if a competent patient has the right to make decisions regarding medical treatment, then, as a natural corollary, even incompetent patients should be entitled to the same right. However, due to their lack of decision-making capacity, a precarious situation may arise. It is this very gap that AMDs seek to bridge.

95. In effect, an AMD is an instrument that allows a decision regarding medical treatment to be made in advance, on the notion that if the situation prescribed therein arises at a later time when the patient is incompetent, the decision will be enforced. The justification is that if competent patients have the right to refuse treatment now, they would also have the right to refuse treatment that might be imposed on them even in the future.

In other words, if a decision on whether or not to receive medical treatment is valid for the present, such a decision must be equally valid when it is intended to operate in the future. Thus, the notions of patient autonomy and consent played an instrumental role in the Court's recognition of AMDs as valid under the law. In fact, the Constitution Bench was unequivocal in stating that, in cases where there is a valid AMD, the right of self-determination, rooted in autonomy and consent, trumps notions of sanctity of life. The relevant observations made by the Court in this regard are as follows:

Dipak Misra, CJ.

"198. In our considered opinion, Advance Medical Directive would serve as a fruitful means to facilitate the fructification of the sacrosanct right to life with dignity. The said directive, we think, will dispel many a doubt at the relevant time of need during the course of treatment of the patient. That apart, it will strengthen the mind of the treating doctors as they will be in a position to ensure, after being satisfied, that they are acting in a lawful manner.

202.11. A failure to legally recognise Advance Medical Directives may amount to non-facilitation of the right to smoothen the dying process and the right to live with dignity.

202.12. Though the sanctity of life has to be kept on the high pedestal yet in cases of terminally ill persons or PVS patients where there is no hope for revival, priority shall be given to the Advance Directive and the right of self-determination."

Dr. A.K. Sikri, J.

333. I am also of the view that such an advance authority is akin to well-recognised common law right to refuse medical treatment.

Dr. D.Y. Chandrachud, J.

"473. The principles of patient autonomy and consent are the foundation of Advance Medical Directives. A competent and consenting adult is entitled to refuse medical treatment. By the same postulate, a decision by a competent adult will be valid in respect of medical treatment in future.

476. The reason for recognising an Advance Directive is based on individual autonomy. As an autonomous person, every individual has a constitutionally recognised right to refuse medical treatment. The right not to accept medical treatment is essential to liberty. Medical treatment cannot be thrust upon an individual, however, it may have been conceived in the interest of the individual. The reasons which may lead a person in a sound state of mind to refuse medical treatment are inscrutable.

Those decisions are not subject to scrutiny and have to be respected by the law as an essential attribute of the right of the individual to have control over the body. The State cannot compel an unwilling individual to receive medical treatment. While an individual cannot compel a medical professional to provide a particular treatment (this being in the realm of professional medical judgment), it is equally true that the individual cannot be compelled to undergo medical intervention. The principle of sanctity of life thus recognises the fundamental liberty of every person to control his or her body and as its incident, to decline medical treatment.

The ability to take such a decision is an essential element of the privacy of the being. Privacy also ensures that a decision as personal as whether or not to accept medical treatment lies exclusively with the individual as an autonomous being. The reasons which impel an individual to do so are part of the privacy of the individual. The mental processes which lead to decisionmaking are equally part of the constitutionally protected right to privacy.

477. Advance Directives are founded on the principle that an individual whose state of mind is not clouded by an affliction which prevents him or her from taking decisions is entitled to decide whether to accept or not accept medical intervention. If a decision can be made for the present, when the individual is in a sound state of mind, such a person should be allowed to decide the course of action which should be followed in the future if he or she were to be in a situation which affects the ability to take decisions.

If a decision on whether or not to receive medical treatment is valid for the present such a decision must be equally valid when it is intended to operate in the future. Advance Directives are, in other words, grounded in a recognition by the law of the importance of consent as an essential attribute of personal liberty. It is the consensual nature of the act underlying the Advance Directive which imparts sanctity to it in future in the same manner as a decision in the present on whether or not to accept medical treatment.

Ashok Bhushan, J.

"617. The foundation for seeking direction regarding Advance Medical Directive is extension of the right to refuse medical treatment and the right to die with dignity. When a competent patient has right to take a decision regarding medical treatment, with regard to medical procedure entailing right to die with dignity, the said right cannot be denied to those patients, who have become incompetent to take an informed decision at the relevant time. The concept of Advance Medical Directive has gained ground to give effect to the rights of those patients, who at a particular time are not able to take an informed decision."

(Emphasis Supplied)

96. While recognising AMDs as valid legal instruments, the Constitution Bench was cognisant that their enforcement could give rise to misuse. Chandrachud, J., in his concurring opinion, went a step further, acknowledging the limitations of such AMDs and the challenges that may arise in implementing them. It is in this context that he made the following observations:

"485. Human experience suggests that there is a chasm of imponderables which divide the present from the future. Such a divide may have a bearing on whether and if so, the extent to which an Advance Directive should bind in the future. As stated above, the sanctity of an Advance Directive is founded upon the expression of the will of an individual who is in a sound state of mind when the directive is executed. Underlying the consensual character of the declaration is the notion of the consent being informed. Undoubtedly, the reasons which have weighed with an individual in executing the Advance Directive cannot be scrutinised (in the absence of situations such as fraud or coercion which implicate the very basis of the consent).

However, an individual who expresses the desire not to be subjected to a particular line of treatment in the future, should she or he be ailing in the future, does so on an assessment of treatment options available when the directive is executed. For instance, a decision not to accept chemotherapy in the event that the individual is detected with cancer in the future, is based on today's perception of the trauma that may be suffered by the patient through that treatment. Advances in medical knowledge between the date of the execution of the document and an uncertain future date when the individual may possibly confront treatment for the disease may have led to a re-evaluation by the person of the basis on which a desire was expressed several years earlier.

Another fundamental issue is whether the individual can by means of an Advance Directive compel the withholding of basic care such as hydration and

nourishment in the future. Protecting the individual from pain and suffering as well as the indignity of debility may similarly raise important issues. Advance Directives may hence conceivably raise ethical issues of the extent to which the perception of the individual who executes it must prevail in priority to the best interest of the patient.

509. Advance Directives also have limitations. Individuals may not fully understand treatment options or recognise the consequences of certain choices in the future. Sometimes, people change their minds after expressing Advance Directives and forget to inform others. Another issue with Advance Directives is that vague statements can make it difficult to understand the course of action when a situation arises. For example, general statements rejecting "heroic treatments" are vague and do not indicate whether you want a particular treatment for a specific situation (such as antibiotics for pneumonia after a severe stroke).

On the other hand, very specific directives for future care may not be useful when situations change in unexpected ways. New medical therapies may also have become available since an Advance Directive was given. Thus, Advance Directives should be reviewed and revised regularly if feelings about certain issues change, so that current wishes and decisions are always legally documented."

(Emphasis Supplied)

97. Well aware of such challenges in their implementation and the potential for misuse, Common Cause 2018 (supra) noted that recognition of AMDs cannot be withheld solely because, in their implementation, they might create a potential for misuse or raise certain ethical or legal challenges. It is to alleviate such concerns of misuse that the Bench found it fit to lay down broad principles to govern and provide a just basis for the execution and enforcement of such AMDs. Dipak Misra, CJ., in his leading opinion, laid down guidelines that would govern aspects such as: (i) who can execute an AMD, (ii) what such a directive should contain, (iii) how it should be recorded and preserved, and lastly, (iv) when and by whom it can be given effect to. Acknowledging and directly addressing the challenge of enforcing AMDs due to the chasm that divides the past and present, the following guideline was also incorporated:

"198.6.2. An Advance Directive shall not be applicable to the treatment in question if there are reasonable grounds for believing that circumstances exist which the person making the directive did not anticipate at the time of the Advance Directive and which would have affected his decision had he anticipated them."

98. In addition to the guidelines on execution and enforcement of an AMD, Dipak Misra, CJ., also laid down guidelines regarding the procedure to be followed for undertaking passive euthanasia in those scenarios where no AMD exists. Therefore, when dealing with an AMD and passive euthanasia (with or without an AMD), the guidelines as laid down by this Court in Common Cause 2018 (supra) and later modified in Common Cause 2023 (supra) constitute the governing law of the land.

99. On the issue of who can execute an AMD, this Court in Common Cause 2018 (supra) laid down the following guidelines:

- a) The Advance Directive can be executed only by an adult who is of a sound and healthy state of mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document.⁷
- b) It must be voluntarily executed and without any coercion or inducement or compulsion and after having full knowledge or information.⁸
- c) It should have characteristics of an informed consent given without any undue influence or constraint.⁹
- d) It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering and further put him/her in a state of indignity.¹⁰

100. On the issue of what an AMD should contain, this Court in Common Cause 2018 (supra) laid down the following guidelines:

- a) It should clearly indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to.¹¹
- b) It should be in specific terms and the instructions must be absolutely clear and unambiguous.¹²
- c) It should mention that the executor may revoke the instructions/authority at any time.¹³
- d) It should disclose that the executor has understood the consequences of executing such a document.¹⁴
- e) It should specify the name of a guardian(s) or close relative(s) who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorised to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive.¹⁵

f) In the event that there is more than one valid Advance Directive, none of which have been revoked, the most recently signed Advance Directive will be considered as the last expression of the patient's wishes and will be given effect to.¹⁶

101. On the issue of how an AMD should be recorded and preserved, this Court in Common Cause 2018 (supra) laid down the following guidelines:

a) The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and attested before a notary or gazetted officer.¹⁷

b) The witnesses and the notary or gazetted officer shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.¹⁸

c) The executor shall inform, and hand over a copy of the Advance Directive to the person or persons named in para 57(e) as well as to the family physician, if any.¹⁹

d) A copy shall be handed over to the competent officer of the local Government or the Municipal Corporation or Municipality or Panchayat, as the case may be. The aforesaid authorities shall nominate a competent official in that regard who shall be the custodian of the said document. The executor may also choose to incorporate their Advance Directive as a part of the digital health records, if any.²⁰

102. On the issue of withdrawal, revocation and inapplicability of an AMD, this Court in Common Cause 2018 (supra) laid down the following guidelines:

a) An individual may withdraw or alter the Advance Directive at any time when he/she has the capacity to do so and by following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.²¹

b) It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.²²

c) An Advance Directive shall not be applicable to the treatment in question if there are reasonable grounds for believing that circumstances exist which the person making the directive did not anticipate at the time of the Advance Directive and which would have affected his decision had he anticipated them.²³

d) If the Advance Directive is not clear and ambiguous, the Medical Boards concerned shall not give effect to the same and, in that event, the guidelines meant for patients without Advance Directive shall be made applicable.²⁴

103. The step-wise procedure to undertake passive euthanasia as laid down in Common Cause 2018 (supra), both in situations where an AMD exists and where there is no such AMD, is discussed in the next sub-section.

V. Procedural Framework for Passive Euthanasia

104. On a close reading of this Court's decision in Common Cause 2018 (supra), it appears to us that this Court declared the law on withholding or withdrawing medical treatment by categorising patients into three distinct categories. The applicability of the procedure depends on the patient's category. The three categories are as follows:

- a) Where the patient is competent and capable of making an informed decision regarding their medical treatment.
- b) Where the patient is incompetent and incapable of taking an informed decision, but has executed a valid AMD in accordance with the safeguards laid down above.
- c) Where the patient is incompetent and has not executed an AMD, or the same is invalid or inapplicable.

105. For competent patients, withdrawal or withholding of medical treatment is rooted in their right to refuse medical treatment, which is part of the right to live with dignity, combined with personal autonomy and self-determination. As noted above, this right to refuse medical treatment for competent patients is unencumbered, and the right of self-determination in such situations trumps the interest in the sanctity of life. Thus, any patient, regardless of the medical condition they are suffering from, has the right to refuse treatment.

In situations where a competent patient, aware of the consequences, refuses medical treatment, the treating physician is bound by that informed decision and must withdraw or withhold medical treatment to give effect to it. In such cases, the withdrawal or withholding of medical treatment would be fairly uncontroversial and authorised, as it is supported by the patient's explicit and informed consent at the time of the withdrawal or withholding. In our opinion, if a patient is competent, it would eliminate the need to refer to or consider any existing AMD.

106. When dealing with incompetent patients, the circumstances are more knotty. It could be argued that an AMD represents express consent from the

patient and, consequently, that its enforcement should be as unencumbered as the right to refuse treatment. However, it is important to recognise the qualitative difference between explicit consent given at the very time of withdrawal or withholding, and consent derived from a past directive. Relying on a past decision is admittedly fraught with complexities.

The patient's knowledge at the time may have been limited, or circumstances may have effectively changed. Essentially, there is no absolute equivalence between the past and the present. Events may have occurred that could have altered the patient's decision, but their current incompetence prevents us from accurately ascertaining this. Due to these uncertainties, the unrestrained enforcement of an AMD was not permitted, and a strict procedure was put in place.

107. The most important restriction, however, appears to be that an AMD can also only be enforced in situations where the executor is in a condition so as to fulfil the three prerequisites/medical parameters that we have culled out above, when discussing passive euthanasia for incompetent patients. Thus, following this Court's ruling in *Common Cause 2018* (supra), passive euthanasia for incompetent patients, regardless of whether an AMD exists or not, is permitted only if the following conditions are met:

- a) The patient must be diagnosed to be suffering from a medical ailment and be classified as either terminally ill, in a PVS, or like conditions.
- b) The patient must be undergoing prolonged medical treatment with respect to the said ailment, indicating that the intervention has ceased to be temporary.
- c) The ailment must be irreversible, meaning:
 - i. the condition is incurable; or
 - ii. there is absolutely no hope of the patient being cured.

108. To reiterate, an AMD which conveys the refusal of treatment cannot be enforced unless all the aforementioned conditions are satisfied. This applies even where the directive is explicit. For instance, consider a patient whose directive specifically states that no treatment should be administered in the event of a heart attack. If this patient is admitted with a heart attack, that instruction cannot be given effect to.

The same is because the patient's condition does not meet the requisite threshold conditions as aforesaid (e.g., terminally ill in PVS, prolonged medical treatment etc.) and therefore, the directive remains unenforceable despite its specific wording. In effect, the decision in *Common Cause 2018*

(supra) limited the enforceability of AMDs to rare and extreme cases, precluding their application in general medical circumstances, thereby, differentiating us from certain other jurisdictions.

109. With that being said, on the procedure to be followed to undertake passive euthanasia in those cases where an AMD exists, this Court in Common Cause 2018 (supra) laid down the following guidelines:

a) In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, and does not have decisionmaking capacity, the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof with reference to the existing digital health records of the patient, if any or from the custodian of the document referred to in para 58(d). 25 The instructions in the document must be given due weight by the doctors. However, it should be given effect to only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is no hope of him/her being cured.²⁶

b) If the physician treating the patient (executor of the document) is satisfied that the instructions given in the document need to be acted upon, he shall inform the person or persons named in the Advance Directive, as the case may be, about the nature of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. He must also ensure that he believes on reasonable grounds that the person in question understands the information provided, has cogitated over the options and has come to a firm view that the option of withdrawal or refusal of medical treatment is the best choice.²⁷

c) The hospital where the executor has been admitted for medical treatment shall then constitute a Primary Medical Board consisting of the treating physician and at least two subject experts of the specialty concerned with at least five years' experience, who, in turn, shall visit the patient in the presence of his guardian/close relative and form an opinion preferably within 48 hours of the case being referred to it whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded as a preliminary opinion.²⁸

d) In the event the Primary Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the hospital shall then immediately constitute a Secondary Medical Board comprising one registered medical practitioner nominated by the Chief Medical Officer of the district and at least two subject experts with at least five years' experience of

the specialty concerned who were not part of the Primary Medical Board. They shall visit the hospital where the patient is admitted and if they concur with the initial decision of the Primary Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive. The Secondary Medical Board shall provide its opinion preferably within 48 hours of the case being referred to it.²⁹

e) The Secondary Board must beforehand ascertain the wishes of the executor if he is in a position to communicate and is capable of understanding the consequences of withdrawal of medical treatment. In the event the executor is incapable of taking decision or develops impaired decision-making capacity, then the consent of the person or persons nominated by the executor in the Advance Directive should be obtained regarding refusal or withdrawal of medical treatment to the executor to the extent of and consistent with the clear instructions given in the Advance Directive.³⁰

f) The hospital where the patient is admitted, shall convey the decision of the Primary and Secondary Medical Boards and the consent of the person or persons named in the Advance Directive to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor.³¹

g) If permission to withdraw medical treatment is refused by the Secondary Medical Board, it would be open to the person or persons named in the Advance Directive or even the treating doctor or the hospital staff to approach the High Court by way of writ petition under Article 226 of the Constitution. If such application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent committee consisting of three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years.³²

h) The High Court shall hear the application expeditiously after affording opportunity to the State counsel. It would be open to the High Court to constitute Medical Board in terms of its order to examine the patient and submit report about the feasibility of acting upon the instructions contained in the advanced directive.³³ Needless to say that the High Court shall render its decision at the earliest as such matters cannot brook any delay and it shall ascribe reasons specifically keeping in mind the principles of "best interests of the patient".³⁴

i) Where the Primary Medical Board takes a decision not to follow an Advance Directive while treating a person, the person or persons named in the Advance Directive may request the hospital to refer the case to the Secondary Medical Board for consideration and appropriate direction on the Advance Directive.³⁵

110. As discussed above, the Court also noted that there would be many scenarios in which no AMDs would exist, or where the directive would become inapplicable for various reasons. For undertaking passive euthanasia in such scenarios, the Bench in Common Cause 2018 (supra) held that the procedure and safeguards are largely to be the same as applied to cases where an AMD is in existence; in addition thereto, the following procedure shall be followed:

a) In cases where the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is incurable or where there is no hope of being cured, the physician may inform the hospital, which, in turn, shall constitute a Primary Medical Board in the manner indicated earlier. The Primary Medical Board shall discuss with the family physician, if any, and the patient's next of kin/next friend/guardian and record the minutes of the discussion in writing. During the discussion, the patient's next of kin/next friend/guardian shall be apprised of the pros and cons of withdrawal or refusal of further medical treatment to the patient and if they give consent in writing, then the Primary Medical Board may certify the course of action to be taken preferably within 48 hours of the case being referred to it. Their decision will be regarded as a preliminary opinion.³⁶

b) In the event the Primary Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall then constitute a Secondary Medical Board comprising in the manner indicated hereinbefore. The Secondary Medical Board shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the Primary Medical Board. In that event, intimation shall be given by the hospital to the JMFC and the next of kin/next friend/guardian of the patient preferably within 48 hours of the case being referred to it.³⁷

c) There may be cases where the Primary Medical Board may not take a decision to the effect of withdrawing medical treatment of the patient or the Secondary Medical Board may not concur with the opinion of the Primary Medical Board. In such a situation, the nominee of the patient or the family member or the treating doctor or the hospital staff can seek permission from the High Court to withdraw life support by way of writ petition under Article 226 of the Constitution in which case the Chief Justice of the said High Court shall constitute a Division Bench which shall decide to grant approval or not.

The High Court may constitute an independent committee to depute three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years after consulting the competent medical practitioners. It shall also afford an opportunity to the State counsel. The High Court in such cases shall render its decision at the earliest since such matters cannot brook any delay. Needless to say, the High Court shall ascribe reasons specifically keeping in mind the principle of "best interests of the patient".³⁸

111. Before addressing the substantive issues, a clarification regarding nomenclature is essential. The ruling of this Court in Common Cause 2018 (supra) permitted passive euthanasia while prohibiting active euthanasia. It is also abundantly clear that, for the Court in Common Cause 2018 (supra), the term 'passive euthanasia' was equated or synonymised with the withholding or withdrawal of medical treatment. However, there seems to be a general consensus on the fact that 'passive euthanasia' is an obsolete and a rather, confusing term. We are also of the view that imprecise terminology unnecessarily obscures the legal position. Therefore, to ensure clarity in this judgment, we will henceforth adopt the following definitions/phrases:

- a) 'Euthanasia' will refer strictly to active euthanasia, which remains impermissible.
- b) 'Withdrawing or Withholding of Medical Treatment' will replace the term 'passive euthanasia'.

It is imperative to state that this change is merely a matter of terminology, not of substance. Accordingly, the withholding or withdrawing of medical treatment remains strictly governed by the guidelines and procedural safeguards established for 'passive euthanasia' in Common Cause 2018 (supra).

112. While the preceding discussion has dwelt at length on the constitutional basis and procedural mechanics of withholding or withdrawing medical treatment, we must not lose sight of another substantive aspect we briefly broached in this section. The Constitution Bench in Common Cause 2018 (supra) was unequivocal in holding that such withdrawal or withholding is permissible only when it serves the 'best interests' of the patient. This principle serves as the bedrock of the entire legal framework. Consequently, any decision to withdraw or withhold medical treatment must withstand scrutiny on two primary grounds: first, the intervention in question must qualify as 'medical treatment', and secondly, its withdrawal must strictly be in the patient's best interests.

(E). ISSUES FOR DETERMINATION

113. Having heard the learned counsel appearing for the parties, having gone through the materials on record and having exhaustively examined the reasoning adopted in Common Cause 2018 (supra), the following questions fall for our consideration:

- (1) Whether the administration of CANH is to be regarded as "medical treatment"?
- (2) What is the meaning, scope, and contours of the principle of "best interest of the patient" in determining whether medical treatment should be withdrawn or withheld?
- (3) Whether it is in the best interest of the applicant that his life be prolonged by continuation of medical treatment?
- (4) What are the further steps to be undertaken in the event that a decision to withdraw or withhold medical treatment is arrived at?

(F). ANALYSIS (1) WHETHER THE ADMINISTRATION OF CANH IS TO BE REGARDED AS "MEDICAL TREATMENT"?

114. The present medical condition of the applicant necessitates the determination of an issue that is central to the further course of action which is to be adopted. In the present matter, the applicant has sustained non-progressive, irreversible brain damage having suffered a severe traumatic brain injury with diffuse axonal injury at the time of the fateful incident. Following his discharge from the hospital in the immediate aftermath of the incident, his fragile health condition has necessitated frequent hospital admissions for the treatment of his head injury, seizures, pneumonia and bedsores.

However, his medical condition has been such that it did not warrant continuous hospitalisation all the time and, therefore, he has largely been maintained at home, albeit with a tracheostomy tube, urinary catheter, and PEG tube in situ. He retains intact brainstem function and breathes spontaneously with the tracheostomy tube in place. Nonetheless, due to his PVS condition, his survival is dependent upon the continued administration of CANH.

115. The pertinent question before us is whether the applicant's medical treatment can be withdrawn or withheld. Since the applicant is being sustained through the provision of CANH, through a PEG tube, it is essential for us to first determine whether the administration of CANH constitutes 'medical treatment' and would therefore be amenable to being lawfully withheld or withdrawn. In other words, it is only in the event that CANH is recognised as a

medical treatment, as opposed to being regarded as basic primary care that the withholding or withdrawal of such treatment would be permissible.

In order to analyse this issue, we have delved into some landmark cases across developed common law jurisdictions, including briefly revisiting those cases already referred to in our preceding discussion, to answer the limited question whether CANH is a form of "medical treatment" and therefore, is amenable to the same principles governing the withholding or withdrawal of any other form of medical treatment.

116. Before proceeding any further, we must begin by clarifying that by the term CANH, we refer to all forms of enteral nutrition and parenteral nutrition which are administered upon clinical indication, which is not inclusive of oral feeding, by cup, spoon, or any other method of delivering food or nutritional supplements into the patient's mouth. In order to ascertain the status of CANH as a "medical treatment", it is crucial that the scope of the term CANH, as it is currently understood, be explained in some detail. CANH can be primarily categorised into two broad categories: enteral nutrition and parenteral nutrition.

(a) Enteral nutrition, also known as "tube feeding", is a method of providing nutrition directly into the gastrointestinal (GI) tract through an enteral access device (feeding tube) that is passed either through the nose, mouth or directly through the abdominal wall, up to the stomach or small intestine.³⁹ Enteral nutrition is a special liquid food mixture containing all the nutrients required to meet the nutritional needs, such as protein, carbohydrates, fats, vitamins, minerals, etc. of the patient. The formula can include ready-to-feed liquids, formulas made from a powder or a concentrate, or blenderized food, but the suitability of the feed type would vary on a case to case basis, as per the clinical judgment of the medical practitioner.⁴⁰ The enteral access device/feeding tubes can be of various types such as:

(i). Tubes placed through the nose into the stomach (nasogastric) or the small intestine (nasoduodenal/nasojejunal), called nasoenteral tubes.

(ii). Tubes placed through the mouth into the stomach (orogastric) or the small intestine (oroduodenal/orojejun), called oroenteral tubes.

(iii). Tubes surgically placed directly through the skin into the stomach (gastrostomy) or small intestine (jejunostomy), for e.g. Percutaneous Endoscopic Gastrostomy (PEG) tube, Percutaneous Endoscopic Jejunostomy (PEJ) tube, etc.⁴¹

(b) Parenteral nutrition is a method for patients to receive nutrition other than through the gastrointestinal (GI) tract, and may comprise a unique sterile

intravenous (IV) solution administered directly into the bloodstream via a catheter inserted into a vein. 42

117. There is no gainsaying that the prescription and administration of CANH involves careful consideration of a multitude of clinical factors, ranging from installation of the CANH device (placed surgically or otherwise), precise assessment of the patient's nutritional requirements, the underlying clinical condition of the patient, gastrointestinal tolerance, potential metabolic instability, and an assessment of the anticipated duration of CANH support, amongst others. 43 Some complications that are associated with CANH include the risk of aspiration pneumonia, peritonitis, and wound/stoma site infection. 44 Administration of CANH also requires periodic medical review of its indications, route of administration, risks, benefits and therapeutic goals.

Even where enteral nutrition is administered by caregivers in a home setting, the process remains strictly governed by medical protocols, requiring the prescribing clinician to specify the nutritional formulation, dosage, rate and method of delivery. 45 For example, feeding pumps are used to regulate the flow of feed delivered over a specific period of time. The enteral nutrition administration may be through the use of an electronic feeding pump or by bolus feeding using a syringe. This may include 'continuous gravity feeding' that is manually controlled with a feeding bag and a roller clamp to help control the rate; and 'intermittent gravity feeding' where liquid feeds are delivered over a certain duration or, 'bolus feeding' where a specific volume of feeding is infused via bag or a syringe rapidly over several minutes. 46.

Pump assisted feeding utilizes an electric pump device to more precisely control the rate of delivery in patients who are at a higher risk of inadvertently getting formula in their lungs, sensitive to volume, have delayed gastric emptying or are being fed into the small intestine. 47 Regular flushing of feeding tubes, preventing and controlling of infections and monitoring for complications are integral components of CANH protocols. 48

The CANH protocols require that enteral feeding tubes be flushed with water before and after medication or feeding, or at certain hourly intervals during continuous feeding, to prevent clogging and ensure adequate hydration. 49 The protocols further mandate that, in the event a CANH device gets dislodged, the reinsertion of the CANH shall be undertaken only under appropriate medical supervision so as to obviate the high risk of peritonitis and aspiration, which are potentially fatal complications. 50

For example, if a PEG tube becomes partially dislodged and such dislodgement goes unnoticed, the specialised liquid nutrition, fluids, or medication administered through it may leak into the abdominal cavity, leading to

peritonitis, which is a severe infection that may be life-threatening. Similarly, if a nasogastric or orogastric tube gets misplaced, it risks introducing fluids or medication into the respiratory tract or pleura, which could be fatal. Therefore, medical guidance has to be sought for reinsertion, to prevent such adverse consequences.⁵¹

118. The aforesaid clinical and procedural characteristics of CANH indicate, without an iota of doubt, that CANH cannot be regarded as a mere means of basic sustenance or primary care, but should be recognised as a technologically mediated medical intervention that is prescribed, supervised and periodically reviewed by trained healthcare professionals in accordance with established medical standards.

119. We are in respectful agreement with Schreiber J.'s erudite reasoning in *In re Conroy*, reported in 98 N.J. 321, wherein, although he acknowledged the emotional symbolism of food and the innate emotions which are invoked when it comes to feeding and nourishment, yet he went on to hold that CANH methods are significantly different from bottle feeding or spoon feeding when judged on medical parameters. He observed that artificial feeding mechanisms such as nasogastric tubes, gastrostomies and intravenous infusions are significantly different from bottle or spoon feeding as they are medical procedures with inherent risks and possible side effects, administered by skilled health care providers to compensate for impaired physical functioning.

Drawing an analogy between artificial feeding by means of a nasogastric tube or intravenous infusion and artificial breathing by means of a respirator, Schreiber J. elaborated on how these medical procedures that ensure nutrition and hydration involve the risks and burdens of serious complications and could sometimes be seriously distressing to the patient. The pertinent observations made by Schreiber J. read thus: "Certainly, feeding has an emotional significance. As infants we could breathe without assistance, but we were dependent on others for our lifeline of nourishment.

Even more, feeding is an expression of nurturing and caring, certainly for infants and children, and in many cases for adults as well. Once one enters the realm of complex, high technology medical care, it is hard to shed the 'emotional symbolism' of food. However, artificial feedings such as nasogastric tubes, gastrostomies, and intravenous infusions are significantly different from bottle feeding or spoon feeding - they are medical procedures with inherent risks and possible side effects, instituted by skilled health care providers to compensate for impaired physical functioning.

Analytically, artificial feeding by means of a nasogastric tube or intravenous infusion can be seen as equivalent to artificial breathing by means of a

respirator. Both prolong life through mechanical means when the body is no longer able to perform a vital bodily function on its own. Furthermore, while nasogastric feeding and other medical procedures to ensure nutrition and hydration are usually well tolerated, they are not free from risks or burdens; they have complications that are sometimes serious and distressing to the patient."

(Emphasis Supplied)

120. Drawing upon this analogy between CANH and artificial respiratory support given by Schreiber J., we may refer to one another crucial observation made by the High Court of Auckland, New Zealand in *Auckland Area Health Board v. Attorney-General* reported in (1992) 8 CRNZ 634 regarding the role played by such artificial life sustaining systems and why their medical function or purpose should be given due regard when considering their administration.

In *Auckland Area Health Board* (supra), while considering the permissibility of withholding artificial respiratory support, Thomas J. observed that a life support system may by itself not prevent or cure the underlying life-threatening condition but may nonetheless serve a therapeutic or medical function by enabling the patient to survive long enough for recovery. In such a case, the intervention only alleviates the effect(s) of the illness while nature or other medical treatments address the underlying condition. In that sense, unless the life support system serves further medical function or therapeutic purpose, it would not be unlawful to discontinue it if such discontinuance is in accordance with good medical practice. Thomas J. goes on to observe that:

"To require the administration of a life support system when such a system has no further medical function or purpose and serves only to defer the death of the patient is to confound the purpose of medicine. In such circumstances, the continuation of the artificial ventilation may be lawful, but that does not make it unlawful to discontinue it if the discontinuance accords with good medical practice."

This reasoning adopted in *Auckland Area Health Board* (supra) applies with equal force to CANH. Thus, like artificial ventilatory support, CANH also serves a therapeutic or medical function and must therefore be assessed under the same legal framework applicable to other life-sustaining medical interventions.

121. Furthermore, in *Airedale* (supra), Lord Keith rejected the argument that artificial feeding by nasogastric tube was indistinguishable from normal feeding, the latter of which did not amount to medical treatment. He emphatically acknowledged that there is a distinction between CANH and

normal feeding, as the administration of nourishment by artificial means involves the application of a medical technique.

Driving home this point, Lord Keith succinctly observed that it is incorrect to direct exclusive attention to the fact that nourishment is being provided. Rather, regard should be had for the whole regime of medical treatment that keeps the patient alive, including that of artificial feeding, which involves the application of medical technique. In observing thus, Lord Keith places CANH on the same pedestal as other forms of medical treatment, vis-à-vis which the medical practitioners are under no greater duty to administer it if such medical treatment would not confer any benefit to the patient. We consider it important to quote Lord Keith's observations in *Airedale* (supra), which are as follows:

"It was argued for the guardian ad litem, by analogy with that case, that here the doctors in charge of Anthony Bland had a continuing duty to feed him by means of the nasogastric tube and that if they failed to carry out that duty they were guilty of manslaughter, if not murder. This was coupled with the argument that feeding by means of the nasogastric tube was not medical treatment at all, but simply feeding indistinguishable from feeding by normal means. As regards this latter argument, I am of the opinion that regard should be had to the whole regime, including the artificial feeding, which at present keeps Anthony Bland alive.

That regime amounts to medical treatment and care, and it is incorrect to direct attention exclusively to the fact that nourishment is being provided. In any event, the administration of nourishment by the means adopted involves the application of a medical technique. But it is, of course, true that in general it would not be lawful for a medical practitioner who assumed responsibility for the care of an unconscious patient simply to give up treatment in circumstances where continuance of it would confer some benefit on the patient.

On the other hand a medical practitioner is under no duty to continue to treat such a patient where a large body of informed and responsible medical opinion is to the effect that no benefit at all would be conferred by continuance. Existence in a vegetative state with no prospect of recovery is by that opinion regarded as not being a benefit, and that, if not unarguably correct, at least forms a proper basis for the decision to discontinue treatment and care: *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582"

(Emphasis Supplied)

122. The aforementioned observation made by Lord Keith regarding consideration of the whole regime of medical treatment, including artificial feeding, when read with Lord Lowry's observation *Airedale* (supra), makes it

all the more poignant. Taking a comprehensive view of CANH, Lord Lowry observed that an artificial feeding regime is inevitably associated with the continuous use of catheters and enemas and the constant combating of potentially deadly infection(s). He observes thus:

"4. Although entirely satisfied with your Lordships' consensus, I ought finally to touch on the real point in the case. The strength of the Official Solicitor's argument lies in its simplicity. In answer to the respondent's reliance on accepted medical opinion that feeding (nutrition and hydration), particularly by sophisticated artificial methods, is part of the life-supporting medical treatment, he says that the duty to feed a helpless person, such as a baby or an unconscious patient, is something different, an elementary duty to keep the patient alive which exists independently of all questions of treatment and which the person in charge cannot omit to perform: to omit deliberately to perform this duty in the knowledge that the omission will lead to the death of the helpless one, and indeed with the intention, as in the present case, of conducing to that death, will render those in charge guilty of murder.

One of the respondent's counter- arguments, albeit not conclusive, is based on the overwhelming verdict of informed medical opinion worldwide, with particular reference to the common law jurisdictions, where the relevant law generally corresponds closely with our own, that therapy and life-supporting care, including sophisticated methods of artificial feeding, are components of medical treatment and cannot be separated as the Official Solicitor contends.

In this connection it may also be emphasised that an artificial feeding regime is inevitably associated with the continuous use of catheters and enemas and the sedulous avoidance and combatting of potentially deadly infection. I consider that the court, when intent on reaching a decision according to law, ought to give weight to informed medical opinion both on the point now under discussion and also on the question of what is in the best interests of a patient and I reject the idea, which is implicit in the appellant's argument, that informed medical opinion in these respects is merely a disguise for a philosophy which, if accepted, would legalise euthanasia."

(Emphasis Supplied)

123. At this juncture, it is pertinent to refer to the observation regarding 'feeding tubes' made by Sikri, J. in Common Cause 2018 (supra), which reads thus:

"219. Passive euthanasia occurs when medical practitioners do not provide life-sustaining treatment (i.e. treatment necessary to keep a patient alive) or remove patients from life-sustaining treatment. This could include discontinuing

treatment. This could include discontinuing life-support machines or feeding tubes or not carrying out life-saving operations or providing lifeextending drugs."

(Emphasis Supplied)

124. A similar view has been echoed by D.Y. Chandrachud, J., in *Common Cause* 2018 (supra), in his reference to feeding through hydration tubes as an example of medical treatment which an individual might be subjected to in an emergency, but with regard to which one should have the right of refusal if such artificial prolongation results in human suffering. D.Y. Chandrachud, J., in *Common Cause* 2018 (supra) observes thus:

"359. Individuals who suffer from chronic disease or approach the end of the span of natural life often lapse into terminal illness or a permanent vegetative state. When a medical emergency leads to hospitalisation, individuals in that condition are sometimes deprived of their right to refuse unwanted medical treatment such as feeding through hydration tubes or being kept on a ventilator and other life support equipment. Life is prolonged artificially resulting in human suffering."

125. To acknowledge that the very survival of the patient in a PVS condition is resting on an invasive form of artificial support made possible by medical science and technology, yet deny such intervention the status of a 'medical treatment' in respect of which doctors could exercise their clinical judgment, would stretch the concept of basic or primary care to an extent that it becomes illogical. Thus, it is crucial that CANH be regarded as medical treatment, forming an integral part of a patient's medical management, and be subject to the same ethical, legal, and clinical principles that govern the initiation, continuation, withholding, or withdrawal of other life-sustaining medical interventions. To deny it recognition as a medical treatment would reduce the patient to being a passive subject of medical technology, while simultaneously depriving doctors of the agency necessary to responsibly assess the therapeutic value of such intervention in the discharge of their duty of care.

126. However, another significant aspect that needs to be addressed is whether CANH that is administered at home can still be regarded as a medical treatment. We hereby clarify that merely because routine feeding in the form of CANH can be administered at home, by an informed lay person, it cannot be relegated to a non-medical status. We find the reasoning given by Morris J., in *Re BWV; Ex parte Gardner*, reported in 2003 VSC 173, to be most apt in addressing this point.

Therein it was recognised by the Supreme Court of Victoria, Australia, that artificial nutrition and hydration involves protocols, skills and care which draw from and depend upon medical knowledge. In his opinion, Morris J., clearly reasons out why the use of PEG for artificial nutrition and hydration is unquestionably a medical procedure. He explains how artificial nutrition and hydration will inevitably require the careful choice of materials and preparation methods, close consideration of dosage rates, measures to prevent infection, and regular cleaning of conduits.

These measures cannot be regarded as common knowledge. Rather, they draw from and depend upon medical knowledge. More pertinently, he observes, that although artificial nutrition and hydration, via a PEG, can be performed at home by an informed lay person, it remains a medical procedure because such administration of nutrition and hydration must necessarily be performed under regular medical and nursing supervision, involving skills and protocols which the lay person would need to specifically obtain by drawing upon medical knowledge. Morris J.'s observations read as follows:

"76. It is not necessary to explore all the circumstances which might be said to constitute a medical procedure: because, unquestionably in my judgment, the use of a PEG for artificial nutrition and hydration, or for that matter any form of artificial feeding, is a "medical" procedure. Artificial nutrition and hydration involves protocols, skills and care which draw from, and depend upon, medical knowledge. Artificial nutrition and hydration will inevitably require careful choice of and preparation of materials to be introduced into the body, close consideration to dosage rates, measures to prevent infection and regular cleaning of conduits. These are not matters of common knowledge. In this regard, I particularly rely upon the evidence given to the Court by Dr Woodward, Professor Ashby and Professor Horne.

77. In my opinion, the claim that artificial nutrition and hydration via a PEG, can be performed in the home by an informed lay person does not mean that this procedure is not a medical procedure. Quite apart from the fact that the evidence is that such artificial nutrition and hydration must necessarily be performed under regular medical and nursing supervision, such a procedure involves skills and protocols which the lay person would need to specifically obtain by drawing upon medical knowledge."

(Emphasis Supplied)

127. The recognition accorded to CANH as a 'medical treatment' is of particular importance as it enables doctors acting in good faith and with due medical propriety to undertake such treatment and be able to take further decisions regarding its discontinuation, in the same manner as any other

decision the doctor is duty-bound to make concerning the appropriateness of continuing a medical intervention.

In other words, recognising CANH as a medical treatment brings decisions regarding its administration, refusal, withholding or withdrawal squarely within the realm of clinical judgment, thereby making physicians duty-bound to evaluate whether it is in the best interest of the patient to continue such treatment, or whether it has lost its therapeutic purpose and has become futile, thereby outweighing its intended benefits. It cannot be said that a patient should be made a passive subject of medical technology without allowing the doctors to engage in clinical decision-making regarding such technological intervention.

128. We are therefore of the considered view that CANH constitutes 'medical treatment' and must be governed by the same legal principles applicable to the withholding or withdrawal of other forms of life-sustaining medical interventions, subject, of course, to the safeguards and procedural requirements laid down by this Court in Common Cause 2018 (supra).

129. In the present matter before us, the applicant is sustained through the administration of nutrition and hydration in medically prescribed quantities of certain prescribed feed, via a surgically installed PEG tube. We have already explained how the continuation of such CANH requires an ongoing clinical decisionmaking process, through routine medical supervision, periodic evaluation, and emergency medical management in case of infection or dislodgment of the CANH device. Consequently, it is beyond question that administration of CANH in this case is to be considered as medical treatment. Further, as we have already explained hereinabove, the fact that the applicant is administered CANH at home does not displace the status of such CANH as being considered as a medical treatment.

130. Therefore, in line with our considered view that CANH constitutes medical treatment, it is permissible for the primary medical board and secondary medical board to exercise their clinical judgment with regard to the continuation or withdrawal or withholding of CANH, like any other form of medical treatment, in accordance with the guidelines as laid down in Common Cause (supra). In other words, the primary and secondary medical boards are at liberty to exercise their independent clinical judgment on the question of continuation or withdrawal of CANH, as they would in respect of any other form of medical treatment.

(2) WHAT IS THE MEANING, SCOPE, AND CONTOURS OF THE PRINCIPLE OF "BEST INTEREST OF THE PATIENT" IN

DETERMINING WHETHER MEDICAL TREATMENT SHOULD BE WITHDRAWN OR WITHHELD?

131. As discussed above, a five-judge Constitution Bench of this Court in Common Cause 2018 (supra) had inter alia laid out certain guidelines for the withdrawal or withholding of medical treatment. According to the Common Cause 2018 (supra), when following these step-by-step guidelines and determining whether a particular medical treatment is to be withdrawn or withheld, the doctors and the courts have to keep in mind the principle of "best interest of the patient".

132. While referring to this principle, Dipak Misra, C.J., in his opinion, referred to the decision of the House of Lords in Airedale (supra) wherein it was settled that the life sustaining treatment can be withdrawn in the case of a competent patient, if he consents to it and in the case of an incompetent patient, if it is in his best interest to do so. Similarly, A.K. Sikri, J., in his opinion, was of the same view that the decision of a doctor to withdraw or withhold medical treatment must be based on what is in the best interest of the patient.

Additionally, D.Y. Chandrachud, J., also expressed in clear and categorical terms, that the decision of a treating doctor to withdraw or withhold medical treatment is legally protected, so long as such decision is taken bona fide, in faithful discharge of professional duty, and in the best interests of the patient. Lastly, Ashok Bhushan, J., while concurring with the aforesaid views, also observed that in cases involving incompetent patients who are incapable of taking an informed decision, the governing principle shall be the "best interests of the patient", and the determination in that regard must rest with competent medical experts. The relevant observations are as under: Dipak Misra, C.J.

"192. In general, as per the settled law vide the decision in Airedale, life-sustaining treatment including artificial nutrition and hydration can be withdrawn if the patient consents to it and in case of incompetent patients, if it is in their best interest to do so."

A.K. Sikri, J.

"462. Placing a patient on artificial life support would, in such a situation, merely prolong the agony of the patient. Hence, a decision by the doctor based on what is in the best interest of the patient precludes an intent to cause death.

D.Y. Chandrachud, J.

"521. The decision by a treating doctor to withhold or withdraw medical intervention in the case of a patient in the terminal stage of illness or in a persistently vegetative state or the like where artificial intervention will merely

prolong the suffering and agony of the patient is protected by the law. Where the doctor has acted in such a case in the best interest of the patient and in bona fide discharge of the duty of care, the law will protect the reasonable exercise of a professional decision."

Ashok Bhushan, J.

"629.9. We are also of the opinion that in cases of incompetent patients who are unable to take an informed decision, "the best interests principle" be applied and such decision be taken by specified competent medical experts and be implemented after providing a cooling period to enable aggrieved person to approach the court of law."

(Emphasis Supplied)

133. Furthermore, according to Para. 198.5.3 (cases where an AMD is present) and Para. 199.4 (cases where an AMD is absent) of the guidelines as laid down in Common Cause (supra), respectively, it is also obligatory upon the court dealing with the question of withdrawal or withholding of medical treatment to ascribe reasons for the same, while specifically keeping in mind the principle of best interest of the patient. At Para.

202.14 of the guidelines as laid down in Common Cause (supra), this Court also laid down that when withdrawing or withholding medical treatment is considered medically appropriate as a part of the patient's palliative care, then the patient's best interests must take priority over the interests of the State to preserve life. The relevant excerpts from the guidelines as laid down in Common Cause (supra) are as follows:

"198.5.3. Needless to say that the High Court shall render its decision at the earliest as such matters cannot brook any delay and it shall ascribe reasons specifically keeping in mind the principles of "best interests of the patient".

199.4. Needless to say, the High Court shall ascribe High Court shall ascribe reasons specifically reasons specifically keeping in mind the keeping principle of "best interests of the patient".

202.14. When passive euthanasia as a situational palliative measure becomes applicable, the best interest of the patient shall override the State interest.

(Emphasis Supplied)

134. From the foregoing discussion, it emerges that the application of the principle of the "best interests of the patient" possesses an intrinsic and qualified significance in determining whether medical treatment should be

withdrawn or withheld. However, at this stage, a pertinent question arises as to the precise content, contours, and scope of this principle, and the manner in which it is to be applied to the facts and circumstances of each individual case.

We are, therefore, of the considered view that it is imperative, at the threshold, to elucidate the meaning and ambit of the principle of best interests, which receives paramount consideration in contemplating the withdrawal or withholding of medical intervention. We intend to undertake this exercise by examining a series of decisions rendered by courts across various jurisdictions, wherein the principle of best interests has been expounded, particularly in the context of issues relating to the withdrawal or withholding of medical treatment.

We shall also advert, albeit briefly, to the meaning and scope of this principle as evidenced in the recommendations given by the Law Commission of India in its 196th Report titled "Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)" and in its 241st Report titled "Passive Euthanasia - A Relook", and, finally, to the exposition of this Court in Common Cause 2018 (supra).

(a) Best interest of the patient in United States of America (USA)

135. The earliest authority in the USA relevant for our discourse is of *In re Eichner* on behalf of Fox, reported in 73 A.D.2d 431. In this case, the Supreme Court of New York was concerned with the case of Brother Joseph Charles Fox, an 83-year-old Catholic monk who suffered a cardiac arrest during routine hernia surgery, resulting in severe and irreversible brain damage and leaving him in a PVS. He was sustained solely by artificial ventilation and had no prospect of recovery.

Father Philip K. Eichner, a close associate and religious superior, applied before the court seeking a declaration of the patient's incompetence and authorisation to withdraw the respirator, relying on the patient's previously expressed wishes not to be kept alive by extraordinary means. The trial court permitted withdrawal of the respirator. The District Attorney preferred an appeal. During the pendency of the appeal, the patient died naturally; however, the court proceeded to determine the matter, observing that similar issues were capable of recurring.

The Supreme Court of New York ultimately affirmed the decision of the trial court, holding that withdrawal of extraordinary life-sustaining treatment was permissible, subject to strict procedural safeguards and clear medical confirmation. The court observed that the law confers jurisdiction upon the

court to act in relation to an incompetent person only in furtherance of his best interests and in exercise of its protective jurisdiction.

136. The court then addressed the question of the patient's wishes and recognised that, in many cases, a specific prior statement of intent may not be available. In such circumstances, the court held that an alternative mechanism is required to safeguard the patient's right to refuse treatment. The court approved the use of the substituted judgment standard in such circumstances and recognised that such an approach had received judicial acceptance in the USA. The court further observed that substituted judgment is intended to give effect to the patient's own wishes and autonomy and is best undertaken by persons who knew the patient closely. The court further emphasised that the substituted judgment must proceed on the basis that it reflects the patient's own choice, i.e., what the patient would have wanted if he had capacity. The relevant observations are as under:

"The legal component concerns the mechanism by which the patient's intentions are ascertained, if possible, and his best interests safeguarded. But the question does not end there for we recognize that a specific statement of intent by the patient will occur only in a minority of cases. Another mechanism is required if the comatose patient's [**548] right to refuse extraordinary lifeprolonging medical treatment is to be safeguarded. Both Quinlan and Saikewicz faced the problem, although in different contexts: in Quinlan the 21-year-old Karen, in the full flower of her [***89] health, had no reason to contemplate the possibility of death and therefore no reason to make known her wishes; in Saikewicz, the 67-year-old retardate had an I.Q. of 10, and a mental age of less than three, and hence was incapable of intelligently expressing his wishes. Both courts, however, elected a similar procedural mechanism: a "substitute" or proxy judgment by the patient's guardian in the best interests of the incompetent patient.

This was no great departure from the norm since "[courts] in the exercise of their parens patriae responsibility to protect those under disability have sometimes implemented medical decisions and authorized their carrying out under the doctrine of 'substituted judgment. The Quinlan court held that the "only practical way to prevent destruction of the right is to permit the [***90] guardian and family of Karen to render their best judgment * * * as to whether she would exercise it in these circumstances". Similarly, the guardian ad litem in Saikewicz was required to make a substitute judgment based on the "incompetent person's actual interests and preferences We believe that this is essentially a sound approach, borne of the exigencies of the circumstances.

We look particularly to a close family relative, a spouse, parent, child, brother, sister or grandchild -- in Brother Fox's case, a member of his religious family --

as an appropriate person to initiate, as committee of the incompetent, the process of reaching such a decision. Such an individual who has known and loved the patient personally, presumably for years, can best determine what that patient would have wanted under the circumstances.

It is a decision we trust that will derive from a deep and abiding respect for the patient as an individual. But more important, [***91] we believe that it must be based on the assumption that the patient would have wanted it that way. This approach seeks to fulfill what would be deemed to be the dying patient's own wishes, and reaffirms notions of self-determination. We note that the doctrine of substitute judgment is not unknown in this jurisdiction in incompetency proceedings."

(Emphasis Supplied)

137. In *Barber v Superior Court*, reported in 147 Cal App 3d 1006, the patient had suffered a cardiac arrest resulting in severe brain damage and leaving him in a deep and irreversible vegetative state with virtually no prospect of regaining cognitive or motor function. He was sustained on life-support systems, including a respirator and intravenous nutrition and hydration. After being informed of the prognosis, the patient's wife and children requested withdrawal of all life-sustaining treatment, consistent with the patient's previously expressed wishes not to be kept alive artificially.

The treating physicians thereafter withdrew the respirator and subsequently, the CANH. The patient, thereafter, died while receiving palliative care. In consequence, the doctors were charged with murder and conspiracy to commit murder, which they challenged before the Court of Appeal of California by seeking a writ of prohibition. The court held that the doctors' omission to continue treatment did not constitute an unlawful failure to perform a legal duty when the patient had virtually no prospect of recovering cognitive function.

138. In holding so, the court emphasised that medical decision-making in such cases must be rationally approached by examining whether the proposed treatment is proportionate or disproportionate, having regard to the benefits and burdens associated with such treatment. The court recognised that treatment may still be regarded as proportionate, even if painful or intrusive, where there exists a reasonable prospect of cure or significant improvement in the patient's condition. The court further recognised that the patient's interests and desires constitute central components of the decisionmaking process.

However, in cases where the possibility of full recovery is virtually non-existent, and the patient is incapable of expressing his wishes, the focus of the

inquiry must shift to the medical prognosis, particularly the reasonable possibility of return to cognitive and sapient life, as distinct from mere continuation of biological existence in a vegetative state. The court recognised that where the patient's choice cannot be ascertained, the surrogate must act in the patient's best interests, assessed by factors such as relief from suffering, preservation or restoration of functioning, and the quality and extent of life sustained. The surrogate may also consider the impact of the decision on those closest to the patient. The relevant observations are as under:

"A more rational approach involves the determination of whether the proposed [*1019] treatment is proportionate or disproportionate in terms of the benefits to be gained versus the burdens caused. Under this approach, proportionate treatment is that which, in the view of the patient, has at least a reasonable chance of providing [***22] benefits to the patient, which benefits outweigh the burdens attendant to the treatment. Thus, even if a proposed course of treatment might be extremely painful or intrusive, it would still be proportionate treatment if the prognosis was for complete cure or significant improvement in the patient's condition. Of course the patient's interests and desires are the key ingredients of the decision-making process.

When dealing with patients for whom the possibility of full recovery is virtually nonexistent, and who are incapable of expressing their desires, there is also something of a consensus on the standard to be applied. The focal point of decision should be the prognosis as to the reasonable possibility of return to cognitive and sapient life, as distinguished from the forced continuance of that biological vegetative existence. Prolongation of life does not mean a mere suspension of the act of dying, but contemplates, at the very least, a remission of symptoms enabling a return towards a normal, functioning, integrated existence.

If it is not possible to ascertain the choice the patient would have made, the surrogate ought to be guided in his decision by the patient's best interests. Under this standard, such factors as the relief of suffering, the preservation or restoration of functioning and the quality as well as the extent of life sustained may be considered. Finally, since most people are concerned about the well-being [***27] of their loved ones, the surrogate may take into account the impact of the decision on those people closest to the patient."

(Emphasis Supplied)

139. Further, in *In re Conroy* (supra), the Supreme Court of New Jersey considered the case of Claire C. Conroy, an incompetent, bedridden nursing-home resident suffering from severe and irreversible physical and mental impairments, including advanced dementia, gangrene, ulcers, and inability to

swallow. She was not terminally ill, comatose, or in a vegetative state, but was being sustained through a nasogastric feeding tube, which constituted her sole source of nutrition and hydration.

Her nephew and legal guardian sought judicial authorisation to withdraw the feeding tube, contending that continued artificial feeding merely prolonged her suffering and was inconsistent with what she would have wanted. The trial court permitted withdrawal of the feeding tube. However, the Appellate Division reversed, holding that withdrawal of nourishment would amount to killing. During the pendency of the appeal, the patient died naturally, yet the Supreme Court of New Jersey proceeded to determine the matter in view of its public importance.

140. The court held that a patient's best interests may be assessed through structured objective standards. Under the limited-objective test, life-sustaining treatment may be withdrawn where there is some trustworthy evidence of the patient's prior wishes to refuse such treatment and where the burdens of continued life with treatment clearly outweigh its benefits, including unavoidable and continuing pain and suffering.

In the absence of any trustworthy evidence of prior wishes, the court recognised that withdrawal may still be permissible under a pure-objective test, where the net burdens of continued treatment clearly and markedly outweigh the benefits and the patient's suffering renders continuation inhumane. The court, however, clarified that even under such objective standards, treatment must not be withdrawn where the patient had previously expressed a clear wish to be kept alive despite suffering. The relevant observations are as under:

"We therefore hold that life-sustaining treatment may also be withheld or withdrawn from a patient in Claire Conroy's situation if either of two "best interests" tests-- a limited-objective or a pure-objective test - is satisfied. Under the limited-objective test, life-sustaining treatment may be withheld or withdrawn from a patient in Claire Conroy's situation when there is some trustworthy evidence that the patient would have refused the treatment, and the decision-maker is satisfied that it is clear that the burdens of the patient's continued life with the treatment outweigh the benefits of that life for him.

By this we mean that the patient is suffering, and will continue to suffer throughout the expected duration of his life, unavoidable pain, and that the net burdens of his prolonged life (the pain and suffering of his life with the treatment less the amount and duration of pain that the patient would likely experience if the treatment were withdrawn) markedly outweigh any physical pleasure, emotional enjoyment, or intellectual satisfaction that the patient may still be able to derive from life. This limited-objective standard permits the

termination of treatment for a patient who had not unequivocally expressed his desires before becoming incompetent, when it is clear that the treatment in question would merely prolong the patient's suffering.

This limited-objective test also requires some trustworthy evidence that the patient would have wanted the treatment terminated. This evidence could take any one or more of the various forms appropriate to prove the patient's intent under the subjective test. Evidence that, taken as a whole, would be too vague, casual, or remote to constitute the clear proof of the patient's subjective intent that is necessary to satisfy the subjective test -- for example, informally expressed reactions to other people's medical conditions and treatment -- might be sufficient to satisfy this prong of the limited-objective test.

In the absence of trustworthy evidence, or indeed any evidence at all, that the patient would have declined the treatment, life-sustaining treatment may still be withheld or withdrawn from a formerly competent person like Claire Conroy if a third, pure-objective test is satisfied. Under that test, as under the limited-objective test, the net burdens of the patient's life with the treatment should clearly and markedly outweigh the benefits that the patient derives from life.

Further, the recurring, unavoidable and severe pain of the patient's life with the treatment should be such that the effect of administering life-sustaining treatment would be inhumane. Subjective evidence that the patient would not have wanted the treatment is not necessary under this pure-objective standard. Nevertheless, even in the context of severe pain, life-sustaining treatment should not be withdrawn from an incompetent patient who had previously expressed a wish to be kept alive in spite of any pain that he might experience."

(Emphasis Supplied)

141. In *Rasmussen v. Fleming*, reported in 154 Ariz. 207, the Supreme Court of Arizona was seized with a case involving a 64-year-old patient named Mildred Rasmussen who was admitted to a nursing home and later suffered multiple strokes, leading to severe, irreversible brain damage and a chronic vegetative state. She was incapable of caring for herself, was largely non-responsive, and had no realistic prospects of recovery, according to medical experts.

142. The Supreme Court of Arizona expressed the view that in cases involving surrogate medical decision-making, two distinct standards have been developed by courts, namely, substituted judgment and best interests. Under the substituted judgment standard, the guardian is required to attempt to reach the decision that the incapacitated person would have made if he or she had the

capacity to choose, and this standard is most appropriately applied where the patient, while competent, has manifested his or her intentions concerning medical treatment.

However, the court clarified that where the evidentiary record is barren of any reliable indication of the patient's prior wishes, the substituted judgment standard provides little or no meaningful guidance and must therefore give way to the best interests standard. In such circumstances, the surrogate decision-maker is required to determine what course of medical treatment would best serve the patient's interests, assessed by reference to objective considerations. The relevant observations are as under:

"We conclude that Rasmussen's right to refuse medical treatment still existed despite her incompetency and her failure to articulate her medical treatment desires prior to becoming incompetent. Because she was incapable of exercising that right, however, we must determine who could exercise that right for her.

WHO CAN EXERCISE AN INCOMPETENT'S RIGHT TO REFUSE MEDICAL TREATMENT

The court of appeals held that either a family member or a guardian could exercise Rasmussen's right to refuse medical treatment. The guardian ad litem contends that the guardian should not have unbridled discretion to decide whether to refuse any or all medical treatment. We agree. Courts have developed two standards to guide surrogate decision making: "substituted judgment" and "best interests." Under the substituted judgment standard, the guardian "attempt[s] to reach the [***36] decision that the incapacitated person would make if he or she were able to choose."

This standard best guides a guardian's decision-making when a patient has manifested his or her intent while competent. [***37] Unfortunately, the record in this [*222] [**689] case is barren of any evidence that Rasmussen expressed her medical desires in any form prior to becoming incompetent. Where no reliable evidence of a patient's intent exists, as here, the substituted judgment standard provides little, if any, guidance to the surrogate decisionmaker and should be abandoned in favour of the "best interests" standard. Under the best interests standard, the surrogate decisionmaker assesses what medical treatment would be in the patient's best interests as determined by such objective criteria as relief from suffering, preservation or restoration of functioning, and quality and extent of sustained life."

(Emphasis Supplied)

143. Later, in the landmark decision of *Cruzan v Director, Missouri Department of Health*, reported in 497 U.S. 261, the Supreme Court of the USA considered the case of Nancy Cruzan, a 25-yearold woman who had suffered severe brain damage due to oxygen deprivation following a motor vehicle accident, leaving her in a PVS with no realistic prospect of regaining cognitive function. She was sustained by CANH through a feeding tube, though she could breathe without mechanical assistance.

Nancy's parents, acting as her guardians, sought withdrawal of the feeding tube, relying upon her prior informal statements indicating that she would not wish to live in a "vegetable-like" condition. The hospital declined to withdraw life-sustaining treatment without judicial authorisation. The Missouri Supreme Court denied permission, holding that there was no clear and convincing evidence of Nancy's wishes to refuse life-sustaining treatment.

144. The matter reached the Supreme Court of the United States to decide whether the Federal Constitution required the State of Missouri to permit withdrawal of CANH in such circumstances. A majority of the court, speaking through Chief Justice Rehnquist and four concurring judges, upheld the decision of the Missouri Supreme Court. While recognising that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment, the court held that an incompetent person cannot exercise such a choice directly, and that any decision in that regard must be made through a surrogate, subject to procedural safeguards designed to reflect, as nearly as possible, the patient's own wishes expressed while competent.

The court further held that the Constitution does not prohibit a State from requiring that an incompetent patient's wishes regarding withdrawal of lifesustaining treatment be established by clear and convincing evidence. It observed that close family members, though often acting in good faith, cannot automatically be presumed to represent the patient's own views, and that the State may therefore insist on a heightened evidentiary standard. Applying this standard, the court held that the evidence relied upon by Nancy Cruzan's parents did not satisfy the clear and convincing threshold and accordingly affirmed the decision to continue CANH. The relevant observations of the majority opinion are as under:

"The difficulty with petitioners' claim [****35] is that in a sense it begs the question: An incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment or any other right. Such a "right" must be exercised for her, if at all, by some sort of surrogate. Here, Missouri has in effect recognised that under certain circumstances a surrogate may act for the patient in electing to have hydration and nutrition withdrawn in such a way as to cause death, but it has established

a procedural safeguard to assure that the action of the surrogate conforms as best it may to the wishes expressed by the patient while competent. Missouri requires that evidence of the incompetent's wishes as to the withdrawal of treatment be proved by clear and convincing evidence.

The question, then, is whether the United States Constitution forbids the establishment of this procedural requirement by the State. We hold that it does not. No doubt is engendered by [****47] anything in this record but that Nancy Cruzan's mother and father are loving and caring parents. If the State were required by the United States Constitution to repose a right of "substituted judgment" with anyone, the Cruzans would surely qualify. But we do not think the Due Process Clause requires the State to repose judgment on these matters with anyone but the patient herself.

Close family members may have a strong feeling -- a feeling not at all ignoble or unworthy, but not entirely disinterested, [**2856] either -- that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless, and even degrading. But there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent. All of the reasons previously discussed for allowing Missouri to require clear and convincing evidence of the patient's wishes lead us to conclude that the State may [*287] choose to defer only to those wishes, rather than confide the decision to close family members."

(Emphasis Supplied)

145. However, Justice Brennan and Justice Stevens dissented from the above opinion. Justice Brennan's dissent was concurred by 2 other judges, and Justice Stevens delivered a separate dissent. 146. Justice Brennan, in his dissent, was of the view that the majority had erred in permitting the State's abstract interest in the preservation of life to override the concrete and individual best interests of Nancy Cruzan. According to him, the Missouri Supreme Court adverted to no evidence supporting its decision, but nevertheless concluded that there was no clear and convincing, inherently reliable evidence establishing that Nancy would have wished to avoid further treatment.

In doing so, the court, in Justice Brennan's view, failed to consider relevant and material evidence, including statements made by Nancy to family members and a close friend, as well as the testimony of her mother and sister, who were certain that Nancy would have wished to discontinue CANH. He noted that this omission occurred despite the court's own finding that Nancy's family was loving and acted without any improper or malignant motive.

Justice Brennan further observed that the Missouri Supreme Court failed to give due consideration to the conclusions of the guardian ad litem appointed by the trial court, who had found clear and convincing evidence that Nancy would have wished to discontinue medical treatment and that such discontinuation was in her best interests. According to Justice Brennan, such an approach imposed an unduly rigid and unrealistic evidentiary burden, inconsistent with the realities of medical decision-making and personal autonomy. The relevant observations from Justice Brennan's dissenting opinion are as follows:

"The court adverted to no evidence supporting its decision, but held that no clear and convincing, inherently reliable evidence had been presented to show that Nancy would want to avoid further treatment. In doing so, the court failed to consider statements Nancy had made to family members and a close friend. The [***270] court also failed to consider testimony [*322] from Nancy's mother and sister that they were certain that Nancy would want to discontinue artificial nutrition and hydration, even after the court found that Nancy's family was loving and without malignant motive.

The court also failed to consider the conclusions of the guardian ad litem, appointed by the trial court, that there was clear and convincing evidence that Nancy would want to [*323] discontinue medical treatment and that this was in her best interests. The court did not specifically define what kind of evidence it would consider [**2875] clear and convincing, but its general discussion suggests that only a living will or equivalently formal directive from the patient when competent would meet this standard."

(Emphasis Supplied)

147. Justice Stevens, in his dissent, was of the further view that the majority had impermissibly allowed the State's undifferentiated interest in preserving life to overwhelm Nancy Cruzan's individual best interests, which, according to undisputed findings at trial, would have been served by permitting her guardians to exercise her constitutional right to discontinue medical treatment. He found it ironic that the court reached this conclusion despite endorsing propositions which, in his view, should have led to the opposite result. In his opinion, the Constitution required the State to care for Nancy Cruzan's life in a manner that accords appropriate respect to her own best interests.

148. Justice Stevens emphasised that this case was the first in which the apex court of USA was called upon to consider whether, and in what manner, the Constitution protects the liberty of seriously ill patients to be free from medical treatment. He cautioned against resolving the issue in the abstract and stressed that the court's responsibility was to address the problem as illuminated by the specific facts before it. In this regard, he highlighted that clear and convincing

evidence established that Nancy Cruzan was permanently unconscious, incapable of swallowing food or water, and would never recover any cognitive function, with irreversible and progressive cerebral cortical atrophy.

Recovery and consciousness were impossible, and the highest level of function that could be hoped for was a reflexive response to painful stimuli. Justice Stevens further noted that the trial judge had examined the potential impact of withdrawing treatment on third parties and had found that Nancy's parents were motivated neither by economic considerations nor by any improper purpose, and that granting their request would neither harm innocent third parties nor violate ethical medical standards. He further observed that the guardian ad litem, despite appealing the trial court's order as a matter of duty, did not disagree with its conclusion and expressly endorsed the finding that it was in Nancy Cruzan's best interests to have tube feeding discontinued.

According to Justice Stevens, this critical conclusion was undisputed by the parties and ought to have been dispositive. He questioned how, in such circumstances, where continued treatment served no interest of the patient and where the good faith of the family was not in doubt, the state could legitimately insist upon continued medical treatment, particularly when the Missouri Supreme Court had largely ignored the trial court's findings regarding Nancy Cruzan's interests. The relevant observations from Justice Brennan's dissenting opinion are as follows:

"The Court would make an exception here. It permits the State's abstract, undifferentiated interest in the preservation of life to overwhelm the best interests of Nancy Beth Cruzan, interests which would, according to an undisputed finding, be served by allowing her guardians to exercise her constitutional right to discontinue medical treatment. Ironically, the Court reaches this conclusion despite endorsing three significant propositions which should save it from any such dilemma. I would so hold: In my view, the Constitution requires the State to care for Nancy Cruzan's life in a way that gives appropriate respect to her own best interests.

This case is the first in which we consider whether, and how, the Constitution protects the liberty of seriously ill patients to be free from life-sustaining medical treatment. So put, the question is both general and profound. We need not, however, resolve the question in the abstract. Our responsibility as judges both enables and compels us to treat the problem as it is illuminated by the facts of the controversy before us. [*332] The most important of those facts are these:

"Clear and convincing evidence" established that Nancy Cruzan is "oblivious to her environment except for reflexive responses to sound and perhaps to

painful stimuli"; that "she has no cognitive or reflexive ability to swallow food or water"; that "she will never recover" these abilities; and that her "cerebral cortical atrophy is irreversible, permanent, progressive and [***276] ongoing." App. to Pet. for Cert. A94-A95. Recovery and consciousness are impossible; the highest cognitive brain function [****125] that can be hoped for is a grimace in "recognition of ordinarily painful stimuli" or an "apparent response to sound." Id., at A95. [****126] [**2880] After thus evaluating Nancy Cruzan's medical condition, the trial judge next examined how the interests of third parties would be affected if Nancy's parents were allowed to withdraw the gastrostomy tube that had been implanted in [*333] their daughter.

His findings make it clear that the parents' request had no economic motivation, and that granting their request would neither adversely affect any innocent third parties nor breach the ethical standards of the medical profession. Because he believed he had a duty to do so, the independent guardian ad litem appealed the trial court's order to the Missouri Supreme Court. In that appeal, however, the guardian advised the court that he did not disagree with the trial court's decision. Specifically, he endorsed the critical finding [****129] that "it was in Nancy Cruzan's best interests to have the tube feeding discontinued." That important conclusion thus was not disputed by the litigants.

One might reasonably suppose that it would be dispositive: If Nancy Cruzan has no interest in continued treatment, and if she has a liberty interest in being free from unwanted treatment, and if the cessation of treatment would have no [**2881] adverse impact on third parties, and if no reason exists to doubt the good faith of Nancy's parents, then what possible basis could the State have for insisting upon continued medical treatment? Yet, instead of questioning or endorsing the trial court's [****130] conclusions about Nancy Cruzan's interests, the State Supreme Court largely ignored them."

(Emphasis Supplied)

149. From above, it is our view that the real divergence in Cruzan (supra) lay not in the recognition of a patient's liberty to refuse medical treatment, but in whether the State of Missouri could have constitutionally insisted upon a rigid and formal application of the "clear and convincing evidence" standard, even where the patient's best interests were undisputed and her wishes could be reasonably inferred through substituted judgment.

150. Thereafter, in *In re Guardianship of Jane Doe*, reported in 411 Mass. 512, the Supreme Court of Massachusetts considered the case of Jane Doe, a 33-year-old woman suffering from Canavan's disease, who was also in a PVS, with no prospect of improvement. The medical evidence established that she

had suffered a total loss of cerebral functioning, had no awareness of herself or her surroundings, and was incapable of experiencing cognitive responses to stimuli, hunger, or thirst. For nearly a decade, she had been sustained through CANH administered via a nasoduodenal tube.

In such circumstances, a petition was brought before the Probate and Family Court by Doe's permanent guardian seeking authorisation for the withdrawal of the feeding tube. The Probate Court judge applied the doctrine of substituted judgment and recognised substituted judgment as a legal fiction in cases involving incompetent persons, through which liberty interests of the patient may nonetheless be vindicated.

While applying the substituted judgment standard, the judge concluded that, if Doe had been competent, he would have chosen to discontinue CANH, and accordingly allowed the petition. On appeal, the Supreme Court of Massachusetts affirmed the decision of the judge, reiterating that although best interests considerations are relevant to substituted judgment analysis, yet they are relevant only to the extent that the individual herself would have considered them in deciding whether to accept or refuse continued treatment, if he were to be competent. The relevant observations are as under:

"Lack of a prior expressed intention regarding medical treatment does not bar use of the doctrine of substituted judgment. We recognize that in situations in which there is an attempt to use substituted judgment for a never-competent person, it is a legal fiction. It is the legal mechanism by which society (at least in Massachusetts) attempts to vindicate liberty interests, albeit through a legal fiction. We are also aware that therefore "the substituted judgment [doctrine] is difficult to apply."

That difficulty, however, "provides inadequate justification for denying its benefits" "While it may be necessary to rely to a greater degree on objective criteria [in the case of a never-competent person] the effort to bring the substituted judgment into step with [***15] the values and desires of the affected individual must not, and need not, be abandoned". Some of these objective criteria are the same as those considered in the "best interests of the ward" test. "[T]he best interests analysis, like that of the substituted judgment doctrine, requires a court to focus on the various factors unique to the situation of the individual for whom it must act." while ward's best interests are relevant to substituted judgment determination, "they are relevant only to the extent that the individual, if competent, would weigh them in deciding whether to accept treatment".

(Emphasis Supplied)

151. In the case of *In re Guardianship of L.W.*, reported in 167 Wis. 2d 53, the Supreme Court of Wisconsin examined whether lifesustaining medical treatment, including artificial nutrition and hydration, could be withdrawn from an incompetent patient in a PVS, and whether such a decision could lawfully be taken by a guardian. In this case, L.W., a 79-year-old man with a long history of severe schizophrenia who had been admitted to the hospital for decades and may never be competent, suffered a cardiac arrest and thereafter entered a chronic PVS. His physicians advised that, absent his improvement, withdrawal of life-sustaining treatment would be considered.

The guardian sought declaratory guidance as to whether he could consent to such withdrawal without prior court approval. Although L.W. died naturally while the matter was pending, the court addressed the issues owing to their public importance. The court held that an incompetent individual in a PVS possesses a constitutionally protected right to refuse unwanted medical treatment, including CANH, and that a guardian may exercise that right on the ward's behalf where withdrawal is in the ward's best interests.

The court clarified that, where a patient's wishes can be clearly ascertained, it is in the patient's best interests to honour those wishes, however, where there is little or no reliable evidence of past wishes (as in the case of a never-competent or longincompetent patient) the substituted judgment standard would be inapplicable, and the decision must instead be governed exclusively by the best interests principle.

In applying that principle, the guardian must begin from a presumption in favour of the continuation of life, but may rebut that presumption through a good faith assessment of objective factors viewed from the patient's standpoint, including prognosis, life expectancy, prospects of recovery, the burdens and benefits of continued treatment, and the degree of humiliation, dependence, and loss of dignity likely to result from the patient's condition and its treatment. The court gave ample caution that in such circumstances the guardian must not substitute his own assessment of the beliefs, values, and wishes of the patient's life. The relevant observations are as under:

"We conclude that an incompetent individual in a persistent vegetative state has a constitutionally protected right to refuse unwanted medical treatment, including artificial nutrition and hydration, that a court-appointed guardian may consent to withdrawal of such treatment where it is in the "best interests" of the ward to do so, and that the guardian does not need the prior authority of the court, although that decision may be reviewed by the court at the instance of parties in interest.

We stress that this opinion is limited in scope to persons in a persistent vegetative state. Certainly the patient's wishes, as far as they can be discerned, are an appropriate consideration for the guardian. If the wishes are clear, it is invariable as a matter of law, both common and statutory, that it is in the best interests of the patient to have those wishes honored, for the patient has made the pre-choice of what he or she considers to be the best interests under the *80 circumstances that arise.

We also hold that in a case such as this one where there can be no reliable ascertainment of the incompetent's wishes, only the best interests standard can be applied. We are fully in accord with the circuit court's conclusion in this respect. In the circumstances of this proceeding the guardian. In making the best interests determination, the guardian must begin with a presumption that continued life is in the best interests of the ward. Whether that presumption may be overcome depends upon a good faith assessment by the guardian of several objective factors. Objective factors the guardian may consider include:

The degree of humiliation, dependence, and loss of dignity probably resulting from the condition and treatment; the life expectancy and prognosis for recovery with and without treatment; the various treatment options; and the risks, side effects, and benefits of each of those options. In determining whether to withdraw or withhold medical treatment from patient in persistent vegetative state, guardian must assess objective factors from standpoint of patient, and should not substitute his or her own view of "quality of life" of ward; guardian's determination of what is in ward's best interests necessarily involves assessment of value that continuation of life has for ward, but should not involve value others find in continuation of ward's life, and guardian should not engage in subjective quality of life determination on behalf of ward. U.S.C.A. Const. Amend. 14; W.S.A. Const. Art. 1, Â§ 1; W.S.A. 154.01 et seq."

(Emphasis Supplied)

152. From the above, it appears that courts in the USA have approached decisions relating to withdrawal of life-sustaining treatment through a structured interaction between the substituted judgment standard and the best interests principle, rather than treating them as isolated or competing tests.

153. Where evidence exists of the patient's prior wishes, values, or convictions, the courts in the USA have preferred the substituted judgment standard as the primary mode of decision-making. This is evident in *In re Eichner* (supra), where the court emphasised that the role of the surrogate is to determine what the patient would have decided if he had been competent, based on prior expressions and deeply held beliefs, while simultaneously grounding that

inquiry in the objective threshold of medical findings of irreversibility, absence of cognitive function, and lack of therapeutic purpose i.e., medically what is in best interest.

Similarly, in Barber (supra), the court acknowledged the prior expressions of the patient's wishes and then evaluated continued treatment through a proportionality analysis, holding that treatment which merely prolongs biological existence without any reasonable prospect of recovery does not serve the patient's interests and imposes no legal duty on physicians to continue it.

154. At the same time, the courts have repeatedly acknowledged that substituted judgment cannot operate meaningfully in the absence of reliable evidence of the patient's intentions. In such circumstances, the substituted judgment standard yields to a best interests determination grounded in objective criteria. This transition is clearly articulated in Rasmussen (supra), where the court held that substituted judgment is appropriate only where the patient has expressed his wishes while competent, and that where the record is barren of such evidence, decisions must be guided solely by the patient's best interests, assessed through factors such as relief from suffering, recovery of cognitive functioning, and the quality and extent of life sustained.

A similar approach is reflected in *In re Conroy* (supra), where the court developed best interests tests to govern cases involving incompetent patients whose wishes could not be clearly established, permitting withdrawal of treatment where the burdens of continued life with treatment clearly outweigh its benefits and continuation would be inhumane.

155. The decision of the Supreme Court of the USA in *Cruzan* (supra), introduces an important point of divergence. While the majority upheld the State's requirement of clear and convincing evidence of the patient's wishes before permitting withdrawal of life-sustaining treatment, the dissenting opinions, particularly those of Justice Brennan and Justice Stevens, placed greater emphasis on the patient's best interests and the factual findings of the trial court. The dissent criticised the elevation of the State's abstract interest in preserving life over the individual patient's interests, especially where the medical evidence established permanent unconsciousness, irreversibility, and the absence of any benefit to the patient from continued treatment.

The dissent further noted that the trial court had already found, on clear and convincing evidence, that withdrawal of treatment was in the patient's best interests, that the family acted in good faith, and that no third-party interests were adversely affected. We resonate with the observations made in the dissenting opinions, more particularly, the primacy that they have accorded to

the patient's welfare and dignity, rather than endorsing very strict procedural evidentiary thresholds that serve to defeat substantively just outcomes in cases where continued treatment serves no purpose for the patient.

156. Subsequent State court decisions reflect both strands of *Cruzan* (supra). In *Guardianship of Jane Doe* (supra), the Supreme Court of Massachusetts reaffirmed the continued applicability of substituted judgment even for incompetent patients, recognising it as a legal fiction but one necessary to vindicate liberty interests, while permitting reliance on objective criteria where subjective intent cannot be reconstructed. Conversely, in *In the Matter of Guardianship of L.W.* (supra), the Supreme Court of Wisconsin drew a clearer line between substituted judgment and best interests, holding that where the patient's wishes cannot be reliably ascertained, only the best interests standard may be applied, beginning with a presumption in favour of life but allowing that presumption to be rebutted through a good-faith, patient-centred assessment of prognosis, dignity, and the burdens of treatment, without importing subjective quality-of-life judgments of others.

(b) Best interest of the patient in United Kingdom (UK)

157. In one of the first cases of its kind in the United Kingdom, the House of Lords in *In re F. (Mental Patient: Sterilisation)*, reported in (1990) 2 AC 1, was seized with an issue involving a patient F, suffering from a severe mental disability, with the verbal capacity of a two-year old and the mental capacity of a child aged about fourfive years. F resided as a voluntary patient in a mental hospital where she formed a sexual relationship with a male patient, P. Although F had the physical capacity to conceive, she was incapable of understanding the causal link between intercourse and pregnancy, nor could she cope with the psychiatric consequences of pregnancy and childbirth.

Medical evidence established that standard reversible contraceptives were medically contraindicated or impracticable for her. Consequently, her mother and doctors sought a declaration that the sterilisation of F by tubal occlusion would not be unlawful, despite F's inability to consent to the procedure. In this backdrop, the House of Lords had held that it would be lawful to sterilise a mental patient who was incapable of giving consent to the procedure on the ground that sterilisation would be in the patient's best interests.

The House of Lords further observed that the duty of a doctor towards a patient who lacks mental capacity to express his own wishes and has not expressed at any time when he had such capacity, is to give or withhold treatment according to what appears to be in the best interests of the patient. The House of Lords observed that an operation or a medical treatment will be said to be in the best interests of the patient only if it is carried out in order either to save their lives,

or to ensure improvement or prevent deterioration in the patient's health. The relevant observation is as follows:

"At common law, a doctor cannot lawfully operate on adult patients of sound mind, or give them any other treatment involving the application of physical force however small ("other treatment"), without their consent. If a doctor were to operate on such patients, or give them other treatment, without their consent, he would commit the actionable tort of trespass to the person. There are, however, cases where adult patients cannot give or refuse their consent to an operation or other treatment.

One case is where, as a result of an accident or otherwise, an adult patient is unconscious and an operation or other treatment cannot be safely delayed until he or she recovers consciousness. Another case is where a patient, though adult, is not by reason of mental disability, able to understand the nature or purpose of an operation or other treatment. The common law would be seriously defective if it failed to provide a solution to the problem created by such inability to consent.

In my opinion, however, the common law does not so fail. In my opinion, the solution to the problem that the common law provides is that a doctor can lawfully operate on, or give other treatment to, adult patients who are incapable, for one reason or another, of consenting to his doing so, provided that the operation or other treatment concerned is in the best interests of such patients. The operation or other treatment will be in their best interests if, but only if, it is carried out in order either to save their lives, or to ensure improvement or prevent deterioration in their F physical or mental health."

(Emphasis Supplied)

158. In another pivotal ruling in the case of Airedale (supra), the House of Lords was seized of a matter involving a patient, Anthony Bland, who was 17 years old and had sustained irreversible damage to the brain, which had left him in a PVS, without cognitive function, and loss of sight and hearing. He was artificially fed by CANH via a nasogastric tube. After three years with no hope of recovery, his doctors and family felt that no fruitful purpose would be served by continuing the medical treatment. Therefore, they sought a declaration from the court that it would be lawful to withdraw CANH and associated medical treatment. While holding that it would be in good medical practice and in the best interest of the patient, the House of Lords permitted discontinuation of medical treatment, including the CANH.

159. While doing so, Lord Keith observed that the existence in a vegetative state with no prospect of recovery is regarded as not being beneficial and forms

a proper basis for the decision to discontinue medical treatment. Lord Keith was also of the view that the decision whether the continued treatment confers any benefit on a PVS patient is essentially a decision for the doctor in charge. The relevant observations of Lord Keith are as under:

"But it is, of course, true that in general it would not be lawful for a medical practitioner who assumed responsibility for the care of an unconscious patient simply to give up treatment in circumstances where continuance of it would confer some benefit on the patient. On the other hand, a medical practitioner is under no duty to continue to treat such a patient where a large body of informed and responsible medical opinion is to the effect that no benefit at all would be conferred by continuance. Existence in a vegetative state with no prospect of recovery is, by that opinion, regarded as not being a benefit, and that, if not unarguably correct, at least forms a proper basis for the decision to discontinue treatment and care."

(Emphasis Supplied)

160. In addition to this, Lord Goff, while emphasising the principle of the best interest of the patient, referred to *In re F. (Mental Patient: Sterilisation)* (supra) and observed that a decision by a doctor whether or not to initiate or to continue to provide treatment should also be governed by the same fundamental principle of the patient's best interest. According to Lord Goff, in cases involving the patient being incompetent to consent to the discontinuation of medical treatment where there is no hope for his recovery, and prolongation of medical treatment is serving no therapeutic purposes, the question is not whether it is in the best interests of the patient that he should die, rather the correct question for consideration is "whether it is in the best interests of the patient that his life should be prolonged by the continuance of such form of medical treatment or care".

Further, Lord Goff also observed that medical treatment is neither appropriate nor requisite "simply to prolong a patient's life, when such treatment has no therapeutic purpose of any kind, as where it is futile because the patient is unconscious and there is no prospect of any improvement in his condition". Thereafter, the Lord Goff observed that regard should also be had to the invasive character of the treatment and to the "indignity" to which a patient is subjected by prolonging his life by artificial means, which, in turn, causes considerable distress to his family. In such cases, Lord Goff said that it is the futility of the treatment which justifies its termination and in such circumstances, a doctor is not required to initiate or to continue life-prolonging treatment or care, keeping in mind the best interests of the patient. The relevant observations of Lord Goff are as follows:

"I return to the patient who, because, for example, he is of unsound mind or has been rendered unconscious by accident or by illness, is incapable of stating whether or not he consents to treatment or care. In such circumstances, it is now established that a doctor may lawfully treat such a patient if he acts in his best interests, and indeed that, if the patient is already in his care, he is under a duty so to treat him: see *In re F. (Mental Patient: Sterilisation)* [1990] 2 A.C. 1, in which the legal principles governing treatment in such circumstances were stated by this House.

For my part, I can see no reason why, as a matter of principle, a decision by a doctor whether or not to initiate, or to continue to provide, treatment or care which could or might have the effect of prolonging such a patient's life, should not be governed by the same fundamental principle. Indeed, if the justification for treating a patient who lacks the capacity to consent lies in the fact that the treatment is provided in his best interests, it must follow that the treatment may, and indeed ultimately should, be discontinued where it is no longer in his best interests to provide it. The question is not whether the doctor should take a course that will kill his patient, or even take a course which has the effect of accelerating his death.

The question is whether the doctor should or should not continue to provide his patient with medical treatment or care which, if continued, will prolong his patient's life. This is because the question is not whether it is in the best interests of the patient that he should die. The question is whether it is in the best interests of the patient that his life should be prolonged by the continuance of this form of medical treatment or care. The correct formulation of the question is of particular importance in a case such as the present, where the patient is totally unconscious and where there is no hope whatsoever of any amelioration of his condition.

In circumstances such as these, it may be difficult to say that it is in his best interests that the treatment should be ended. But if the question is asked, as in my opinion it should be, whether it is in his best interests that treatment which has the effect of artificially prolonging his life should be continued, that question can sensibly be answered to the effect that his best interests no longer require that it should be. Here, the condition of the patient, who is totally unconscious and in whose condition there is no prospect of any improvement, is such that life-prolonging treatment is properly regarded as being, in medical terms, useless.

But for my part, I cannot see that medical treatment is appropriate or requisite simply to prolong a patient's life, when such treatment has no therapeutic purpose of any kind, as where it is futile because the patient is unconscious and there is no prospect of any improvement in his condition. It is reasonable also

that account should be taken of the invasiveness of the treatment and of the indignity to which, as the present case shows, a person has to be subjected if his life is prolonged by artificial means. But in the end, in a case such as the present, it is the futility of the treatment that justifies its termination. I do not consider that, in circumstances such as these, a doctor is required to initiate or to continue life-prolonging treatment or care in the best interests of his patient.

(Emphasis Supplied)

161. In a similar trend, Lord Mustill observed that it was in the best interest of the community at large that Anthony Bland's life should end. The doctors had done all they could have done. It was a loselose situation as nothing would be gained by continuing Bland's treatment. Lord Lowry also observed that in reaching a decision according to law, one ought to give weight to informed medical opinion both on the point whether to continue the artificial feeding regime of a patient in PVS and also on the question of what is in the best interests of a patient. The relevant observations of Lord Mustill and Lord Lowry are as follows:

"Threaded through the technical arguments addressed to the House were the strands of a much wider position, that it is in the best interests of the community at large that Anthony Bland's life should now end. The doctors have done all they can. Nothing will be gained by going on, and much will be lost. The distress of the family will get steadily worse. The strain on the devotion of a medical staff charged with the care of a patient whose condition will never improve, who may live for years and who does not even recognise that he is being cared for, will continue to mount.

I consider that the court, when intent on reaching a decision according to law, ought to give weight to informed medical opinion both on the point now under discussion and also on the question of what is in the best interests of a patient and I reject the idea, which is implicit in the appellant's argument, that informed medical opinion in these respects is merely a disguise for a philosophy which, if accepted, would legalise euthanasia."

(Emphasis Supplied)

162. Lastly, Lord Browne-Wilkinson, in concurrence with the above views, expressed the view that if there comes a stage where a responsible doctor reaches a reasonable conclusion, which accords with the views of a responsible body of medical opinion, that further continuance of an intrusive life support system is not in the best interests of the patient, the doctor can no longer lawfully continue that life support system as to do so would constitute the crime of battery and the tort of trespass. According to him, unless the doctor

has reached the affirmative conclusion that it is in the patient's best interest to continue the invasive care, such care must cease. The relevant observations of Lord Browne-Wilkinson are as under:

"In my judgment it must follow from this that if there comes a stage where the responsible doctor comes to the reasonable conclusion (which accords with the views of a responsible body of medical opinion) that further continuance of an intrusive life support system is not in the best interests of the patient, he can no longer lawfully continue that life support system: to do so would constitute the crime of battery and the tort of trespass to the person. Therefore, he cannot be in breach of any duty to maintain the patient's life. Therefore, he is not guilty of murder by omission."

(Emphasis Supplied)

163. Thus, from the collective reasoning and concurring opinions expressed by the House of Lords in Airedale (supra), it becomes manifest that the determination of what constitutes the "best interests of the patient" must be guided by an objective evaluation of the medical realities attending each individual case. Central to this evaluation is the question of whether it is in the best interests of the patient that his life should be prolonged by the continuation of medical treatment, which, in the given facts and circumstances, may have ceased to serve any therapeutic purpose and has instead become medically futile.

In this context, as per Airedale (supra), the principle of best interests does not mandate the preservation of life at all costs or by every available artificial means, irrespective of the quality of life and the invasiveness of the medical intervention. Rather, the focus must remain on whether the continuation of such treatment confers any real benefit upon the patient. Where a responsible body of informed medical opinion concludes that the patient's condition is irreversible, that there exists no reasonable hope of recovery, and that continued treatment merely sustains biological existence without consciousness or cognitive function, causing indignity to the life of the patient, such existence cannot, in law or medical ethics, be regarded as constituting a benefit to the patient.

164. What further emerges is that the correct formulation of the enquiry is not whether it is in the best interests of the patient that he should die, but whether it is in his best interests that his life should be artificially prolonged through the continuation of medical treatment which has become non-beneficial, non-therapeutic, or futile. Where the answer to this enquiry, based on sound medical judgment and ethical considerations, is in the negative, the withdrawal

or withholding of such treatment must accord with the principle of best interests.

165. At this juncture, for the purposes of our discussion ahead, it is also noteworthy to mention that Lord Goff in *Airedale* (supra) had also drawn a tangent upon the scope and application of the "substituted judgment" standard while determining the "best interest of the patient". According to Lord Goff, American courts had adopted the substituted judgment standard, where, in a case in which the patient is incapacitated from expressing any view on the question whether life-prolonging medical treatment should be withheld in the relevant circumstances, the determination is anchored on what decision the patient himself would have made had he been able to do so.

This came to be known as the substituted judgment standard, and it generally involves a detailed patient-centric consideration of his views and wishes. However, Lord Goff was of the view that any such American standard did not form part of the English law in relation to incompetent adults and in decisions relating to withdrawal or withholding of their medical treatment. The relevant observation is as under:

"I wish however, to refer at this stage to the approach adopted in most American courts, under which the court seeks, in a case in which the patient is incapacitated from expressing any view on the question whether life-prolonging treatment should be withheld in the relevant circumstances, to determine what decision the patient himself would have made had he been able to do so. This is called the substituted judgment test, and it generally involves a detailed inquiry into the patient's views and preferences"

(Emphasis Supplied)

166. Later, in the case of *Re A (Male Sterilisation)*, reported in [2000] 1 FLR 549 560 F-H, the Court of Appeal developed the use of a "balance sheet approach" in determining the best interest of an incompetent person. According to this approach, a judge who is tasked with the responsibility to make an evaluation of what is in the best interest of the patient who lacks capacity should draw up a balance sheet. In such a balance sheet, the first entry should be of any factor or factors of actual benefit.

On the other side, a judge or a decision-maker should write any counter-balancing disadvantages to the patient. Then he should enter on each side the potential gains and losses for each instance. At the end of that exercise, the judge or the decision-maker should be better placed to strike a balance between the sum of certain and possible gains against the sum of the certain and possible losses. The account that has relatively significant credit will be the

concluding factor in deciding what is in the best interest of the patient. The relevant observation is as under:

"Pending the enactment of a checklist or other statutory direction it seems to me that the first instance judge with the responsibility to make an evaluation of the best interests of a claimant lacking capacity should draw up a balance sheet. The first entry should be of any factor or factors of actual benefit. In the present case the instance would be the acquisition of foolproof contraception. Then on the other sheet the judge should write any counterbalancing disbenefits to the applicant.

An obvious instance in this case would be the apprehension, the risk and the discomfort inherent in the operation. Then the judge should enter on each sheet the potential gains and losses in each instance making some estimate of the extent of the possibility that the gain or loss might accrue. At the end of that exercise the judge should be better placed to strike a balance between the sum of the certain and possible gains against the sum of the certain and possible losses. Obviously, only if the account is in relatively significant credit will the judge conclude that the application is likely to advance the best interests of the claimant."

(Emphasis Supplied)

167. In drawing up this balance sheet, the court is not concerned solely with medical issues, but also takes into account wider factors concerning the patient. Therefore, in *Re A (Male Sterilisation)* (supra), the Court of Appeal had observed that the best interests of the patient are not limited to best medical interests. In fact, the best interests of the patient should encompass medical, emotional and any other welfare issues as well. The relevant observation is as under:

"In *re MB (Medical Treatment)* [1997] 2 FLR 426 I said at page 439: "Best interests are not limited to best medical interests." In my judgement best interests encompasses medical, emotional and all other welfare issues."

(Emphasis Supplied)

168. Further, in *Re S (Adult Patient: Sterilisation)*, reported in [2001] Fam 15, the Court of Appeal was of the view that in determining what is in the best interest, the judge must have regard to welfare as an important consideration, which means the determination should embrace issues far wider than the medical ones. The relevant observation is as under:

"in deciding what is best interest the judge must have regard to welfare as the paramount consideration. That embraces issues far wider than the medical.

Indeed, it would be undesirable and probably impossible to set bounds to what is relevant to a welfare determination."

(Emphasis Supplied)

169. In furtherance of the above, in the case of *Portsmouth NHS Trust v Wyatt*, reported in [2005] 1 FLR 21, Lord Hedley, while relying on *Re A (Male Sterilisation)* (supra) and *Re S (Adult Patient: Sterilisation)* (supra) respectively, added that the infinite variety of the human condition never ceases to surprise and it is that fact that defeats any attempt to be more precise in a defining the contours of the best interests of the patient principle.

170. Even so more, Lord Phillips in the case of *R (Burke) v GMC (Official Solicitor and others intervening)*, reported in [2005] EWCA Civ 1003, added that it is not possible to attempt to define what is in the best interest of a patient by any single test.

171. At this juncture, it is pertinent to mention that post the landmark ruling of *Airedale* (supra) and other cases as referred to above, the Parliament of the UK found it necessary to introduce an exclusive legislation in this respect.

172. Therefore, the Parliament of the UK introduced the Mental Capacity Act, 2005 ("MCA") inter alia, with an objective to provide a comprehensive statutory regime for making decisions about mentally incapacitated adults. This Act was supported by a Code of Practice as well. The basic principles to be applied under the MCA are set out in Section 1 and include, under Section 1(4), the cardinal principle that "an act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests". The steps to be taken to determine what is in a person's best interests are set out in Section 4, which provides inter alia the determinants to be considered under the "Best Interest" principle. Section 4 of this Act states that:

"(1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of (a) the person's age or appearance or (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.

(3) He must consider (a) whether it is likely that the person will at some time have the capacity in relation to the matter in question, and (b) if it appears likely that he will, when that is likely to be.

(4) He must, so far as reasonably practicable, permit and encourage the person to participate, or improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.

(5) Where the determination relates to life-sustaining treatment, he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

(6) He must consider, so far as is reasonably ascertainable, (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity); (b) the beliefs and values that would be likely to influence his decision if he had capacity, and (c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind; (b) anyone engaged in caring for the person or interested in his welfare; (c) any donee of a lasting power of attorney granted by the person, and (d) any deputy appointed by the court.

(11) "Relevant circumstances" are those - (a) of which the person making the determination is aware, and (b) which it would be reasonable to regard as relevant."

(Emphasis Supplied)

173. In a nutshell, the MCA did not provide a straight-jacketed one size fit for all standard in determining what is in the best interest. Instead, it delineated a set of guiding considerations, upon due evaluation of which the best interests of the patient are to be ascertained. The most notable addition to the position of law in the UK was Section 4(6) of MCA, wherein due consideration was given to the wishes, feelings, beliefs, and values of the patient while determining his best interest. The person or body making such a determination has been defined as a decision-maker.

174. The noticeable determinants under the MCA are as follows:

(i) the determination must not rest merely upon the patient's age, appearance, or any medical condition or behavioural aspect that might give rise to unjustified assumptions;

(ii) the decision-maker must consider all the relevant circumstances of which he is aware, and which would be reasonable to be regarded as relevant;

- (iii) due regard must be had to the likelihood of the patient regaining decision-making capacity and, if so, the probable timeframe thereof;
- (iv) where the determination concerns life-sustaining treatment, the decision-maker must not be influenced by any desire to bring about the patient's death;
- (v) so far as reasonably ascertainable, consideration must be accorded to the patient's past and present wishes and feelings, including any relevant written statements made when the patient possessed capacity;
- (vi) equal regard must be had to the beliefs, values, and other factors that would likely have guided the patient's decision had he been competent to decide; and
- (vii), where practicable and appropriate, the views of those among others who are engaged in the care of the patient or otherwise interested in his welfare, must also be taken into account.

175. Moreover, the MCA is supported by a Code of Practice. Section 5 of this Code of Practice gives specific guidance as to how to work out someone's best interests when making decisions about lifesustaining treatment. Section 5.7 of the Code of Practice states that when working out what is in the best interests of the person who lacks capacity to make a decision or act for themselves, decisionmakers must take into account all relevant factors that would be reasonable to consider, not just those that they think are important.

The decision-makers must not act or make a decision based on what they would want to do if they were the person who lacked capacity. Further, Section 5.19 of the Code of Practice states that the relevant circumstances will, of course, vary from case to case. For instance, when making a decision about major medical treatment, a doctor would need to consider the clinical needs of the patient, the potential benefits and burdens of the treatment on the person's health and life expectancy and any other factor relevant to making a professional judgement.

176. In particular, Section 5.31 of the Code of Practice provides that all reasonable steps which are in the person's best interests should be taken to prolong their life. However, "there will be a limited number of cases where treatment is futile, overly burdensome to the patient or where there is no prospect of recovery. In circumstances such as these, it may be that an assessment of best interests leads to the conclusion that it would be in the best interests of the patient to withdraw or withhold life-sustaining treatment, even if this may result in the person's death".

The decision maker must not be motivated by a desire to bring about the person's death for whatever reason, even if this is from a sense of compassion. Section 5.33 of the Code of Practice states that the requirement that a doctor must not be motivated by a desire to bring about the patient's death cannot be interpreted to mean that doctors are under an obligation to provide, or to continue to provide, a treatment where that treatment is not in the best interests of the person.

Section 5.38 of the Code of Practice states that even if a patient cannot make the decision due to his incapacity, "his wishes and feelings, beliefs and values should be taken fully into account, whether expressed in the past or now. But his wishes and feelings, beliefs and values will not necessarily be the deciding factor in working out their best interests". Any such assessment must consider past and current wishes and feelings, beliefs and values alongside all other factors, but the final decision must be based entirely on what is in the person's best interests. The relevant portions of these provisions are as under:

"5.7 When working out what is in the best interests of the person who lacks capacity to make a decision or act for themselves, decision-makers must take into account all relevant factors that it would be reasonable to consider, not just those that they think are important. They must not act or make a decision based on what they would want to do if they were the person who lacked capacity.

5.19 The relevant circumstances will of course vary from case to case. For example, when making a decision about major medical treatment, a doctor would need to consider the clinical needs of the patient, the potential benefits and burdens of the treatment on the person's health and life expectancy and any other factors relevant to making a professional judgement.

5.31 All reasonable steps which are in the person's best interests should be taken to prolong their life. There will be a limited number of cases where treatment is futile, overly burdensome to the patient or where there is no prospect of recovery. In circumstances such as these, it may be that an assessment of best interests leads to the conclusion that it would be in the best interests of the patient to withdraw or withhold life-sustaining treatment, even if this may result in the person's death. The decision-maker must make a decision based on the best interests of the person who lacks capacity. They must not be motivated by a desire to bring about the person's death for whatever reason, even if this is from a sense of compassion. Healthcare and social care staff should also refer to relevant professional guidance when making decisions regarding life-sustaining treatment.

5.33 Importantly, section 4(5) cannot be interpreted to mean that doctors are under an obligation to provide, or to continue to provide, life-sustaining

treatment where that treatment is not in the best interests of the person, even where the person's death is foreseen. 5.38 In setting out the requirements for working out a person's 'best interests', section 4 of the Act puts the person who lacks capacity at the centre of the decision to be made.

Even if they cannot make the decision, their wishes and feelings, beliefs and values should be taken fully into account - whether expressed in the past or now. But their wishes and feelings, beliefs and values will not necessarily be the deciding factor in working out their best interests. Any such assessment must consider past and current wishes and feelings, beliefs and values alongside all other factors, but the final decision must be based entirely on what is in the person's best interests."

(Emphasis Supplied)

177. Upon the introduction of the MCA, the Court of Protection in the case of *W v. M*, reported in [2011] EWHC 2443 (Fam), was called upon to consider a matter involving a patient, named 'M', who was diagnosed with a state of mind called Minimally Conscious State (MCS). In such a state, a patient is not in PVS. Rather, in MCS, a patient is considered to be above the vegetative state and is aware to some extent of herself and her environment, but does not have full consciousness.

The issue before the court was whether it is in M's best interests that all life-sustaining treatment, including CANH, is withdrawn and withheld and, secondly, if it is in M's best interests to continue life-sustaining treatment, including CANH, then what future management would be in her best interests. In such circumstances, Justice Baker was of the opinion that the reasoning adopted in *Airedale* (supra) more particularly that a balance sheet approach need not be undertaken in cases involving PVS patients, cannot directly be imported to cases involving MCS patients.

On this basis, the Court of Protection adopted the balance sheet approach to the MCS patient in weighing the benefits of withdrawal of CANH against the disadvantages of continuing with the same. On the aspect of the substituted judgment standard, the court also observed that M's past and present wishes and feelings, so far as reasonably ascertainable, had to be given significant weight when deciding whether CANH should be withdrawn or not. The relevant observations of the Court of Protection are as under:

"4. Any decision made under the Mental Capacity Act for a person who lacks capacity must be made in her best interests. The law requires the court to identify those factors which are relevant to the person's best interests and carry out a balancing exercise weighing up the factors on each side of the issue. This

approach is well established in cases involving medical treatment. This is, however, the first time in this country that a court has been asked to authorise the withdrawal of artificial nutrition and hydration from a patient in a minimally conscious state.

"81. It is important to note that, while any decision maker, including a judge, is under an obligation to consider P's wishes and feelings, and the beliefs, values and other factors that he would have taken into account if he had capacity, the decision must be based on P's best interests and not on what P would have decided if he had capacity. Like Lewison J (as he then was) in *Re P (Statutory Wills)* [2009] EWHC 163 (Ch) [2010] Ch 33, I agree with the observation in the explanatory notes to the original Mental Capacity Bill (which in turn echoed the observation of Lord Goff in the *Bland* case cited above) that "best interests is not a test of 'substituted judgement' (what the person would have wanted), but rather it requires a determination to be made by applying an objective test as to what would be in the person's best interests." This is confirmed by the Code of Practice at paragraph 5.38:"

99. On behalf of the Official Solicitor, Miss Harry Thomas and Miss Apps argue that the balance sheet approach should not be adopted in cases where the patient is otherwise clinically stable. They argue that the balance sheet analysis cannot apply in such circumstances as it can never be in P's best interests to withhold or withdraw lifesustaining treatment. They submit that the House of Lords in *Bland* specifically rejected the weighing up the benefits and disadvantages of treatment in PVS cases and that the balance sheet approach has been confined in other cases to circumstances where the patient is very seriously ill or is at the end of their life.

100. This submission is opposed not only by the Applicant but also by the Primary Care Trust. On behalf of the PCT, Miss Dolan submits that the balance sheet approach is to be applied in all cases save for those involving PVS. She submits that a clear reading of the speeches in *Bland* demonstrates that the House envisaged that weighing up the patient's best interests should be conducted in every case save where the patient was in a PVS where the futility of treatment means that treatment had no benefit at all.

101. Miss Dolan submits that, whilst it is clear that the benefit of preserving of life will always weigh extremely heavily in the balance, it cannot be assumed that there will always be no relevant dis-benefit to weigh against it. Even in a clinically stable patient there must be room for any relevant psychological and emotional aspects of their position to be taken into account as part of the balancing exercise.

She further argues that the fact that the balance is most likely to come down in favour of preserving life in a MCS patient whose only medical treatment need is for ANH is not grounds for saying that a balance between factors in support of and against providing such treatment need not be struck in such cases. To do away with the balancing exercise and balance sheet would be to disregard the requirement of s.4(2) MCA that consideration be given to "all of the relevant circumstances" and would also disregard s.4(6) MCA which requires consideration of those matters of import to P or that P would be likely to consider if he could do so, when coming to any best interests decision.

102. On this point I am wholly unpersuaded by the Official Solicitor's argument and fully accept the submissions advanced by Miss Dolan on behalf of the PCT. There is, in my judgment, no rationale for extending the approach adopted by the House of Lords in *Bland* to non-VS cases. Lord Goff specifically distinguished between cases in which, having regard to all the circumstances, it may not be in the patient's best interests to continue treatment and cases in which a patient was permanently insensate and thus unable to benefit at all from the treatment. Crucially Lord Goff observed:

"In both classes of case, the decision whether or not to withhold treatment must be made in the best interests of the patient. In the first class, however, the decision has to be made by weighing the relevant considerations"

223. The second factor requires more extensive analysis. As set out above, s.4(6) of the MCA requires the court to consider, so far as reasonably ascertainable, M's past and present wishes and feelings. Even though M made no formal advance decision as to medical treatment, it is said on behalf of the Applicant that she expressed wishes and feelings about the matter which should be given significant weight when deciding whether ANH should now be withdrawn.

Indeed, Mr Sachdeva and Miss Butler-Cole on behalf of the Applicant, say that this factor should be given decisive weight and place M's wishes and feelings at the forefront of their argument. M's family feel strongly that she would have rejected her current treatment, and the rationale for this application is fundamentally based on M's perceived wishes and feelings. They submit that those who oppose this application fail to give appropriate respect to M's wishes and feelings about the right to choose her life and the manner of her death.

245. As set out above, it is the Official Solicitor's submission that the balance sheet approach is inappropriate in respect of a patient in a MCS who is clinically stable. For the reasons set out above, I do not accept this argument.

246. I adopt the balance sheet approach proposed by Thorpe LJ in *Re: A Male Sterilisation* (supra) and applied in subsequent cases. In my judgment, that process is best expressed in this case by a comparison of the advantages of withdrawing ANH against the advantages of continuing with the treatment."

(Emphasis Supplied)

178. Following the ruling of *W v. M* (supra), the UK Supreme Court in the case of *Aintree University Hospitals NHS Foundation Trust v James*, reported in [2013] UKSC 67, was concerned with a patient who had a very limited level of awareness and lacked the capacity to make a decision concerning his medical treatment. The applicant trust had applied to the court seeking the withdrawal of medical treatment as it was in the patient's best interest.

The unanimous view of the clinical team was that it would not be in the patient's best interests to receive these treatments, should his condition deteriorate to the extent that he needed them. The family did not agree with the withdrawal of treatment. They felt that every time the patient had an infection, he had pulled through. According to the family, although he would never regain his previous quality of life, yet he found great enjoyment in seeing his family and close friends.

179. In such circumstances, the trial judge approached the question of best interests by adopting a patient-centred evaluation, wherein medical considerations were treated as only one component of the inquiry. He held that the concept of "futility" must be understood as treatment being ineffective or of no benefit to the patient, rather than treatment being incapable of curing the underlying disease. He further held that "recovery" does not signify restoration to full health, but rather the resumption of a quality of life which the patient himself would regard as worthwhile.

The judge emphasised that the burdens of treatment must be weighed against the benefits of continued existence and that due weight must be accorded to the patient's family life, emotional welfare, and dignity. Here, the reference to a patient's family life does not entail an assessment of the lives, interests, or emotional needs of the family members themselves, rather, it requires consideration of the life of the patient as lived in and through his or her relationship with the family, and the value that such family life holds for the patient in assessing what constitutes his or her best interests.

180. The Court of Appeal, however, adopted a materially different approach. Sir Alan Ward held that futility must be assessed against the therapeutic goal sought to be achieved, namely, whether the treatment had a real prospect of curing or at least palliating the lifethreatening illness. He further held that

recovery must be understood as the restoration of such a state of good health as would avert the impending prospect of death. Sir Alan Ward of the Court of Appeal further held that while best interests encompassed more than medical factors, the patient's wishes must yield to medical imperatives where treatment was futile, overly burdensome, and incapable of restoring health. Arden LJ of the Court of Appeal, while reaching the same result, applied a different reasoning, holding that in the case of uncertainty regarding the patient's wishes, the court should proceed on the basis of what a reasonable person would choose.

181. Due to contrary views taken by both the trial judge and the Court of Appeal, the UK Supreme Court undertook a detailed review of the legal principles governing best interests and disagreed with several propositions advanced by the Court of Appeal while also substantially endorsing the approach of the trial judge.

First, the Supreme Court rejected the Court of Appeal's formulation that the futility of a treatment can be considered only if it has a real prospect of curing or palliating the disease. The court held that such a formulation sets the bar too high and is inconsistent with the view flowing from Airedale (supra), clarifying that futility must be understood in the sense of treatment being useless or pointless, i.e., conferring no benefit at all upon the patient.

Secondly, the Supreme Court rejected the Court of Appeal's formulation of recovery as restoration to such good health as would avert death. The Court held that, particularly in cases involving incurable illness or permanent disability, recovery cannot realistically be equated with restoration of good health, and that the correct inquiry is whether treatment would enable the patient to resume a quality of life which he would himself regard as worthwhile.

Thirdly, the Supreme Court rejected the objective reasonable person standard adopted by Arden LJ, holding that the best interests inquiry must focus on the particular patient's own wishes, beliefs, and values, rather than on what a hypothetical reasonable person would choose. The relevant observation is as under:

"43. It follows that I respectfully disagree with the statements of principle in the Court of Appeal where they differ from those of the judge. Thus it is setting the goal too high to say that treatment is futile unless it has 'a real prospect of curing or at least palliating the life-threatening disease or illness from which the patient is suffering' Given its genesis in Bland, this seems the more likely meaning to be attributed to the word as used in the Code of Practice. A

treatment may bring some benefit to the patient even though it has no effect on the underlying disease or disability.

44. I also respectfully disagree with the statement that 'no prospect of recovery' means 'no prospect of recovering such a state of good health as will avert the looming prospect of death if the life-sustaining treatment is given'. It was accepted in Burke (as it had been earlier) that where the patient is close to death, the object may properly be to make his dying as comfortable and as dignified as possible, rather than to take invasive steps to prolong his life for a short while (see paras 62-63). But where a patient is suffering from an incurable illness, disease or disability, it is not very helpful to talk of recovering a state of "good health". The patient's life may still be very well worth living. Resuming a quality of life which the patient would regard as worthwhile is more readily applicable.

"45. Finally, insofar as Sir Alan Ward and Arden LJ were suggesting that the test of the patient's wishes and feelings was an objective one, what the reasonable patient would think, again I respectfully disagree insofar as it is possible to ascertain the patient's wishes and feelings, his beliefs and values it is those which should be taken into account."

(Emphasis Supplied)

182. In addition to the foregoing, the UK Supreme Court observed that the advantage of the best interests standard lies in its focus upon the patient as an individual, rather than upon the conduct of the doctor, and in its requirement to take into account the totality of circumstances, both medical and non-medical. The Court further held that the best interests inquiry must incorporate a strong element of substituted judgment, by giving due regard to the patient's past and present wishes and feelings, as well as to the considerations which the patient himself would have taken into account had he possessed decision-making capacity.

The UK Supreme Court further stated that in considering the best interests of a particular patient at a particular time, decision-makers must look at his welfare in the widest sense, not just medical but social and psychological; they must consider the nature of the medical treatment in question, what it involves and its prospects of success; they must consider what the outcome of that treatment for the patient is likely to be; they must try and put themselves in the place of the individual patient and ask what his attitude to the treatment is or would be likely to be; and they must consult others who are looking after him or interested in his welfare, in particular for their view of what his attitude would be. The relevant observation is as under:

"24. The advantage of a best interests test was that it focused upon the patient as an individual, rather than the conduct of the doctor, and took all the circumstances, both medical and non-medical, into account (paras 3.26, 3.27). But the best interests test should also contain "a strong element of 'substituted judgment'" (para 3.25), taking into account both the past and present wishes and feelings of patient as an individual, and also the factors which he would consider if able to do so (para 3.28). This might include "altruistic sentiments and concern for others" (para 3.31).

The Act has helpfully added a reference to the beliefs and values which would be likely to influence his decision if he had capacity. Both provide for consultation with carers and others interested in the patient's welfare as to what would be in his best interests and in particular, what his own views would have been. This is, as the Explanatory Notes to the Bill made clear, still a "best interests" rather than a "substituted judgment" test, but one which accepts that the preferences of the person concerned are an important component in deciding where his best interests lie.

39. The most that can be said, therefore, is that in considering the best interests of this particular patient at this particular time, decision-makers must look at his welfare in the widest sense, not just medical but social and psychological; they must consider the nature of the medical treatment in question, what it involves and its prospects of success; they must consider what the outcome of that treatment for the patient is likely to be; they must try and put themselves in the place of the individual patient and ask what his attitude to the treatment is or would be likely to be; and they must consult others who are looking after him or interested in his welfare, in particular for their view of what his attitude would be."

(Emphasis Supplied)

183. In short, the decision of the UK Supreme Court in *Aintree* (supra) clarifies that the governing standard in cases of medical decisionmaking for incapacitated patients is that of the patient's best interests. While substituted judgment forms an integral component of this inquiry, it does not supplant the best interests test, but instead informs it by incorporating the patient's past and present wishes, feelings, beliefs, and values.

This means that though the substituted judgment standard is a component of the best interest principle, it is the latter that would still remain as a governing test. With respect to futility, the court further held that medical futility is to be understood not in terms of the inability of treatment to cure the underlying disease but in the absence of any benefit being conferred to the patient. Likewise, recovery does not connote restoration to full health or avoidance of

death but rather the resumption of a quality of life which the patient himself would regard as worthwhile.

184. In another case, *M v. Mrs. N* (supra), the patient, a 68-year-old woman was diagnosed as being in an MCS. Her condition was profoundly impaired, both physically and cognitively, as a consequence of the progressive degenerative nature of the disease. Her family sought a declaration permitting the withdrawal of CANH. While determining the patient's best interests, the court held that where the wishes, views, and feelings of the patient can be ascertained with reasonable confidence, they must invariably be accorded great respect. At the same time, the court observed that such wishes, views, and feelings would rarely, if ever, be exclusively determinative of a patient's best interests.

The court emphasised that the assessment of best interests involves an intensely complex and fact-sensitive exercise, in which numerous factors fall to be considered, including the nature of the proposed treatment, its degree of intrusiveness, and, most importantly, the likely outcome of such treatment for the individual patient. Within this multifaceted matrix, the weight to be attached to the patient's wishes may vary from case to case. A broader evaluative exercise may, therefore, require consideration of the patient's past conduct and life choices, insofar as they illuminate the strength and content of her views on the contemplated treatment.

In the facts of the case, all medical experts concurred that, if CANH were withdrawn pursuant to a structured palliative care plan, the patient would not experience pain or distress. Upon an overall assessment of the material on record, the court was satisfied that there existed no realistic prospect of the patient attaining a life that she would regard as meaningful, worthwhile, or dignified, and consequently held that it was lawful and in her best interests to permit the withdrawal of CANH. The relevant observations are as under:

"28. I have given both these passages very considerable thought. I draw from them only this: where the wishes, views and feelings of P can be ascertained with reasonable confidence, they are always to be afforded great respect. That said, they will rarely, if ever, be determinative of P's 'best interest's'. Respecting individual autonomy does not always require P's wishes to be afforded predominant weight. Sometimes it will be right to do so, sometimes it will not. The factors that fall to be considered in this intensely complex process are infinitely variable e.g. the nature of the contemplated treatment, how intrusive such treatment might be and crucially what the outcome of that treatment maybe for the individual patient.

Into that complex matrix the appropriate weight to be given to P's wishes will vary. What must be stressed is the obligation imposed by statute to inquire into these matters and for the decision maker fully to consider them. Finally, I would observe that an assessment of P's wishes, views and attitudes are not to be confined within the narrow parameters of what P may have said. Strong feelings are often expressed non-verbally, sometimes in contradistinction to what is actually said. Evaluating the wider canvass may involve deriving an understanding of P's views from what he may have done in the past in circumstances which may cast light on the strength of his views on the contemplated treatment.

30. It is clear, therefore, that the framework of the Act and the scheme of the Code of Practice place great emphasis on the importance of personal autonomy and the obligation to be alert to direct or indirect discrimination against those who lack capacity. Decisions taken in the 'best interests' of an incapacitous individual must factor in the recognition that respect for an individual's past and present (where relevant) wishes and identifiable codes and beliefs by which he has lived are a crucial part of promoting best interests. To subvert these to a substitution of an objective evaluation, i.e. to superimpose what the Court thinks best, may result in indirect discrimination. The central objective is to avoid a paternalistic approach and to ensure that the incapacitous achieve equality with the capacitous."

(Emphasis Supplied)

185. Further, in *Lindsey Briggs v. Paul Briggs and Ors.*, reported in [2016] EWCOP 53, the patient, Mr. Paul Briggs, a 43-year-old police officer, was diagnosed as being in an MCS. The treating doctors had advised continuation of CANH. Although no formal AMD had been executed, the patient's family contended that, on the basis of the his repeated informal statements, it was evident that he would have preferred discontinuation of CANH. Upon considering the principle of the best interests of the patient, the Court of Protection permitted the withdrawal of CANH. At the threshold, the court was of the prima facie view that the balance sheet approach could be applied to the case, since the patient was in MCS.

The court held that the life of Mr. Briggs continued to possess some benefit and value, and in such circumstances, the default position is founded upon the sanctity of life where life retains value. However, the court held that the ultimate determination of best interests required a careful weighing of all relevant and determinative factors, chief among them being an assessment of what Mr. Briggs would have wanted and considered to be in his own best interests.

186. Relying upon Aintree (supra), the court reiterated that the best interests principle is not a substituted judgment test, though it does incorporate elements thereof. It affirmed that the best interests test must be applied holistically and that such holistic application is directed towards doing for the patient what he would have done for himself had he possessed full capacity. The court evaluated the evidence adduced by the patient's family, who consistently stated that Mr. Briggs would not have consented to the continuation of CANH had he retained capacity and that he would have regarded his condition as intolerable and one which he would not have wished to endure.

While permitting the discontinuation of CANH, the court, however, reiterated that a conclusion as to what the patient would have done is not, in itself, decisive. The governing test remains that of best interests, which requires the decision-maker to undertake a careful weighing and balancing exercise among a range of divergent and competing considerations. The relevant observations are as follows:

"44. The test is now a statutory test and the factors in s. 4 of the MCA are not given any priority. Of key importance in this case is s. 4(6) and so the weight to be given (with my emphasis on parts of the language) so far as is reasonably ascertainable to:

- i) Mr Briggs' past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
- ii) Mr Briggs' beliefs and values that would be likely to influence his decision if he had capacity, and iii) the other factors that Mr Briggs would be likely to consider if he were able to do so.

45. Before any of these matters can be taken into account they must be "reasonably ascertainable" and the influence of Mr Briggs' beliefs and values is to be assessed on the premise that he had capacity now and, in my view, the influence of the other factors he would be likely to consider is assessed if he were able to do so now, and so on the same basis.

46. The sub-section clearly introduces a number of "what if" issues and assessments. An obvious problem set by s. 4(6) is how the decision maker is to determine the existence of, and then the weight to be given to, the past and present matters it refers to at a time when P cannot (or cannot clearly) communicate and explain either: i) what he or she used to wish and feel and how they would have applied their beliefs, values and other factors they thought were relevant, ii) what he or she now wishes and feels or how they would now take their past beliefs and values and other relevant factors into account if they were able to do so.

47. As to the past a decision maker can gather and consider evidence of what the relevant person has said and done when he or she had capacity and was able to make their own decisions.

48. A court can if necessary make binding findings of fact and it carries out the weighing exercise required by the MCA with the benefit of hearing evidence that is tested and argument. As a consequence, it is likely to be in a better position to determine the existence of, and the weight to be given to, the matters set out in s. 4(6) of the MCA that are based on the past when P had capacity than, for example, treating doctors are. So, if P's family are asserting that they favour a different conclusion to that reached by the medical team, it is likely that in many cases to be reasonable if not inevitable for doctors to give great and probably determinative weight to medical and ethical issues in their exercise of the MCA best interests test pending the resolution of the existence of the matters in s. 4(6) and the weight to be given to them by a court.

100. Mr Briggs' wife is sure that her husband and the father of their young child would not consent to his CANH treatment being continued and made it clear that she is pursuing this painful litigation to try to achieve the result for her husband that she is sure he would have wanted and chosen if he was able to do so. All his close family support that position.

108. Mr Briggs' experience of witnessing death and the consequences of serious accidents informs and probably explains the number of conversations, views and discussions reported in the evidence before me about death and injury. The one closest to home relates to his mother-in-law and her refusal of PEG feeding and nutrition when she was terminally ill with cancer. His wife reports that he fully supported her and her mother in this decision and told her that he would never want a feeding tube. This provides a clear indication that Mr Briggs did not consider it was sensible to prolong life at all costs and thought it was right that the suffering of his mother-in-law was not prolonged. Indeed his wife reports that he used to ask why there was not something legal that could be done to end her mother's suffering.

111. Members of the family told me that in their view Mr Briggs would regard his present situation as horrible and one that he would not wish to continue. Included within the reasons given are that a life in which he did not have the ability to communicate with his wife and child is not one that he would be willing to have.

129. I have concluded that as I am sure that if Mr Briggs had been sitting in my chair and heard all the evidence and argument he would, in exercise of his right of self-determination, not have consented to further CANH treatment that his

best interests are best promoted by the court not giving that consent on his behalf."

(Emphasis Supplied)

187. In the case of *In re M* (Incapacitated Person: Withdrawal of Treatment), reported in [2018] 1 WLR 465, the Court of Protection was seized of the case of M, whose condition had deteriorated to an MCS. M's mother and litigation friend, supported by her immediate family, treating clinicians, and an independent external specialist, approached the court seeking a declaration that it was no longer in M's best interests to continue CANH. The court emphasised that the fundamental starting point in such cases is a strong presumption in favour of the preservation of life, grounded in the sanctity of life principle.

However, the court clarified that this presumption is not absolute, and that there are circumstances in which it may be displaced, particularly where continuation of treatment would no longer serve the patient's overall welfare. Applying the statutory framework underlying the MCA, the court was satisfied, on the basis of comprehensive medical evidence and the consistent views of the family, that it was no longer in M's best interests for her life to be artificially prolonged by CANH. The court accepted that the clinicians and family had arrived at their respective positions after the most careful reflection, placing M at the centre of their concern, and having concluded that she would not have wished to continue living in her present state, nor to endure the inevitable further decline attendant upon her terminal condition.

The court further observed that the concurrence of medical and familial views reflected a considered and collaborative decision-making process, thereby lending credibility to the conclusion reached. Accordingly, the court granted the declaration sought, holding that CANH should be discontinued and replaced by appropriate palliative care, to be implemented in a planned and structured manner after consultation between family members and medical professionals. The relevant observation is as follows:

"26. In this case, the evidence satisfied me that it was no longer in M's interests for her life to be artificially continued by CANH. I accepted the evidence of the family and the clinicians. They had reached their positions after the most careful thought, placing M at the centre of their concern, and concluding that she would not have wanted to go on living like as she was, nor endure the inevitable continued decline in her terminal condition. I therefore decided that CANH should be discontinued and replaced by palliative care after a meeting of family members and professionals had agreed on a suitable timetable.

27. I also noted that the medical opinion on M's overall best interests was to some degree influenced by (and might, in the end, be said to have been tipped by) the views of her family. There is nothing wrong with that. For obvious reasons, it is not found in many of the reported cases, which often portray doctors and families in opposite camps, but those cases are surely unrepresentative of the much greater number where a common position is reached through people listening to each other. Just as family members will naturally pay regard to the views of carers and doctors, particularly on the medical aspects of the situation, so doctors will naturally listen to the views of the family about their relative's wider best interests."

(Emphasis Supplied)

188. Even in the recent case of *An NHS Trust and others v. Y (Intensive Care Society and others intervening)*, reported in [2019] A.C. 978, the UK Supreme Court construed and affirmed the observations as more particularly discussed above.

189. From a cumulative reading of the decisions of the Court of Appeals, House of Lords and the UK Supreme Court respectively, together with the statutory framework of the MCA and the Code of Practice framed thereunder, it appears to us that the principle of the best interests of the patient constitutes the governing standard for decision-making concerning the withdrawal or withholding of medical treatment of persons lacking capacity in the UK. The said principle appears to be neither a narrow test nor a rigid, straightjacketed formula, but a holistic evaluative assessment requiring due consideration of all relevant circumstances bearing upon the patient's welfare in the widest sense.

This is evident from the observation of Lord Hedley in *Portsmouth* (supra) wherein he had observed that "the infinite variety of the human condition never ceases to surprise, and it is that fact that defeats any attempt to be more precise in a definition of best interests". Similarly, in *R (Burke)* (supra), Lord Phillips reiterated that "it is not possible to attempt to define what is in the best interests of a patient by a single test", affirming that the doctrine resists any rigid formulation and must operate through a holistic assessment of all relevant circumstances.

190. At the foundational level, the best interests inquiry is anchored in a strong presumption in favour of the preservation of life, reflecting the sanctity of life. However, as consistently emphasised in *Airedale* (supra) and reaffirmed in *Aintree* (supra), this presumption is not absolute and may be displaced where continuation of medical treatment ceases to serve any therapeutic purpose, i.e., becomes futile, merely prolongs the suffering without the hope of recovery or causes indignity to the life of the patient. In such circumstances, the

preservation of biological existence alone does not constitute a determinative good, and the legal inquiry must shift towards an assessment of whether continued treatment truly advances the patient's overall welfare.

191. The position of law in the UK further clarifies that the formulation of the legal question itself is of decisive importance in cases concerning withdrawal or withholding of life-sustaining treatment. As held in *Airedale* (supra) and later followed by the UK Supreme Court in *Aintree* (supra) and in other cases, as more particularly discussed above, the inquiry must not be whether it is in the patient's best interests that he should die, nor whether the proposed course would hasten or cause death. Rather, the correct question should be whether it is in the patient's best interests that life should be prolonged by the continuance of the particular medical treatment in question.

192. In cases involving patients in a PVS, the House of Lords in *Airedale* (supra) held that existence devoid of consciousness, cognition, or awareness of the external world cannot be regarded as conferring any benefit upon the patient. Where medical opinion establishes that such a condition is irreversible or that no hope of recovery exists, and that treatment merely sustains biological life without therapeutic benefit, the medical treatment may be characterised as futile.

In such circumstances, the continuation of life-sustaining treatment does not involve any meaningful weighing of competing considerations, since no benefit exists to be balanced against the burdens of treatment. Consequently, once futility is established, withdrawal of life-sustaining treatment stands fully justified within the framework of best interests. A distinction is, however, drawn between patients in a PVS and those in an MCS. As discussed in *W v. M* (supra) and subsequently applied in *Lindsey Briggs* (supra), where some degree of awareness, responsiveness, or experiential capacity subsists, life continues to retain some value.

In such cases, treatment cannot be presumed to be futile *ab initio*, and in such cases, the determination of best interests would necessarily require a balancing exercise to be undertaken. In a nutshell, this balance sheet approach involves weighing the potential benefits of continued treatment against its burdens, including physical suffering, invasiveness, indignity, psychological distress, the impact upon the patient's lived experience, etc.

193. However, we do not agree with the observation that for a PVS patient, the continuation of life-sustaining treatment does not involve any meaningful weighing of competing considerations under the balance sheet approach on the mere ground of having no benefits to be balanced against the burdens of treatment. In our considered view, post recognition of the substituted judgment

standard in MCA, the balance sheet approach can be drawn even in the case of a PVS patient, since the wishes, feelings, beliefs, or values of the patient, if ascertainable, would be a relevant entry in the balance sheet.

It is our view that Airedale (supra), while endorsing the non-application of the balance sheet approach to PVS patients, had not yet recognised the application of the substituted judgment standard in the UK jurisprudence. Thus, Airedale (supra), in the absence of such a recognition, limited itself to saying that since there are of no benefits accruing whatsoever in cases involving a patient with PVS, there is no need to go into the balancing exercise. However, we are of the view that if there are any wishes, feelings, beliefs, or values of a PVS patient that are reasonably ascertainable, then the same shall also be weighed by drawing a balance sheet despite the patient being in a PVS.

194. Another central consideration within the best interests framework in the UK is the presence of terminal illness and the absence of any realistic prospect of recovery. As explained in Aintree (supra) and later affirmed in *M v Mrs. N* (supra), recovery does not signify restoration to full physical health, but rather the resumption of a quality of life which the patient would himself regard as worthwhile. Where medical evidence establishes that such a quality of life cannot be achieved and that continued treatment merely prolongs the dying process, the patient's best interests may lie in the withdrawal of life-sustaining treatments.

195. The courts in the UK have further recognised that the burdensome and intrusive nature of medical treatment, the indignity inherent in artificial prolongation of life, and prolongation of physical and psychological suffering constitute a significant factor within the best interests principle. Treatment that subjects a patient to invasive interventions, loss of bodily integrity, and prolonged distress, without corresponding therapeutic gain, cannot ordinarily be justified as advancing the patient's welfare. Thus, dignity and experiential quality of life are treated as intrinsic components of the best interests standard.

196. Another component of the best interests principle is the patient's own wishes, feelings, beliefs, and values, as statutorily mandated under Section 4(6) of MCA and elaborated in cases above. These factors are to be considered so far as reasonably ascertainable and must be accorded great respect. However, the courts have consistently clarified that such wishes, whether past or present, are not determinative in themselves. While they constitute a strong element and an often weighty component of the inquiry, they do not displace the overarching obligation to act in the patient's best interests, which requires a holistic evaluation of all relevant circumstances.

The reason that the substituted judgment standard does not override the best interest principle in the UK is that while applying the substituted judgment standard, the family of the patient makes reasonable endeavours to ascertain what the patient would have wanted had he possessed the capacity, but such an endeavour at its heart is a surmise at best and cannot in itself be a determinative factor to decide withdrawal or withholding of medical treatment. Therefore, other relevant factors are also to be looked at under the best interest principle.

As explained in *Aintree* (supra) and later followed in *Lindsey Briggs* (supra), the best interests principle incorporates a strong element of the substituted judgment standard, requiring the decision maker to place himself, so far as possible, in the position of the patient and to consider what the patient would have wanted if he had capacity. This enables the doctors and the court to do for the patient what he would have done for himself. However, substituted judgment does not operate autonomously or in an overriding manner. The ultimate inquiry remains what course of action would serve the patient's best interest, even where that conclusion diverges from a reconstructed preference of the patient.

(c) Best interest of the patient in Ireland

197. In *In the matter of a Ward of Court (No. 2)*, reported in [1996] 2 IR 79, the Supreme Court of Ireland was concerned with a case involving a 22-year-old woman who had suffered three cardiac arrests, resulting in profound anoxic brain damage. For more than two decades thereafter, she remained in a near PVS, being spastic, incontinent, bedridden, incapable of speech or meaningful communication, and possessing only the most minimal cognitive capacity. She was initially sustained by nasogastric feeding and subsequently by a PEG tube. An application was made to the High Court seeking authorisation for the withdrawal of CANH.

The High Court granted the application, holding that such withdrawal was lawful and in the patient's best interests. Lynch J. found that although the patient did not strictly satisfy the clinical definition of a PVS, yet she was very nearly so, that any cognitive capacity she retained was negligible, and that there was no prospect of improvement in her condition. Applying the best interests principle, Lynch J. framed the inquiry as whether it was in the patient's best interests that her life should be prolonged by the continuation of artificial means of nourishment, and held that the court was entitled, as part of that inquiry, to take into account what the ward's own wishes would likely have been had she been able to express them i.e., substituted judgment.

Thus, the Supreme Court of Ireland acknowledged the existence of the substituted judgment standard as a component of best interests in its jurisdiction. On a consideration of the evidence, the withdrawal of CANH was authorised and declared lawful. On appeal, the Supreme Court affirmed the High Court's decision, endorsing the application of the best interests test and the conclusion that continued artificial nourishment served no meaningful benefit to the patient. The relevant observations are as under:

"I take the view that the proper and most satisfactory test to be applied by the Court in this case is the best interests test, i.e., whether it is in the best interests of the ward that her life, such as it is at present, should be prolonged by the continuation of the abnormal artificial means of nourishment,. I am of opinion that it is or it is not in the best interests of the ward that her life should be prolonged by the continuance of the abnormal artificial means of nourishment, whether by nasogastric or gastrostomy tube. Whilst the best interests of the ward is the acid test, I think that I can take into account what would be her own wishes if she could be granted a momentary lucid and articulate period in which to express them and if, despite what I have already said, I can form a view on the matter.

I think that it is highly probable, and I find the evidence of the family on this aspect of the case to be clear and convincing, that the ward would choose to refuse the continuance of the present regime to which she is subjected involving abnormal artificial feeding and total nursing care with all the indignities inherent in such care and would instead choose the withdrawal of such abnormal artificial feeding resulting in an immediate reduction of bodily functions and their attendant indignities and a peaceful death in accordance with nature within two weeks or so."

(Emphasis Supplied)

198. From the above, it is clear that the Supreme Court of Ireland also rightly framed the question as proposed in Airedale (supra) i.e., whether it was in the patient's best interests that her life should be prolonged by the continuation of artificial means of nourishment. The court also took into account what the ward's own wishes would likely have been had she been able to express them under the substituted judgment standard. Further, the court also undertook a balancing exercise by weighing the benefits of sustaining life by artificial feeding with the burdens attendant upon such treatment and concluded that the burdens far outweighed the benefits in the case.

(d) Best interest of the patient in Italy

199. The position of law in Italy on the withdrawal of CANH was authoritatively articulated by the Supreme Court of Cassation in the case of Eluana Englaro, reported in Case No. 21748 of 2007. For the first time in Italy, the court had addressed the legality of discontinuing CANH in a patient with PVS. The facts of the case were such that the patient, a young woman, had lapsed into a PVS following a road accident and had remained in that condition for over fifteen years, being kept alive solely through CANH administered via a nasogastric tube.

Her guardian sought authorisation for its withdrawal. The Court of Appeal of Milan initially rejected the request, holding that, in the case of an incapacitated patient, the right to life must unconditionally prevail over the right to self-determination, and that the patient's best interests are objectively served by the preservation of life, save where a living will exists. Aggrieved thereby, the guardian preferred an appeal before the Supreme Court of Cassation.

In allowing the appeal, the Supreme Court expounded on the contours of the best interests principle, holding that in consenting to or dissenting from medical treatment on behalf of an incapacitated person, the guardian decision maker is subject to a two-fold constraint: first, that he must act exclusively in the interests of the incapacitated person; and second, that in determining such interest, he must decide neither "in the place of" nor "for" the incapacitated person, but rather "with" her. According to the court, this necessitated a reconstruction of the presumed will of the patient, who had been an adult prior to losing consciousness, by reference to her previously expressed wishes, or, in their absence, by inference from her personality, lifestyle, inclinations, and her fundamental ethical, religious, cultural, and philosophical convictions.

200. The court further held that where a patient has remained for a prolonged period in a PVS, marked by a complete and irreversible incapacity to relate to the external world, and is sustained solely by artificial nutrition and hydration, the judge may authorise the withdrawal of such treatment, upon an application by the guardian and after due consideration, only upon the satisfaction of two cumulative conditions.

First, that the vegetative state is, on the basis of a rigorous and internationally accepted clinical assessment, irreversible, and that there exists no medical foundation whatsoever to assume even the minimal possibility of recovery of consciousness or perception of the external environment. Second, that the application genuinely reflects the patient's own will, established on the basis of clear, univocal, and convincing evidence, drawn either from her prior declarations or from her personality, lifestyle, and deeply held convictions, corresponding to her conception of human dignity prior to the onset of unconsciousness. The relevant observations are as under:

"7.3. In the opinion of the bench, the highly personal character of the right to health of the incapacitated person requires that the reference to the institution of legal representation does not transfer to the guardian, who is invested with a function of private law, an unconditional power to provide for the health of the person in a state of total and permanent unconsciousness.

In consenting to medical treatment or in dissenting from the prosecution of the same upon the incapacitated person, the representation of the guardian is subjected to a two-fold order of constraints: he must, above all, act in the exclusive interest of the incapacitated person; and, in search of the best interest, must decide not "in the place" of the incapacitated person nor "for" the incapacitated, but "with" the incapacitated person: therefore, reconstructing the presumed will of the unconscious patient, who was already adult before falling into such a state, taking into account the wishes expressed by him before the loss of consciousness, or inferring that will from his personality, from his lifestyle, from his inclinations, from his basic values and of his ethical, religious, cultural and philosophical convictions.

10. Having absorbed the examination of the question of constitutional legitimacy, the appeals are granted, according to the reasoning and within the limits indicated in it. From there ensues the cassation of the challenged decree and the remand of the case to a different Section of the Court of Appeals of Milan. Said Court will rule conforming itself to the following principle of law:

Where the sick person lingers for very many years (in the case, more than fifteen) in a permanent vegetative state, with consequent radical incapacity of relating to the external world, and is kept artificially alive by means of a nasogastric tube that provides to her nutrition and hydration, upon request of the guardian who represents her, and in the debate with the guardian ad litem, the judge may authorize the deactivation of such a health defense (except the application of the measures suggested by science and medical practice in the interest of the patient), only in the presence of the following presuppositions:

(a) when the condition of the vegetative state is, on the basis of a rigorous clinical judgment, irreversible and there isn't any medical foundation whatsoever, according to scientific standards recognized at the international level, allowing the assumption of the minimum possibility, even if faint, of the recovery of consciousness and of returning to a perception of the external world; and

(b) on the condition that such an appeal is truly expressive, on the grounds of clear, univocal and convincing elements of proof, of the voice of the patient herself, drawn from her previous declarations or from her personality, from her lifestyle and from her convictions, corresponding to her way of conceiving,

before falling into a state of unconsciousness, of the very idea of dignity of the person. Where one or the other presupposition does not exist, the judge must deny the authorization, with unconditional prevalence having then to be given to the right to life, independently of the degree of health, autonomy and capacity to understand and to express the will of the interested subject and from the perception, that others are able to have, of the quality of life itself."

(Emphasis Supplied)

(e) Best interest of the patient in Australia

201. The position of law in Australia on this issue was considered by the Supreme Court of Victoria in *Re BWV* (supra). In this case, the patient was a 68-year-old woman suffering from a progressive and fatal form of dementia, who was being kept alive through CANH administered via a PEG tube. Medical reports confirmed that there was no prospect of recovery or improvement in her condition. The public advocate, appointed as the patient's guardian, approached the Supreme Court of Victoria seeking a determination as to whether the PEG tube feeding constituted medical treatment that could lawfully be discontinued.

The evidence of three medical practitioners, who had examined the patient, was unanimous in concluding that the provision of nutrition and hydration through the PEG tube was futile, and that it had no prospect whatsoever of improving the patient's condition, and that, in accordance with good medical practice and principles of palliative care, the PEG tube ought to be removed.

The patient's family also shared the view that continued provision of nutrition and hydration was unwarranted and unreasonable in the best interest of the patient. The court, while holding that CANH administered through a PEG tube constituted medical treatment, permitted its withdrawal, observing that where death has become inevitable, the patient's best interests are better served by treatment directed towards relief and comfort, rather than by futile attempts to cure. The relevant observations are as under:

"80. Various explanations are given of the nature of palliative care. The report quotes various submissions, including a submission from Right to Life Victoria, which emphasises that when death has become inevitable, treatment should be adjusted, since the patient's best interest would then be served by treatment that emphasised relief, rather than futile attempts to cure.

81. I find that the administration of artificial nutrition and hydration, via a PEG, cannot be regarded as palliative care, where that expression is used in its natural sense. Such a procedure is, in essence, a procedure to sustain life; it is

not a procedure to manage the dying process, so that it results in as little pain and suffering as possible."

(Emphasis Supplied)

202. Thereafter, in *Messiha v South East Health*, reported in [2004] NSWSC 1061, the Supreme Court of New South Wales was seized of a case concerning a 75-year-old patient who had suffered a cardiac arrest resulting in severe hypoxic brain damage, leaving him in a deep coma with no realistic prospect of neurological recovery. The treating doctors concluded that any further medical treatment had become futile and proposed the withdrawal of mechanical ventilation and artificial nutrition so as to permit the patient to die naturally. The patient's family opposed this course, contending that he had exhibited certain signs of life, such as opening his eyes, and sought an injunction compelling the hospital to continue treatment.

The court dismissed the family's application and authorised the withdrawal of treatment. The court observed that, in applications of this nature, the paramount consideration is the health, welfare, and best interests of the patient. The court further clarified that such an approach does not entail any value judgment on the intrinsic worth of the patient's life in his existing condition, nor does it disregard the family's sincerely held hopes and beliefs.

Rather, it reflects a recognition of the reality that, where the court is satisfied that treatment decisions are being taken in the welfare and best interests of the patient, such determinations primarily fall within the domain of professional medical expertise. On the facts, the court was satisfied that the continuation of medical treatment, including CANH, would serve no purpose beyond prolonging life for a brief period and would be futile, burdensome, and intrusive upon the patient. The relevant observations are as under:

"25. I appreciate that the Court on such an application as the present is concerned with the best interest of the health and welfare of the patient: *Northridge* at [22] and it is not bound to give effect to the medical opinion, even where, as here, it is unanimous. However, it seems to me that it would be an unusual case where the Court would act against what is unanimously held by medical experts as an appropriate treatment regime for the patient in order to preserve the life of a terminally ill patient in a deep coma where there is no real prospect of recovery to any significant degree.

This is not to make any value judgment of the life of the patient in his present situation or to disregard the wishes of the family and the beliefs that they genuinely hold for his recovery. But it is simply an acceptance of the fact that the treatment of the patient, where, as here, the Court is satisfied that decision

as to the appropriate treatment is being made in the welfare and interest of the patient, is principally a matter for the expertise of professional medical practitioners: Northridge at [24].

28. Apart from extending the patient's life for some relatively brief period, the current treatment is futile. I believe that it is also burdensome and will be intrusive to a degree. I am not satisfied that this Court's jurisdiction has been enlivened by the evidence before me from the family members. The Court is in no better position to make a determination of future treatment than are those who are principally under the duty to make such a decision. The withdrawal of treatment may put his life in jeopardy but only to the extent of bringing forward what I believe to be the inevitable in the short term. I am not satisfied that the withdrawal of his present treatment is not in the patient's best interest and welfare."

(Emphasis Supplied)

203. Subsequently, the Supreme Court of the Australian Capital Territory, in *Australian Capital Territory v. JT*, reported in [2009] ACTSC 105, was seized of a case concerning a 69-year-old man suffering from long-standing paranoid schizophrenia. The patient believed that prolonged fasting would bring him closer to God and consequently refused all nourishment. The medical evidence established that the patient lacked the capacity to provide informed consent and that his expressed wishes were the product of delusional and irrational thought arising directly from his severe mental illness. In such circumstances, the government sought a declaration that it would be lawful for medical staff to desist from forcibly feeding the patient, a process that would require physical restraint and sedation.

The court observed that the approach to his care could be no different from that adopted in cases involving unconscious patients or helpless infants, since even his apparent wish for death was premised upon irrational assumptions. Unlike other cases where the wishes of the patient played an important role in determining the best interest, the patient in this case was not suffering from any terminal illness, and the medical opinion was that his deteriorating condition was caused solely by self-imposed starvation. According to the court, the CANH would, therefore, provide a tangible benefit by preserving his life.

The patient's guardian did not oppose the medical recommendations but acknowledged that the patient's stated wishes were fundamentally compromised by his mental illness. In these circumstances, the court was required to determine whether it would be lawful to withhold nutrition and hydration, save for the provision of palliative care. Higgins, CJ., after careful consideration, declined to grant the declaration sought.

The court held that the withdrawal of nutrition and hydration would be unlawful, primarily on the ground that the treatment was effective in sustaining the patient's life and that he was not otherwise dying from any irreversible underlying physical condition. Accordingly, the court held that the patient's best interests lay in the continuation of nutrition and hydration, even if this necessitated restraint and sedation. The relevant observations are as under:

"18. The truth is that JT lacks the capacity for informed consent and his 'wishes' are the product of delusional and irrational thought in turn the product of his severe mental illness. The approach to his care can be no less than would be the case if he lacked consciousness or was a helpless infant. Indeed, even his apparent acceptance of death is premised on the irrational view that God will preserve him from such a consequence.

21. Ms Anita Phillips, Public Advocate, has the role of guardian of JT under a guardianship order. She does not oppose any course recommended by JT's physicians. She does not wish to propose that he be forcibly nourished to sustain his life. Her conclusion, however, that it accords with his wishes, must be qualified by the obvious conclusion that those wishes are irrational and based on a delusional set of assumptions arising from his mental illness.

33. In the present case the provision of nutrition and hydration will provide a benefit, in the sense that life will be maintained, albeit, that it will to an extent derogate from the patient's dignity.

(Emphasis Supplied)

204. From the above, it appears that Australian courts have construed the determination of whether medical treatment ought to be continued or withdrawn as one governed primarily by an assessment of the patient's best interests, grounded in clinical medical assessment, rather than by a determinative factor under the substituted judgment standard. In *Re BWV* (supra), the Supreme Court of Victoria treated CANH as medical treatment and held that where death has become inevitable, and treatment serves no therapeutic purpose, the patient's best interests are no longer advanced by sustaining biological life through artificial means.

A similar approach is evident in *Messiha* (supra), where the court reiterated that the paramount consideration is the health, welfare, and best interests of the patient. Importantly, the court clarified that authorising withdrawal of treatment in such circumstances does not involve a value judgment on the worth of the patient's life, nor a rejection of the family's sincerely held beliefs, but rather an acceptance that decisions concerning futile treatment lie

principally within the expertise of medical practitioners, provided they are taken in good faith and in the patient's welfare.

The decision in the Australian Capital Territory (*supra*) further clarifies the Australian position by delineating the limits of the patient's wishes in the best interests inquiry. Unlike cases involving terminal illness or irreversible injury, the court held that where treatment is effective in sustaining life, and the patient is not otherwise dying from an irreversible condition, such treatment cannot be characterised as futile. The court expressly declined to give effect to the patient's stated wishes, as they were found to be the product of delusional and irrational beliefs arising from severe mental illness.

(f) Best interest of the patient in New Zealand

205. The position of law in New Zealand on this issue was considered by the High Court of New Zealand in *Auckland Area Health Board (supra)*. The case concerned a 59-year-old patient suffering from an extreme form of Guillain-Barré Syndrome, resulting in total paralysis and complete inability to communicate, who was being kept alive solely by artificial ventilation. The medical consensus was that there existed no prospect of recovery and that continued ventilation of the patient served no therapeutic purpose.

The court held that a doctor acting in good faith and in accordance with good medical practice is under no legal duty to administer life support when, in his or her clinical judgment, such treatment is contrary to the patient's best interests. Emphasising that modern medical science is intended to benefit life and health, and not to prolong biological existence devoid of therapeutic purpose, the court observed that to compel continuation of life support in such circumstances would be to confound the very purpose of medicine.

The court further recognised that no rigid rule can govern the infinite variety of clinical situations, and that decisions of this nature must rest upon a bona fide assessment of the patient's best interests, informed by prevailing medical standards, specialist consultation, ethical oversight, and concurrence of the patient's family or guardian. While noting the conceptual proximity between the best interests principle and the substituted judgment standard, as developed in the UK and USA, Thomas J. suggested that the two approaches are closely interlinked to each other, though he refrained from conclusively delineating their precise doctrinal relationship. The relevant observations are as under:

"Two distinct approaches have been identified in the exercise of this jurisdiction; the "substituted judgment" approach. I suspect that the two tests are inextricably linked. But I do not need to take the issue further because of the way in which the hearing developed. In my view, doctors have a lawful

excuse to discontinue ventilation when there is no medical justification for continuing that form of medical assistance. To require the administration of a life support system when such a system has no further medical function or purpose and serves only to defer the death of the patient is to confound the purpose of medicine.

In such circumstances, the continuation of the artificial ventilation may be lawful, but that does not make it unlawful to discontinue it if the discontinuance accords with good medical practice. A phrase such as "good medical practice" may not have the precision of meaning that the medical profession or the public would desire. But that imprecision is inherent in the problem itself. There can be no single or fixed rule as to exactly when a doctor may withhold a life support system which would cover the infinite variety of factual situations arising in practice. Consequently, the criterion can only be a general phrase such as "good medical practice".

Nor is it imperative that the phrase "good medical practice" be accepted in any exclusive or dogmatic sense. It has been selected because it already enjoys some currency. But any description such as "sound medical practice" or "proper medical standards and procedures" would serve equally well. What is important is its perceived content. Clearly, it must begin with a bona fide decision on the part of the attending doctors as to what, in their judgment, is in the best interests of the patient.

Equally, it must encompass the prevailing medical standards, practices, procedures, and traditions which command general approval within the medical profession. All relevant tests would need to be carried out. The point, for present purposes is, as I apprehend it, that a doctor acting in good faith and in accordance with good medical practice is not under a duty to render life support necessary to prolong life if that is, in his or her judgment, contrary to the best interests of the patient. (Emphasis Supplied)

206. Thereafter, the High Court of New Zealand, in *In Re G*, reported in [1997] 2 NZLR 201, while relying upon the observation of Thomas J. in *Auckland Area Health Board* (supra) and *A Ward of Court* (supra), was of the opinion that in such cases the adoption of the best interest principle is proper, but weightage should also be given to the likely wishes of the patient and to the view of the patient's family and carers, as the substituted judgment standard is closely interlinked with the best interest principle. The relevant observation is as under:

"In the extract from p 242 of Thomas J's judgment in the *Auckland Area Health Board* case quoted above, discussing the *parens patriae* jurisdiction, that learned Judge noted that two distinct approaches have been identified: the

"substituted judgment" approach and the "best interests" approach. He commented that he suspected the two tests were inextricably linked. Bearing this in mind, and having regard to the reasoning of Hamilton CJ in the Ward of Court case (supra) at p 411, I think that the proper course for me is to adopt the "best interests" test but to give weight to the likely wishes of the patient and to the views of the patient's family and carers.

(Emphasis Supplied)

207. From the above, it appears that courts in New Zealand have consistently construed the best interests of the patient as the governing standard in cases involving withdrawal or withholding of medical treatment, with that standard being rooted primarily in medical futility, good medical practice, and the intrinsic purpose of medicine. At the same time, the courts have acknowledged the conceptual proximity between best interests and substituted judgment, without elevating substituted judgment into an independent or controlling test.

(g) Best interest of the patient in European Union (EU)

208. In the year 2015, the European Court of Human Rights ("ECHR"), in *Lambert v France*, reported in (2016) 62 EHRR 2, considered the issue of withdrawal of CANH. The case concerned a patient who had sustained severe head injuries resulting in tetraplegia and complete dependence, accompanied by irreversible brain damage. He was being maintained on CANH through a gastric tube. He was diagnosed with a chronic vegetative state. The treatment was considered futile and disproportionate, serving no purpose other than the artificial prolongation of life.

The decision-making process involved consultation with the patient's wife and, subsequently, with his parents, half-brother, and sister. While the patient's wife supported the decision, his parents, half-brother, and sister opposed the withdrawal of CANH. In light of these circumstances, the Conseil d'État was of the view that withdrawal of CANH must be permitted. The Conseil d'État observed that where a patient is unable to express his wishes due to incapacity, it is for the treating doctor, acting within a collective decision-making process involving relevant healthcare professionals, to take a clinical decision guided by the patient's best interests.

In doing so, the doctor must take into account all relevant elements, including consultation with family members, close friends, any designated person of trust, and any previously expressed wishes of the patient. The Conseil d'État further observed that withdrawal of treatment is subject to additional conditions, including the presence of serious and irreversible medical consequences, the absence of any continuing benefit to the patient, medical

futility, and, where required, a sufficiently prolonged observation phase and review of the patient's condition. The relevant observations are as under:

"64. Other persons involved in the decision-making process may include the patient's legal representative or a person granted a power of attorney, family members and close friends, and the carers. The Guide stresses that doctors have a vital, not to say primary, role because of their ability to appraise the patient's situation from a medical viewpoint.

Where patients are not, or are no longer, able to express their wishes, doctors are the people who, in the context of the collective decision-making process, having involved all the health-care professionals concerned, will take the clinical decision guided by the best interests of the patient. To this end, they will have taken note of all the relevant elements (consultation of family members, close friends, the person of trust, and so on) and taken into account any previously expressed wishes. In some systems the decision is taken by a third party, but in all cases doctors are the ones to ensure that the decision-making process is properly conducted.

76. In addition to the requirement to seek the patient's consent, the withdrawal of treatment is also subject to other conditions. Depending on the country, the patient must be dying or be suffering from a condition with serious and irreversible medical consequences, the treatment must no longer be in the patient's best interests, it must be futile, or withdrawal must be preceded by an observation phase of sufficient duration and by a review of the patient's condition."

(Emphasis Supplied)

(h) Best interest of the patient in India

209. It is often suggested, in a rigid and oversimplified manner, that courts in the USA proceed primarily on the subjective standard of substituted judgment, whereas courts in the UK apply an objective standard under the rubric of the best interests of the patient. In our considered view, such a binary characterisation emerges only when these tests are examined at the surface. A closer, multijurisdictional reading of the authorities we discussed above shows that neither standard operates in isolation or in absolute terms. In the USA, substituted judgment is not applied as a free-standing exercise of personal preference.

It is invariably conditioned by objective medical findings, considerations of the futility of treatment, proportionality of treatment, dignity of the patient, and the patient's present welfare. Where the patient's wishes cannot be reliably ascertained, courts explicitly abandon substituted judgment in favour of a best

interests analysis. Conversely, in the UK, while best interests remains the governing test, it is neither purely objective nor indifferent to the patient's individuality, but incorporates a strong subjective element through a consideration of the patient's past and present wishes, values, beliefs, and conception of dignity.

210. A similar convergence is evident in other jurisdictions as well. In Italy, the best interests inquiry is structured through a dual threshold: (i) a clinical determination of irreversible vegetative state and medical futility, (ii) coupled with a faithful reconstruction of the patient's presumed will, grounded in clear and convincing evidence of values and conception of dignity.

In Australia and New Zealand, courts have consistently treated best interests as the controlling standard, yet it is required to be informed by good medical practice, futility, proportionality, and the likely wishes of the patient, without elevating the substituted judgment standard into an autonomous rule. In the EU, the emphasis has been placed on a procedurally robust, collective decision-making process guided by medical proportionality, absence of unreasonable obstinacy, and respect for human dignity, with prior wishes operating as an important but not decisive consideration.

211. When examined in this manner, the two approaches, i.e., the best interest principle and the substituted judgment standard, cease to conform to a stark day and night distinction. Instead, they converge at twilight where subjective autonomy and objective welfare intersect, each informing and tempering the other, in order to reach a decision that accords with what is overall in the best interest of the patient in the facts and circumstances. It is worth mentioning here that though the substituted judgment standard in the USA may be heavily rooted in privacy and personal choice of the patient, it is our endeavour, keeping in mind the vision of the Constitution Bench in *Common Cause 2018* (supra), to further this substituted judgment standard from the lens of dignity.

212. At this juncture, it becomes imperative for us to also refer to *Common Cause 2018* (supra) to weave a comprehensive thread of consensus upon the meaning and scope of the best interest principle. However, before delving into that exercise, we must reiterate that a competent person has the right to refuse medical treatment within their right to self-determination under Article 21 of the Constitution of India. It is also clear that the autonomy of a competent person in refusing to take or continue a medical treatment needs to be respected.

This means that until the patient is competent and is in a position to exercise his right to refuse medical treatment, he may do so. However, it is only when the patient becomes incompetent and is unable to make an informed decision

for himself that the need to construe the best interest principle comes into play, because in such circumstances, the decision to withdraw or withhold medical treatment needs to be built upon the determination of whether it is in the best interest of the patient.

213. Having said that, a reading of the guidelines as set out in Common Cause (supra), particularly with respect to cases where there is an AMD, shows that the treating physician triggers the process under Para. 198.4.1 of the guidelines for withdrawal or withholding of medical treatment upon the fulfilment of five broad conditions in his opinion. They are: (i) the Executor becomes terminally ill, (ii) is undergoing prolonged medical treatment, (iii) with no hope of recovery, (iv) no cure of ailment, and (v) the patient does not have decision-making capacity i.e., the patient is incompetent.

214. With respect to cases where there is no AMD, the treating physician triggers the process under Para 199.1 of the guidelines for withdrawal or withholding of medical treatment upon the fulfilment of three broad conditions in his opinion: (i) the Patient is terminally ill, (ii) is undergoing prolonged treatment in respect of an ailment which is, (iii) incurable or where there is no hope of being cured. However, unlike Para 198.4.1 of the guidelines, Para 199.1 does not explicitly set forth the fifth condition, i.e., that the patient does not have decision-making capacity. This is because the incompetence of the patient is implied in Para 199.1 of the guidelines.

Had the patient been competent to make an informed decision, he would have exercised his right to refuse medical treatment, but it is only when he is not in a position to exercise that right and where no AMD exists in this regard that the treating physician, and patient's next of kin/next friend/guardian, followed by the primary medical board and secondary medical board, undertake this task on behalf of the patient. This is also clear from Para 199 of the guidelines, which states that there will be cases where there is no existing AMD and in such cases, the procedure and safeguards are required to be the same as in cases where there is an existing AMD.

215. Once these threshold conditions/medical parameters are fulfilled, and the treating physician informs the hospital to constitute a primary medical board, the primary medical board gets constituted by the hospital, which after taking a medical prognosis of the patient and discussing the pros and cons of the withdrawal or refusal of further medical treatment with the patient's next of kin/next friend/guardian, and taking consent of the patient's next of kin/next friend/guardian in writing, renders its opinion by either certifying the withdrawal or refusal of further medical treatment or opposing the option of withdrawal or refusal of further medical treatment.

In the event that the primary medical board certifies the withdrawal or refusal of medical treatment, the secondary medical board is constituted by the hospital, which, after taking a medical prognosis of the patient and studying the medical papers, either concurs with or opposes the opinion of the primary medical board for withdrawal or refusal of further medical treatment. In the event, either at the primary board stage or at secondary board stage, the primary medical board in the former or secondary medical board in the latter opposes the withdrawal or refusal of medical treatment, then the nominee of the patient or family member of the patient i.e., the patient's next of kin/next friend/guardian or treating physician or hospital staff may knock the doors of High Court under Article 226 of the Constitution of India.

216. During this entire exercise as described above, at every stage, the need to adhere to the best interest principle while determining whether withdrawal or withholding of medical treatment must be proceeded with, is of paramount importance, for all the stakeholders including the medical boards, the patient's next of kin/next friend/guardian, and the courts (if involved).

217. The discussion above provides clarity as to when the best interest principle ought to be applied and who should consider it. The next concomitant question that arises is much more fundamental - why do we have to adopt the best interest principle when determining whether treatment ought to be withheld or withdrawn? The answer lies somewhere between the realms of a doctor's continuing duty to provide treatment and the lawful discharge of that duty once the threshold conditions/medical parameters are satisfied. In this context, the decision of a doctor to withdraw or withhold medical treatment on the basis of the best interests of the patient is not one directed towards causing death, but towards relieving pain, suffering, and indignity in circumstances where continued treatment no longer serves any therapeutic purpose.

A doctor's duty to provide treatment obliges until the provision of treatment is capable of conferring some therapeutic benefit upon the patient. Where, however, the patient is in the terminal stage of illness or in a vegetative state with no reasonable prospect of recovery, and the continuation of treatment merely prolongs biological existence without any therapeutic benefit, that duty no longer mandates continuing with life-sustaining treatment. In determining whether or not such a stage has been reached, the best interests of the patient must be the driving force.

218. Now having understood when and why the best interest principle comes into play, we shall attempt to explain what the best interest principle entails on a holistic reading of the Constitution Bench decision in Common Cause 2018 (supra).

219. As consistently recognised in *Cruzan* (supra), *Re A* (Male Sterilisation) (supra), *Aintree* (supra) and many other cases as above-mentioned, the best interest principle consists of both medical and non-medical considerations. In fact, the Law Commission of India, in its 196th Report titled "Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)" as well as in its 241st Report titled "Passive Euthanasia - A relook" was also of the view that the best interest principle must not only include the medical interest of the patient but also certain non-medical considerations such as ethical, social, moral, emotional, and other welfare considerations.

220. A similar approach can also be gauged from this court's decision in *Common Cause 2018* (supra) wherein it was noted that the application of the best interest principle entails taking into account both medical and non-medical considerations. We shall now discuss below the aspects that, as per *Common Cause 2018* (supra), form part of such medical and non-medical considerations.

(i) Medical considerations under the best interest principle

221. *Common Cause 2018* (supra) places great significance on factors such as the futility of treatment, no hope of recovery or cure, and the indignity of the patient, all of which forms a part of medical considerations.

222. On the aspect of futility, Para 198.4.1 of the guidelines uses the phrase "no cure of ailment", and Para 199.1 of the guidelines uses the phrase "incurable". In addition to this, Ashok Bhushan, J., in his opinion, also supported the view that the decision to withdraw or withhold medical treatment is not the act of causing a good death, but rather it is a decision one takes when treatment becomes futile. Further, Dipak Misra, C.J., also supports the idea that the words "no cure" have to be understood to convey that the patient remains in the same state of pain and suffering and only the dying process is delayed by means of taking recourse to modern medical technology.

However, we must also reflect upon what the UK Supreme Court in *Aintree* (supra) had observed i.e., that the concept of futility must not be understood on the mere basis of the treatment being incapable of curing the underlying disease of the patient, rather futility must be understood as the treatment being ineffective on the patient or of no benefit to the patient or useless in that particular case of the patient. Thus, futility must be understood by the doctors in the sense of the treatment being useless or pointless on an individual case to case basis, i.e., conferring no benefit at all upon the patient in question.

However, this futility must only be conclusive when all possible means to cure the ailment have been exhausted, and the particular medical treatment has

become so prolonged so as to render it futile. This means that there must be an aspect of prolongation which is attached to futility. This also necessarily means that calling a condition incurable at the threshold without attaching the aspect of prolongation of medical treatment to it, or in other terms, without exploring all possible means to cure the condition, cannot be considered sufficient for allowing the withdrawal or withholding of medical treatment.

223. On the aspect of recovery, Para 198.4.1 of the guidelines uses the phrase "no hope of recovery", and Para 199.1 of the guidelines uses the phrase "no hope of being cured". In this context, Aintree (supra) observes that the concept of recovery does not signify restoration to full health, but rather the resumption of a quality of life which the patient himself would regard as worthwhile. This emphasises that the burdens of treatment must be weighed against the benefits of continued existence and that due weight must be accorded to other non-medical considerations as well.

224. The dimension of dignity occupies a significant place in the constitutional reasoning of Common Cause 2018 (supra). On the aspect of indignity, Dipak Misra, CJ., was of the view that if a man is allowed to or, for that matter, forced to undergo pain, suffering and a state of indignity because of unwarranted medical support, the meaning of dignity is lost, and the search for the meaning of life is in vain. Similarly, D.Y. Chandrachud, J., in his opinion, was of the view that the decision to withhold medical treatment is not intended to cause death but to prevent pain, suffering and indignity to a human being who is in the end stage of a terminal illness or of a vegetative state with no reasonable prospect of cure.

He also observes that the law must protect a decision which has been made in good faith by a medical professional not to prolong the indignity of a life placed on artificial support in a situation where medical knowledge indicates a point of no return. He was of the further opinion that the court has a duty to interpret Article 21 of the Constitution of India in a further dynamic manner in such a manner that the right to life with dignity must include the smoothening of the process of dying when the person is in a vegetative state or is living exclusively by the administration of artificial aid that prolongs life by arresting the dignified and inevitable process of dying. In a similar fashion, A.K. Sikri, J., also observed that the indefinite continuation of futile physical life is regarded as undignified.

(ii) Non-medical considerations under the best interest principle

225. At this juncture, it is also pertinent to note that, as per Para 199.2 of the Common Cause Guidelines, the primary medical board is required to discuss with the patient's next of kin/next friend/guardian, the pros and cons of

withdrawal or withholding and also obtain their consent in writing before certifying or opposing such withdrawal or withholding. It is in this process of obtaining consent that the non-medical considerations, alongside the relevant medical considerations as described above, form the basis for determining whether or not medical treatment should be withdrawn or withheld.

226. It is also pertinent to mention that this Court in Common Cause 2018 (supra) had looked into the observations made in Aruna Shanbaug (supra), wherein it was held that the autonomy of the patient means his right to self-determination and that, therefore, a competent patient, equipped with informed decision-making, has the right to choose the manner of his treatment. In the event that he is incompetent to make such choices, his wishes expressed in advance, in the form of a living will, or the wishes of the surrogates acting on his behalf under the substituted judgment standard, are to be respected.

In such a case, the surrogate is expected to represent what the patient may have decided had he/she been competent. This court was of the further view that a surrogate acting in the patient's best interest must follow a particular course of action because it is the best course of action for the patient, and must not be influenced by their personal convictions, motives or other considerations.

227. Under the guidelines, with respect to cases where there exists no AMD, though the process generally commences with the treating physician evaluating the threshold conditions/medical parameters of Para 199.1 and informing the hospital to constitute the primary medical board, there comes a point where, without obtaining the consent of the patient's next of kin/next friend/guardian, the primary medical board may not be able to move ahead and certify or oppose their opinion.

This requirement of obtaining the consent of the patient's next of kin/next friend/guardian in writing before the primary medical board has the opportunity to certify or oppose the withdrawal or refusal of medical treatment comes with an inherent objective to save the derailment of the entire exercise that lies ahead. The objective of taking such consent is to allow the patient's next of kin/next friend/guardian to bring forth the nonmedical considerations after being informed of the medical considerations put forth by the primary medical board.

228. At this moment, it is important to adhere to two notes of caution: first, while giving their consent, the patient's next of kin/next friend/guardian should not simply base their consent solely on non-medical considerations. Rather, they must weigh and take into account both medical and non-medical considerations before reaching a decision. Secondly, it has to be ensured that the patient's next of kin/next friend/guardian evaluates such medical and

nonmedical considerations by factoring in not their personal wishes, feelings, beliefs, values, etc., but the wishes, feelings, beliefs, values, and other circumstances that the patient would have evaluated for himself if he had capacity to do so.

Here, the patient's next of kin/next friend/guardian does not go into the enquiry from a caregiver's standard, as to what a reasonable person in such circumstances would have done. Rather, they must portray, as far as ascertainable, the beliefs and values of the patient that would have been likely to influence his decision if he had capacity. Thus, the patient's next of kin/next friend/guardian must keep this exercise as a patient-centric exercise, not a parent-centric one. This is essentially how the substituted judgment standard must be construed as factoring into the Indian position.

229. Moreover, the courts in various jurisdictions, as more particularly discussed above, have considered the substituted judgment standard to be an element of the best interest of the patient principle and have always endeavoured to strike a balance between the two, on a case to case basis. We agree that such a balancing between the two standards/principles must exist in our jurisdiction as well.

On the substituted judgment standard, D.Y. Chandrachud, J., in his opinion, had observed that it seeks to determine what the individual would have decided. He also acknowledged that there is an evident tension between these two standards. What an individual would decide as an autonomous entity is a matter of subjective perception. What is in the best interest of the patient is an objective standard. Thus, D.Y Chandrachud, J., was of the view that a balance between the application of the substituted judgment standard and the best interest principle is necessary as a matter of public interest. The relevant observation is as under:

"486. The substituted judgment standard basically seeks to determine what the individual would have decided. This gives primacy to the autonomy of the individual. On the other hand, as seen earlier, the best interest standard is based on the principle of beneficence. There is an evident tension between these two standards. What an individual would decide as an autonomous entity is a matter of subjective perception. What is in the best interest of the patient is an objective standard: objective, with the limitation that even experts differ.

488. The view which this judgment puts forth is that the recognition of Advance Directives as part of a regime of constitutional jurisprudence is an essential attribute of the right to life and personal liberty under Article 21. That right comprehends dignity as its essential foundation. Quality of life is integral to dignity. As an essential aspect of dignity and the preservation of autonomy

of choice and decisionmaking, each individual must have the right on whether or not to accept medical intervention.

Such a choice expressed at a point in time when the individual is in a sound and competent state of mind should have sanctity in the future if the individual were to cease to have the mental capability to take decisions and make choices. Yet, a balance between the application of the substituted judgment standard and the best interest standard is necessary as a matter of public interest. This can be achieved by allowing a supervisory role to an expert body with whom shall rest oversight in regard to whether a patient in the terminal stage of an illness or in a permanent vegetative state should be withheld or withdrawn from artificial life support."

(Emphasis Supplied)

(i) Application of the best interest principle

230. From the above discussion, it is evident that this Court in Common Cause 2018 (supra) has unequivocally held that when deciding whether medical treatment ought to be withdrawn or withheld, both medical as well as non-medical considerations ought to be given due weightage and be considered as a part of the governing principle of best interest.

231. Thus, we are of the view that the patient's next of kin/next friend/guardian, the medical boards, or the courts (if involved), while determining what constitutes the best interests of the patient, are required to undertake a holistic assessment of all relevant circumstances, both medical and non-medical, including but not limited to, the patient's wishes, feelings, beliefs, values, and any other factor that would be likely to influence the patient's decision, or which the patient himself would have taken into account, had he retained the capacity to decide. While saying so, we understand that although the substituted judgment standard would be a component of the best interest principle, yet it is the latter that would still remain as a governing test to decide the questions concerning withdrawal or withholding of medical treatment.

232. Once the relevant medical and non-medical considerations are discernible, the next step would be to undertake a weighing exercise of both these considerations as per the balance sheet approach. This approach was developed in the case of Re A (Male Sterilisation), by following the opinions of the law lords in Airedale (supra), which was later adopted in W v. M (supra), Aintree (supra), Lindsey Briggs (supra), and so on.

This balance sheet approach involves weighing the potential benefits of continued treatment against its burdens, including physical suffering, invasiveness, indignity, psychological distress, wishes and welfare of the

patient, the impact upon the patient's lived experience and family life, and similar considerations. For the sake of reiteration, the reference to a patient's family life does not entail an assessment of the lives, interests, or emotional needs of the family members themselves, rather, it requires a consideration of the life of the patient as lived in and through his or her relationship with the family, and the value that such family life holds for the patient.

233. As discussed earlier, the best interest principle cannot be defined by a single, straight-jacketed test that would fit across all facts and circumstances. Therefore, we have endeavoured to cull out the contours of this principle as far as possible from across the jurisdictions as examined above. From our discussion, we are of the opinion that the principle of "best interest of the patient" may include, but not be limited to, the following considerations:

1. While deciding upon the withdrawal or withholding of medical treatment, the correct question should be whether it is in the patient's best interests that life should be prolonged by the continuance of the particular medical treatment in question.
2. While answering such a question, the best interest principle cannot be construed in a narrow, rigid, straight-jacketed single test. The determination of the same requires due evaluation of all relevant circumstances and considerations, both medical and non-medical.
3. At the foundational level, the best interests inquiry is anchored in a strong presumption in favour of preserving life, reflecting the sanctity of life. This presumption is not absolute and may be displaced where continuation of medical treatment ceases to serve any therapeutic purpose, i.e., becomes futile, merely prolongs the suffering without the hope of recovery or causes indignity to the life of the patient.
4. The assessment of best interests must, therefore, necessarily encompass an evaluation of the futility of treatment, the absence of therapeutic purpose, the invasive and burdensome nature of continued medical intervention, and the indignity attendant upon artificially prolonging life in a state devoid of awareness, autonomy, or human interaction.
5. Further, while considering the best interests of the patient, decision-makers such as the patient's next of kin/next friend/guardian, the treating physician, the members of the medical boards, or the courts (if involved), as the case may be, must look at the patient's welfare in the widest sense, not just medical but also social and psychological.
6. Decision-makers must try to put themselves in the place of the individual patient and ask what his wishes and attitude to the treatment is or would be

likely to be; and they must consult others who are looking after him or interested in his welfare, in particular for their view of what the patient would have wanted.

7. The best interests principle shall incorporate a strong element of the substituted judgment standard, requiring the decisionmaker to place himself, so far as possible, in the position of the patient and to consider in a patient-centric manner what that patient would have wanted if he had capacity to do so. However, substituted judgment would not operate as an autonomous or overriding standard. The ultimate inquiry remains what course of action serves the patient's best interest.

8. The decision-makers, after identifying and collating necessary and ascertainable considerations, both medical or nonmedical, must engage in the balance sheet exercise, which would involve weighing the potential benefits of continued treatment against its burdens, including physical suffering, invasiveness, indignity, psychological distress, wishes and welfare of the patient, the impact upon the patient's lived experience and family life, and other like considerations.

(3) WHETHER IT IS IN THE BEST INTEREST OF THE APPLICANT THAT HIS LIFE BE PROLONGED BY CONTINUATION OF MEDICAL TREATMENT?

234. Now, advertent to the facts of the present case, the medical history of the applicant shows that due to a severe traumatic brain injury (diffuse axonal injury), he slipped into a PVS.

235. Further, the opinion of the primary medical board reported the following conditions:

- (a) The applicant has been bedridden in a vegetative state for the last 13 years;
- (b) He requires external aid for his feeding, bladder, bowel and back;
- (c) He has recurring bed sores and infections;
- (d) He is emaciated and contractures are present in both lower and upper limbs;
- (e) He has spasticity all over the body;
- (f) The prospects of the patient's recovery from this state are negligible.

236. The opinion of the secondary medical board reported the following conditions:

- (a) He is bedbound and cachexic with evident muscle wasting; He maintains a generalized flexed posture;
- (b) His body is lean with a tracheostomy tube, urinary catheter and PEG in situ;
- (c) He is afebrile to touch;
- (d) Pulse rate of 90/minute, regular and normovolemic. Blood pressure was noted at 130/80 mm Hg and respiratory rate at 16/minute;
- (e) Shows no signs of respiratory distress;
- (f) Although the skin is normal, there was a healing bed sore over the lower back;
- (g) He has contractures in both upper and lower limbs;
- (h) His eyes were open with normal blinks with no purposeful movement or response to auditory, verbal, tactile, or painful stimulus;
- (i) The pupils were bilaterally normal and reacting. There were no eye tracking movement to light or auditory stimuli;
- (j) There were flexion contractures of all limbs and attempts for passive movement did not elicit any facial grimace or voluntary resistance;
- (k) Spontaneous, but non-purposive eye opening;
- (l) No vocalization (or attempt thereof, since the patient is tracheostomised);
- (m) No auditory awareness as reflected by no response to sudden noise or meaningful noise stimuli;
- (n) Pupils reacting to bright light indicates intact anterior visual pathway, but no eye tracking to moving object or response to visual threat indicates that the primary visual pathway may be affected;
- (o) No spontaneous or responsive response to stimuli, indicates higher level moto pathways affected;
- (p) Fulfils the diagnostic criteria of PVS;
- (q) He has non-progressive, irreversible brain damage, and he has been in PVS for the last 13 years;

(r) The continued administration of CANH is required for the sustenance of his survival. However, the same may not aid in improving his condition or repairing his underlying brain damage.

237. The patient's next of kins/next friends/guardians, after being informed of medical considerations by the doctors, have stated the following:

(a) The applicant was extremely energetic, physically active, and deeply interested in gymming and playing football;

(b) They have done everything with the hope that their son may recover but there has been no improvement in his condition;

(c) Their son no longer has a voice of his own and therefore, they feel it is their moral responsibility to speak for him in his best interest;

(d) Their decision to initiate the process under Common Cause Guidelines has been taken not out of despair or pressure but after prolonged thought, years of care, and acceptance that in medical consensus, there is hope of recovery of their son;

(e) That continuing the medical treatment no longer serves any meaningful purpose for the applicant and only prolongs his agony, which is causing an undignified life for the applicant;

(f) The applicant has bed sores, and his position has to be changed every two hours;

(g) That in such circumstances a decision has to be taken in the best interest and dignity of the applicant.

238. Further, the patient's next of kin/next friend/guardian, the primary medical board and the secondary medical board after considering medical as well as non-medical considerations as mentioned above are of the opinion that the medical treatment should be discontinued as the continuation of the same is not in the best interest of the applicant, and that, in the given circumstances, nature should be allowed to take its own course. They are also of the opinion that the applicant would remain in PVS for years to come, with the tubes inserted all over his body. However, he would never be able to recover from such a condition.

239. The medical considerations in the present case admit of no ambiguity. The treatment being administered to the applicant has become prolonged, futile, and offers no hope of recovery. The applicant has remained in a PVS for over 13 years, with irreversible and non-progressive brain damage, and the

continuation of CANH serves only to sustain biological existence without any prospect of cognitive recovery or improvement in condition.

While there is no material on record evidencing any prior expressed wishes of the applicant, the non-medical considerations placed before us, such as the applicant's life prior to the injury, where he was physically active, energetic, and deeply engaged in activities such as gymming and football, provide a relevant lens through which his likely values and preferences may be assessed.

In conjunction with the unanimous medical opinion and the considered stand of the applicant's next of kin/next friend/guardian, who have cared for him for years and have taken this decision after prolonged reflection, we acknowledge that had the applicant been competent today, he would not have chosen to continue CANH in these circumstances. The conclusion reached by the medical boards that withdrawal of CANH is in the applicant's best interests is, therefore, both medically sound and consistent with a patient-centric assessment of dignity, values, and welfare.

240. However, in order to obviate any confusion, we wish to emphatically clarify that our discussion demonstrating how the best interest principle applies to the facts of the present matter should not be misconstrued to mean that a court must always be the final arbiter of what is in the best interest of the patient according to the guidelines as laid down in Common Cause (supra). In the present matter, the decision to withdraw or withhold medical treatment to the applicant could have been put into effect immediately upon the submission of the secondary medical board's opinion, since the same was in concurrence with the opinion of the primary medical board.

Both the primary medical board and the secondary medical board have unequivocally certified that the withdrawal of CANH from the applicant would be in his best interest. In other words, we would like to reiterate that if both the primary medical board and secondary medical board certify the withdrawal or withholding of medical treatment, there is no further requirement for any court intervention, except in the very limited circumstances as explained in our detailed discussion hereinabove.

241. Given that this is the first case that has reached this Court wherein the Common Cause Guidelines are being applied in their full measure, we considered it necessary, in the larger public interest, to explain and clarify certain legal and procedural aspects that arise in the application of these guidelines. Such an exposition, in our view, was required not solely for the resolution of the present case but to provide some guidance to treating physicians, medical boards, families, and courts in similar cases that could arise in the future.

(4) WHAT ARE THE FURTHER STEPS TO BE UNDERTAKEN IN THE EVENT THAT A DECISION TO WITHDRAW OR WITHHOLD MEDICAL TREATMENT IS ARRIVED AT?

242. In the aforesaid discussion, we have addressed when, how and in what manner the decision to withdraw or withhold a medical treatment, including CANH, could be arrived at. However, there is a crucial need to address the stage that follows any decision to withdraw or withhold medical treatment as well. As the decision to withdraw or withhold a medical treatment is made keeping the best interests of the patient in mind, we deem it necessary to underscore that the same must be carried out in a manner that is humane and reflects a responsible and sensitive extension of the doctors' duty of care towards their patient.

The resultant effect of the withdrawal or withholding of medical treatment must not be the abandonment of the patient. Due focus must be given to the comfort of the patient through pain and symptom management. It is in this regard that the branch of medical science known as Palliative Medicine, including End of Life Care ("EOL Care"), becomes significant in governing protocols regarding the withdrawal or withholding of a medical treatment, in which the goals of medical treatment shift from cure to care.

243. It is essential to understand that the withholding of withdrawal of a medical treatment is not a single, abrupt act. Once the decision has been taken to withdraw or withhold a medical treatment in accordance with the law, the obligation of medically caring for the patient does not stop. In other words, the withdrawal or withholding of a medical treatment is not the termination of the doctor-patient relationship altogether, but merely a purposeful reorientation of medical goals. The withdrawal or withholding of a medical treatment cannot result in a vacuum of care or medical supervision.

The process of withdrawal or withholding of a medical treatment necessarily entails a structured, step-wise process, anchored in a clearly articulated withdrawal plan as part of an appropriate palliative and EOL care framework. The importance of such a plan lies in ensuring that the decision to withdraw or withhold a medical treatment, which has been taken in the best interests of the patient, gets translated into clinical practice in a manner that minimises pain, distress, and affords him maximum dignity.

244. In this context, we express our strong disapproval of the practice of "discharge against medical advice" (also known as "leaving against medical advice" or "discharge at own risk") that is routinely misused in cases where the medical treatment of a patient stands discontinued. Such a course of action, when resorted to in substitution of a structured palliative and EOL care plan,

risks amounting to an abdication of the doctor's responsibility and undermines the very rationale of treatment limitation being founded on the patient's best interest.

The choice to withdraw or withhold a medical treatment cannot amount to a forfeiture of the patient's right to a medically supervised care. We would like to clarify that it is not always mandatory that palliative and EOL care is provided in a hospital or any other institutional setting. It is permissible that the palliative care is given at home or at any place of choice of the patient or his/her family, as long as a palliative and EOL care plan has been prescribed at the time of discharge, so that the patient is not deprived of structured medical support in the most vulnerable phase of life.

245. As emphasised by the Court of Protection, United Kingdom, in Hillingdon Hospitals (supra), the withdrawal of CANH must be carried out strictly in accordance with a step-by-step withdrawal plan, so that the burdens of a medical treatment are not merely discontinued in principle, but are meted out in practice. The same principle applies with equal force to the withdrawal of all forms of medical treatment and medical devices, i.e. such withdrawal or withholding can only be undertaken pursuant to a carefully calibrated palliative and EOL care plan.

The following extract from the observations of Poole J., in Hillingdon Hospitals (supra), underscores that the law does not merely permit the withdrawal of a medical treatment, but mandates that it be carried out through a plan that balances the cessation of burdensome interventions with the assurance that the patient will not be subjected to further avoidable pain or distress, and will continue to receive palliative and EOL care for as long as life continues:

"42. I have sought to step back and to consider IN's best interests in the widest sense. In doing so I conclude that it is not in his best interests to continue to receive CANH. Accordingly, the withdrawal of CANH in accordance with the step by step withdrawal of care plan is in his best interests and is lawful. Putting it plainly, he has no prospect of recovery and the provision of CANH will only prolong his burdens and give him no benefit. Even though his life expectancy with continued CANH is relatively short, for so long as he is given CANH, his burdens are continued.

43. The current plan is to leave IN's tracheostomy in situ. Although that may have the effect of prolonging his life by some days, I do think it is in his best interests to keep the tracheostomy in place - IN's values are such that he would not have wanted his family or staff to witness his struggling for breath for a period that might last for a week or more were the tracheostomy removed. That is what I believe would have been in accordance with his values as relayed to

the court by his family. Whilst he will continue to suffer the burdens of his condition and interventions including the tracheostomy for as long as he is alive, he will receive palliative care and so the Court can be as sure as it is possible to be, that IN will not experience pain or distress whilst the plan is implemented. On balance I consider that the plan to maintain his tracheostomy is in his best interests."

(Emphasis Supplied)

246. Having thus emphasised that the withdrawal or withholding of medical treatment must be effected through a structured and humane process, accompanied by a palliative and EOL care plan, it becomes necessary to examine the contours of palliative care as recognised within the Indian medical and regulatory framework. Such an examination is essential not only to demonstrate that the obligation to provide palliative and EOL care is grounded in established medical ethics and policy, but also to ensure that the transition from curative treatment to pain-relieving symptom management care is informed by nationally accepted standards and guidance. It is in this context that reference to the guidance issued by expert medical bodies in India assumes significance.

247. The Indian Council of Medical Research (ICMR) document titled "Definition of terms used in limitation of treatment and providing palliative care at end of life" ("ICMR Palliative & EOL Care Primer"), published under the authority of the Secretary, Department of Health Research (DHR), MoHFW, Government of India provides a cursory guidance on the duty of a health care provider to mitigate suffering and improve the quality of life throughout one's life, including the dying phase.⁵²

Although the Palliative & EOL Care Primer is a document that predates this Court's decision in Common Cause 2018 (supra), the primary discussion in the document is not in conflict with it, and we find it apposite to refer to the same. It pragmatically addresses how the inevitability of death must be recognised as a natural culmination of life, and that in this phase, curative intent would have to give way to pain relief and symptom management, so as to improve the patient's quality of life for the remaining duration of his life.

248. The ICMR Palliative & EOL Care Primer defines the term 'Palliative Care' as "a holistic approach to treatment that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering." Palliative care affirms life by supporting the patient and the family's goals for the future, as well as their hopes for peace and dignity throughout the course of illness, the dying process, and death.

It creates an environment in which the needs of the patients and their families are comprehensively assessed, so that the physical, psychological, social, practical, and spiritual needs of patients and their families are endeavoured to be met, and the patient is afforded the maximum dignity possible. Endeavours in palliative care must ensure that the medical palliative care team collaborates with professional and informal caregivers to ensure coordination, communication, and continuity of palliative care across hospital and home settings. The ICMR Palliative and EOL Care Document defines 'End of Life Care' as 'an approach to a terminally ill patient that shifts the focus of care to symptom control, comfort, dignity, quality of life and quality of dying rather than treatments aimed at cure or prolongation of life.'

249. According to the Operational Guidelines, 2017 ("Palliative Care Operational Guidelines 2017") issued under the National Programme for Palliative Care, by the Directorate General of Health Sciences (DGHS), MoHFW, Government of India, 'Palliative Care is an approach that improves the quality of life of patients and families who face life-threatening illness by providing pain and symptom relief, spiritual and psychosocial support from diagnosis to end of life and bereavement.' The Palliative Care Operational Guidelines 2017 identify the goals of palliative care as providing relief from pain and other distressing symptoms, but it does not intend to hasten or postpone death.

The Palliative Care Operational Guidelines 2017 stresses the ethical responsibility of the health system and the health care professionals respectively, to alleviate pain and suffering, whether physical, psychological or spiritual, irrespective of whether the disease or condition can be cured. It states that palliative care integrates the psychological and spiritual aspects of patient care and offers a support system to help the patients' families cope during the patients' illness and their own bereavement through spiritual support and bereavement counselling.

250. The position statement by the Indian Society of Critical Care Medicine and the Indian Association of Palliative Care, published in February, 2024 ("ISCCM & IAPC Position Statement"), identifies that in India, barriers to EOL Care include a lack of attention to the needs of the dying, reluctance to discuss anticipated death or make ethically challenging decisions, physician and organizational concerns over the legality of withdrawal or withholding of a medical treatment, families' inability to pay and lack of integration of palliative care and Intensive Care Units (ICUs). 53

It would be incorrect to suggest that palliative care is limited to only ICUs. As the National Program for Palliative Care under the National Health Mission of the MoHFW notes that, effective palliative care requires a broad

multidisciplinary approach that includes the family and makes use of available community resources, and can be provided in tertiary care facilities, in community health centres and even in patients' homes. However, when it comes to implementation of decisions regarding withdrawal or withholding of a medical treatment, there should be a palliative care plan in place. As the ISCCM & IAPC Position Statement notes, a stepwise approach to the same must be taken depending on the goals of care.

251. We find that the Guidelines for End of Life Care issued by AIIMS, New Delhi ("AIIMS Guidelines") in March 2020, can provide some guidance to doctors in navigating the documentation required during the palliative and EOL care phase of treatment.⁵⁴ The AIIMS Guidelines provide that there should be a guidance and care plan for the dying, which should be explained to the patient before initiation of the EOL care. Moreover, a crucial step in the guidelines is the continuous assessment of the daily supportive plan. The continuous assessment of the daily supportive care plan takes into account the assessment of physical symptoms (such as pain, agitation, nausea, vomiting, dyspnoea, ability to swallow, continence, catheterization, consciousness, respiratory tract secretions, etc. and others).

The AIIMS guidelines also provide that while conducting such EOL care, a team review of the daily supportive care plan must be undertaken if there is an improvement in the consciousness level, functional ability, oral intake, mobility, or ability to perform self-care or if concerns have been expressed regarding the management plan from either the person, carer or team. Even otherwise, the AIIMS guidelines mandate that the supportive care plan must be reviewed daily by a doctor trained in EOL care. The outcomes of the assessment must also be documented on a daily basis, along with explanations/comments where relevant.

The last step of the AIIMS guidelines requires feedback from the doctor, nursing staff, primary caregiver and the family, in the form of a simple questionnaire on whether the prognosis was informed, whether the symptoms anticipated in the last few days/hours were informed, whether the change of goals of treatment from cure to care were explained and whether it was a 'good and peaceful death'. We believe these documents provide necessary guidance on palliative and EOL care, ensuring that the patient receives medical supervision even at a stage when medical treatment is to be withdrawn or withheld.

252. One another aspect that we would wish to clarify is that it is legally permissible for hospitals to admit patients who are currently undergoing medical treatments at a home setting, but where a 'best interest' assessment of their ongoing medical treatments is sought. In such circumstances, the medical

practitioners and healthcare institutions ought not to feel constrained or hesitant to admit such patients, since such admission would, in turn, enable an institutionalized process to ensure that the decisions relating to the continuation, withholding, or withdrawal of medical treatment are taken in compliance with the procedural safeguards recognized in law.

Upon the admission of such a patient, the treating physician is authorised, and indeed expected, to initiate the structured process of medical evaluation as per the guidelines as laid down in Common Cause (supra) to determine whether the continuation of any ongoing medical treatment serves the best interests of the patient. It would further the goal of ensuring the patient's right to dignity and a legitimate re-determination of the goals of medical treatment, and would allow the patient to receive the relief of palliative care and EOL care, whenever necessary, in accordance with the law.

253. In the present matter before us, the primary medical board and the secondary medical board, in due accordance with the Common Cause guidelines, have certified that the withdrawal or withholding of medical treatment is in the best interest of the applicant. For the implementation of the same, it has to be ensured that there is a step-by-step withdrawal or withholding of CANH through a clearly articulated and medically supervised palliative and EOL care plan that will be directed towards the alleviation of pain and distress, management of symptoms, and preservation of the applicant's dignity.

In view of the facts and circumstances of the present matter, it is necessary that the respondent no. 2/AIIMS grant admission to the applicant in its Palliative Care department so that the withdrawal or withholding of the applicant's medical treatment can be given effect to. The palliative and EOL care plan must be robust and specifically tailored to manage symptoms without causing any discomfort to the applicant, ensuring that his dignity is preserved to the highest degree.

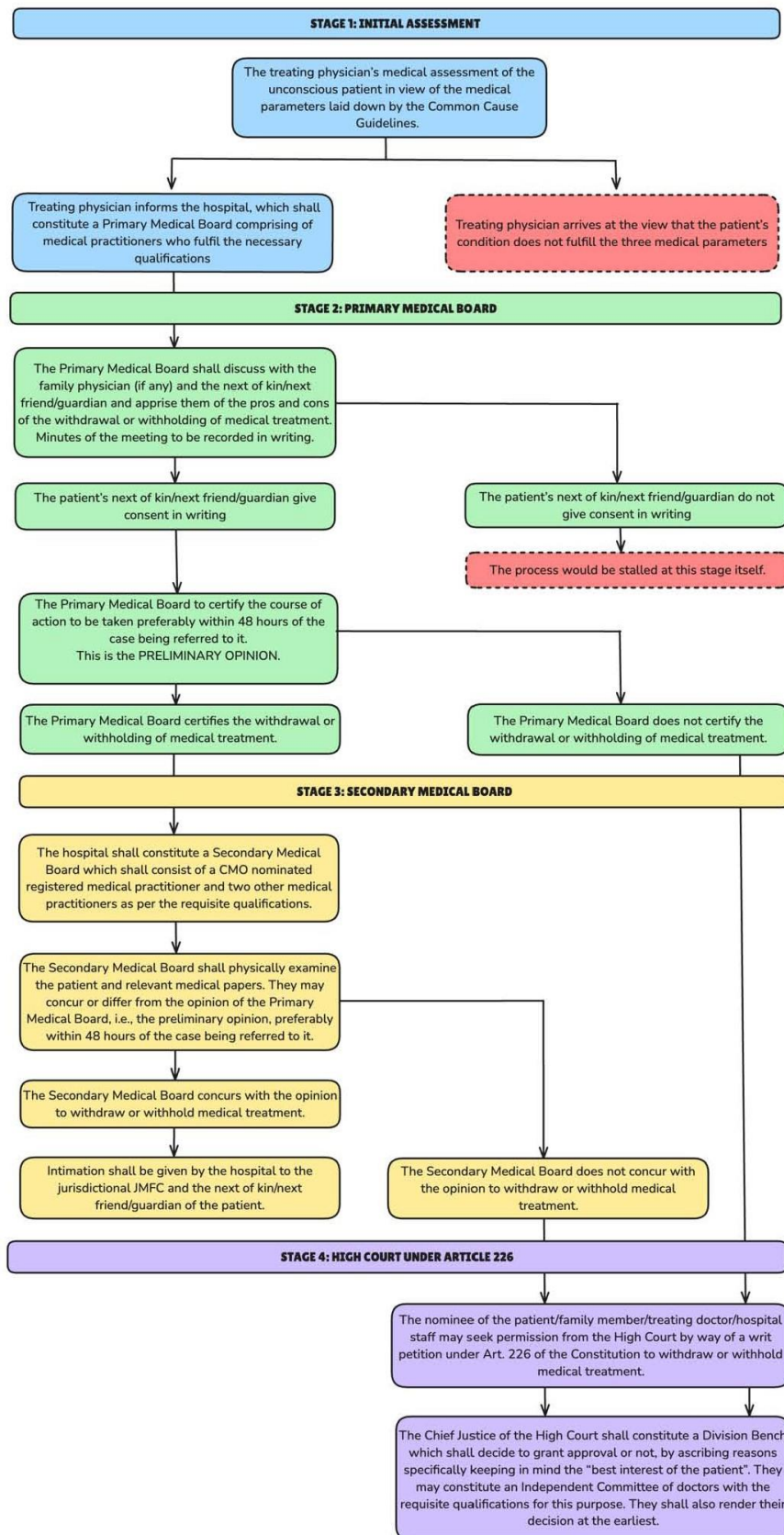
254. Furthermore, we are of the opinion that two other aspects are required to be addressed at this stage: (i) streamlining of the Common Cause Guidelines; and (ii) the need for a subject-specific legislation. These aspects are explained in detail in the following sections.

(5) STREAMLINING AND CONTEXTUALISING THE COMMON CAUSE GUIDELINES

255. This litigation presents the first substantive application of the Common Cause Guidelines. At the same time, it starkly illustrates the practical complexities, difficulties, and dilemmas encountered by all stakeholders in

their implementation, most acutely by the patient's next of kin/next friend/guardian and by treating physicians or medical practitioners.

Even when the threshold conditions/medical parameters, as more particularly discussed above, are fulfilled, the initiation of the process contemplated under the Common Cause Guidelines remains fraught with hesitation and apprehension amongst doctors. In paragraph 110 of our judgment, we have already reproduced the procedure envisaged by the Common Cause Guidelines in a scenario where no AMD exists. To avoid further repetition, we have concisely illustrated the same hereinbelow:



256. A bare reading of Para 199.1 of the Common Cause Guidelines clearly indicates that the treating physician, upon being satisfied that the threshold conditions/medical parameters are fulfilled, sets the process into motion by

informing the hospital to constitute the primary medical board. The treating physician has been entrusted with this responsibility as he is best positioned to know, assess, and evaluate the antecedents and present health condition of the patient at the threshold stage. It is for this reason that the treating physician is also required to be a member of the primary medical board along with at least two subject experts of the concerned speciality, each having a minimum of five years' experience.

I. Safeguarding Checkpoints that remove any hesitation amongst doctors

257. The practical difficulties in implementing the Common Cause Guidelines, more particularly, the potential hesitation of doctor(s) to initiate and carry forward the process, could not be said to have escaped the attention of the Constitution Bench in Common Cause 2018 (supra). It is for this reason that they have inserted some safeguarding checkpoints, which exist at each stage of the implementation process.

258. At the very first stage, it is required that (i) the pros and cons of withdrawal or withholding of medical treatment be discussed by the primary medical board with the patient's next of kin/next friend/guardian and that (ii) their consent in writing is obtained prior to certifying or opposing such withdrawal or withholding.

259. At the second stage, in the event of the primary medical board opposes the withdrawal or withholding of medical treatment, even after receiving such consent in writing, (i) the nominee of the patient, or the family member and/or the patient's next of kin/next friend/guardian, or treating physician, or the hospital staff would have the option to approach the High Court under Article 226 of the Constitution.

Conversely, in the event the primary medical board certifies the withdrawal or withholding of medical treatment after receiving the written consent of the patient's next of kin/next friend/guardian, (ii) the constitution of a secondary medical board consisting of one registered medical practitioner nominated by the Chief Medical Officer of the district (hereinafter referred to as "CMO") and at least two subject experts of the concerned speciality, each having a minimum of five years' experience, is triggered. Here, it is ensured that no member of the primary medical board forms part of the secondary medical board. The inclusion of a registered medical practitioner nominated by the CMO in the secondary medical board also serves to infuse some neutrality into the decision-making process.

260. At the third final stage, in the event that the secondary medical board does not concur with the opinion of the primary medical board, (i) the patient's next

of kin/next friend/guardian, the treating physician, or the hospital staff again have the option to approach the High Court under Article 226 of the Constitution of India. Where the secondary medical board concurs with the decision to withdraw or withhold medical treatment, an additional safeguard comes into operation, in the form of a (ii) 'Reconsideration period', which we shall discuss below under a separate heading.

261. In short, all that we are trying to convey is that these safeguards have been designed keeping in mind the various permutations and combinations of circumstances that may arise in decisions concerning withdrawal or withholding of medical treatment. Doctors must, therefore, not conduct themselves with hesitation, fear, or dilemma in initiating such a process. Each step and stage involves sufficient consultation, neutrality and oversight. It is not just the decision of the treating physician that is individually crystallised into the final decision. The process is collaborative and multi-tiered. Therefore, where the medical and factual circumstances of the patient clearly warrant consideration of withdrawal or withholding of medical treatment in the patient's best interests, the process must commence without any delay.

II. Role of the patient's next of kin/next friend/guardian

262. As illustrated above, once the primary medical board is constituted, the patient's next kin/next friend/guardian remains an integral part of the envisaged procedure. Upon its constitution, the primary medical board would have to visit the patient in the presence of the patient's next of kin/next friend/guardian. The board would also have to holistically and comprehensively identify, as far as practicable, the caregivers of the patient who may be considered as the patient's next of kin/next friend/guardian.

They must apprise the patient's next of kin/next friend/guardian of the pros and cons of withdrawal or withholding of medical treatment and record the minutes of their discussion in writing. A crucial step that follows is the necessity for the primary medical board to obtain the consent of such patient's next of kin/next friend/guardian before certifying or opposing the withdrawal or withholding of medical treatment. Thus, without the consent of the patient's next of kin/next friend/guardian in writing, the process would come to a stall and would eventually collapse.

263. The patient's next of kin/next friend/guardian and primary medical board must also make sure that such consent in writing embodies the notion of what the patient would have wanted had he possessed decision-making capacity and not what the patient's next of kin/next friend/guardian would want in their personal opinion, motive or conviction. They must ensure that the exercise of

determining what is in the best interest of the patient is done in a patient-centric manner and not in a parent-centric manner.

264. Obtaining such consent is also critical for the reason that any further step which is undertaken in pursuance of the procedure envisaged is not fraught with allegations that the patient's next of kin/next friend/guardian was not duly consulted. Moreover, it also prevents the potential derailment of the entire process due to any undue retraction of consent already given by the patient's next of kin/next friend/guardian.

III. Bridging the procedural gap for patients who are undertaking medical treatment in a home-setting

265. In a lot of cases such as the present one, there might be patients who are undertaking prolonged medical treatment in a homesetting. The guidelines as laid down in Common Cause (supra) must not be read in a pedantic manner that unreasonably excludes such patients from taking recourse to the procedure that it has delineated for the withdrawal or withholding of medical treatment. However, if some careful attention is paid to the guidelines as laid down in Common Cause (supra), it can be seen that the duty to constitute the primary medical board is fastened on the hospital in which the patient is admitted.

266. Therefore, we clarify that, in such a scenario, the next of kin/next friend/guardian of the patient who is undertaking medical treatment predominantly in a home setting would have the option to admit the patient in any hospital of their choice. It would then be the mandatory duty of this hospital and the primary treating physician therein to perform the responsibilities laid down under the guidelines as laid down in Common Cause (supra). In cases where it is not feasible for the patient's next of kin/next friend/guardian to facilitate such an institutionalised admission, they may choose to approach any hospital for the limited purpose of designating a primary treating physician, who would then fully apprise himself of the patient's medical condition and initiate the process.

267. In both scenarios, we would strongly urge that the medical practitioners and the hospitals, respectively, do not hesitate to cater to the needs of such patients. Any such behaviour would further defeat the very right to die with dignity which Common Cause 2018 (supra) has set out to secure.

IV. Nomination of registered medical practitioner by CMO

268. Para 199.2 of the guidelines provides that in the event the primary medical board certifies the option of withdrawal or withholding of further medical treatment, the hospital shall then constitute a secondary medical board. The details of the composition of the secondary medical board is given under Para

198.4.5 of the guidelines, which states that the secondary medical board shall be comprised of one registered medical practitioner nominated by the CMO.

269. We have been apprised that this requirement of nomination of a registered medical practitioner by the CMO infuses extensive delay in the process of constitution of the secondary medical board owing directly to the failure of the CMOs of various districts to timely make such nominations. Expediency is one of the cornerstones of the procedure envisaged by the guidelines as laid down in Common Cause (supra) because the absence of same would prolong the suffering and indignity of the patient, thereby directly infringing the rights of the patient guaranteed under Article 21 of the Constitution of India.

270. It is for this reason that this Court, in Common Cause 2023 (supra) modified the original guidelines by incorporating a requirement that both the primary medical board and the secondary medical board certify the further course of action, "preferably within a period of 48 hours" from the referral of the case to them. This Court further envisioned that upon the primary medical board certifying the withdrawal or withholding of medical treatment, the hospital would "immediately" proceed to constitute the secondary medical board.

271. We wish to clarify one other aspect. Any interpretation that permits the hospital to retain discretion over the choice of the CMO-nominated practitioner would defeat the very object underlying the introduction of an external and neutral layer of scrutiny, which this Court had consciously embedded into the decision-making process governing withdrawal or withholding of medical treatment.

This would strictly imply that the authority to nominate one registered medical practitioner vests exclusively with the CMO, while the role of the hospital would be to perform the administrative act of forming the secondary medical board in accordance with such nomination. This, however, does not curtail the hospital's discretion in placing the remaining members of the secondary medical board, as contemplated under the guidelines as laid down in Common Cause (supra).

272. Accordingly, we are of the view that the CMOs of all concerned districts across the country must prepare and maintain a panel consisting of registered medical practitioners possessing qualifications in accordance with the guidelines as laid down in Common Cause (supra), for the purpose of nomination to the secondary medical board. Upon receipt of a request from a hospital seeking nomination of one registered medical practitioner for the constitution of the secondary medical board, the CMO also shall, preferably within a period of 48 hours from the receipt of the request, nominate one such

practitioner from the said panel on a case to case basis. The panel so prepared must also be periodically reviewed and updated by the CMO at intervals not exceeding twelve months, so as to ensure availability, suitability, and continued compliance with the requirements under the guidelines as laid down in Common Cause (supra).

V. Reconsideration Period

273. We have already noted that the role of the patient's next of kin/next friend/guardian has been given due importance in the envisaged procedure. A duty is placed upon the primary medical board to also reasonably ensure that all the caregivers are identified and their concurrence is secured before it certifies the withdrawal or withholding of medical treatment. However, we cannot discount the possibility of any third person claiming to be the patient's next of kin/next friend/guardian assailing the legitimacy of the whole process once it has been completed, alleging that they were not consulted with. We are cognisant that this would occur in the rarest of rare occasions.

274. Moreover, there may also arise situations wherein one of the persons forming the group of the patient's next of kin/next friend/guardian revisits their initial consent due to some validly changed or pressing circumstances. It would not be possible for us to exhaustively outline what reasons could underlie such a change of stance. However, we are sure that there must be something cogent that reveals that the retraction of consent is grounded on what the patient would have wanted for himself and not merely reflect the altered morals/motivations of the patient's next of kin/next friend/guardian.

Having said so, some recourse must exist to address scenarios like these as well. It is keeping such outliers in mind that that Ashok Bhushan, J., in his opinion, observed that in cases of incompetent patients who are unable to take an informed decision, the decision to withdraw or withhold medical treatment should be taken by competent medical experts applying the principle of best interest and should be implemented only after providing a period of 30 days (hereinafter referred to as the "Reconsideration Period"), so as to enable an aggrieved person to approach a court of law. The relevant observation is as follows:

"629.9. We are also of the opinion that in cases of incompetent patients who are unable to take an informed decision, "the best interests principle" be applied and such decision be taken by specified competent medical experts and be implemented after providing a cooling period to enable aggrieved person to approach the court of law.

612. Various learned counsel appearing before us have submitted that seeking declaration from the High Court in cases where medical treatment is needed to be withdrawn is time taking and does not advance the object nor is in the interest of terminally-ill patient. It is submitted that to keep check on such decisions, the State should constitute competent authorities consisting of predominantly experienced medical practitioners whose decision may be followed by all concerned with a rider that after taking of decision by competent body a cooling period should be provided to enable anyone aggrieved from the decision to approach a court of law. We also are of the opinion that in cases of incompetent patients who are unable to take an informed decision, it is in the best interests of the patient that the decision be taken by the competent medical experts and that such decision be implemented after providing a cooling period at least of one month to enable aggrieved person to approach the court of law."

(Emphasis Supplied)

275. We resonate with the above view delivered by Ashok Bhushan, J. However, it must be strictly borne in mind that in such cases, the aggrieved person shall be sufficiently required to establish his or her locus. The court must also tread with caution and not be quick to upend the entire process that has already been culminated, especially a process wherein due and careful attention to the best interest of the patient was paid.

VI. Court Intervention

276. The Constitution Bench in Common Cause 2023 (supra) had modified the guidelines with a view to ensuring minimal judicial intervention in the process. Under the Common Cause Guidelines, there are two circumstances in which court intervention has been envisaged. First, in cases where the primary medical board opposes the withdrawal or withholding of medical treatment and secondly, in cases where the secondary medical board does not concur with the opinion of the primary medical board to withdraw or withhold medical treatment. In such circumstances, Para 199.4 of the guidelines provides that the nominee of the patient, the family member, the treating physician, or the hospital staff may approach the High Court under Article 226 of the Constitution of India.

277. While the provision permitting recourse to the High Court under Article 226 of the Constitution of India under limited circumstances has been retained and extended to provide an overarching safeguard, the guidelines nevertheless envision that, in the ordinary course, court intervention shall be minimal, and that the process contemplated under the guidelines be initiated by the treating physician only and medical boards are to be constituted by the hospitals only.

278. However, in cases where the treating physician himself or the hospital, upon receiving information from the treating physician, fails to initiate the process or constitute the respective medical boards contemplated under the guidelines (as has happened in the present case), despite the patient having fulfilled the requisite threshold conditions/medical parameters, the patient's next of kin/next friend/guardian cannot be left remediless. In such circumstances, the patient's next of kin/next friend/guardian may also have the opportunity to approach the High Court under Article 226 of the Constitution of India seeking appropriate directions to be made to the treating physician and/or the hospital to directly constitute the primary medical board, who may then act in accordance with the Common Cause Guidelines.

(6) LEGISLATIVE INACTION AND THE NEED FOR LEGISLATION

279. There are moments when legislative inaction speaks more loudly than legislative action, and the absence of regulation with regard to the issue at hand presents one such instance. Despite the profound constitutional, ethical, and medical dimensions involved, the field continues to remain largely unregulated by legislation in India.

Due to this legislative vacuum, this Court has, from time to time, been constrained to step in and frame guidelines, not as a matter of institutional preference, but as a matter of constitutional necessity, in order to safeguard the sanctity of fundamental rights, more particularly the right to life with dignity. We underscore that judicial intervention in this domain has never been intended to supplant legislative wisdom, but only to operate as a temporary constitutional bridge until Parliament discharges its role.

280. On more than one occasion, this Court has expressly invited legislative attention to the issue and urged Parliament to consider enacting a comprehensive legislation addressing the practice of euthanasia and/or the withdrawal or withholding of medical treatment. It is pertinent to mention that although two Law Commission Reports⁵⁵ have examined the subject in depth, and several private members' bills ⁵⁶ have been introduced in Parliament, yet these have not generated sustained legislative deliberation. It is, therefore, necessary to advert to these efforts, to demonstrate both the extent of engagement already undertaken and the need for further legislative rigour on the subject.

I. The 196th Law Commission Report

281. After undertaking an exhaustive survey of comparative jurisprudence across various countries, the Law Commission had concluded that a terminally ill patient's decision to discontinue medical treatment does not attract criminal

liability and that such withdrawal ought to be permissible when it accords with the patient's best interests. Through this 196th Report, the Law Commission specifically traced the legislative competence of the Parliament to enact a law on the subject under Entry 26 of List III of the Seventh Schedule to the Constitution of India. To facilitate concrete action, the Law Commission also appended a draft bill to its report for the consideration of the Union Government.

II. The decision of Aruna Shanbaug

282. Five years later, this Court in Aruna Shanbaug (supra) was confronted with the same issues and was forced to deal with them in an acute legislative vacuum. This Court drew guidance from comparative jurisprudence and foreign legal frameworks and laid down guidelines permitting the withdrawal or withholding of medical treatment in cases of patients with terminal illness undergoing prolonged and futile treatment, causing indignity to the life of the patient. At the same time, the Court, being conscious of its limits, expressly clarified that the guidelines framed therein were intended as an interim arrangement to bridge the legislative vacuum, and not as a substitute for legislation made by Parliament. The responsibility was ultimately left with the Parliament to exercise its legislative wisdom and enact a comprehensive statutory framework.

III. The 241st Law Commission Report

283. In the wake of the guidelines enunciated by this Court in Aruna Shanbaug (supra), the Law Commission undertook a relook of the subject matter. In its 241st report, the Law Commission, found no reason to differ from the view taken by this Court or by the earlier Law Commission Report of 2006. However, a revised bill was appended to the 241st Report, incorporating certain variations with respect to the preparation and composition of the panel of medical experts. No concrete subsequent action was taken, and the recommendations mentioned therein failed to be converted into a tangible statutory framework.

284. Further, a question was put by a member of the Rajya Sabha seeking information from the MoHFW regarding the steps taken by the Government pursuant to the guidelines laid down in Aruna Shanbaug (supra) to enact a comprehensive law on end-of-life care. In reply to the aforesaid question, the Minister of Health and Family Welfare stated that since the Constitutional Bench of this Court has already laid down the guidelines, the same should be followed and treated as law. The Minister stated that "at present, there is no proposal to enact a legislation on this subject and the judgment of the Hon'ble Supreme Court is binding on all".

285. Nevertheless, in 2016, the MoHFW published a draft bill, namely, the Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners Bill, 2016, inviting public comments. However, following the consultative stage, no further steps were taken. The bill was neither finalised nor introduced for deliberation before the Parliament. IV. The decision of Common Cause 2018

286. In Common Cause 2018 (supra), this Court formulated fresh guidelines on this issue by exercising its powers under Article 142 of the Constitution of India. However, the need to lay down such guidelines arose solely because there was no law in place. It is in this context that Dipak Misra, CJ., clarified that the Court was not seeking to supplant the legislature, but was merely enabling the exercise of the recognised rights until legislation regarding the same was enacted. Further, in his concluding remarks, A.K. Sikri, J., expressed a "pious hope" that the legislature would intervene and enact an appropriate law to establish a coherent and comprehensive regulatory framework governing the subject.

287. In our view, this "pious hope" has now become an imminent necessity as nearly eight years have passed since the decision of this Court in Common Cause 2018 (supra), yet the legislative void remains. V. Draft Guidelines of 2024 288. Post Common Cause 2023 (supra), the Directorate General of Health Services, MoHFW, released Draft Guidelines (namely Guidelines for Withdrawal of Life Support in Terminally Ill Patients, 2024) for public consultation in June 2024. However, no fruitful conclusion has been reached to date, even on these guidelines.

289. It must be emphasised that the cumulative effect of prolonged legislative inaction is leaving citizens, particularly those situated at the most vulnerable threshold of life, exposed to serious and systemic risk. In the absence of a clear and comprehensive legislation, end-of-life decisions stand imperilled by the possibility that considerations wholly extraneous to medical science or the patient's autonomy, most notably financial distress, lack of insurance coverage, or socio-economic vulnerability, may imperceptibly shape outcomes. Such a vacuum creates the danger that decisions ostensibly grounded in compassion or clinical futility may, in reality, be driven by the inability of families to sustain prolonged and expensive medical intervention, thereby blurring the line between a genuine best-interest determination and an act compelled by economic exhaustion.

290. It is required to be understood that guidelines framed by constitutional courts are intended only to bridge a temporary legislative vacuum arising out of imminent necessity. They are not designed to operate as a permanent substitute

for legislative enactment. It must be reiterated that the directions issued by this Court were never envisaged as a self-contained or exhaustive code.

The responsibility for enacting a comprehensive, coherent, and enduring statutory framework continues to rest exclusively within Parliament's legislative domain. It must be emphasised that any guidelines this Court formulates are bound to be limited in their scope and efficacy. A legislative exercise is inherently more robust as it necessarily involves the engagement of a multitude of stakeholders from various fields, allowing for a broader range of issues to be considered, anticipated, and thereby addressed.

291. Therefore, we urge the Union Government to consider enacting a comprehensive legislation on the subject in line with the vision of the Bench in Common Cause (supra). Such legislation would provide clarity, coherence, and certainty in matters that are deeply practical and emotionally sensitive.

(G). CONCLUSION

I. Summary of our discussion

292. A conspectus of our entire discussion is as follows:

(a) Understanding Common Cause 2018

293. The Constitution Bench in Common Cause 2018 (supra) characterised active euthanasia as a positive overt act, such as the administration of a lethal injection, designed to directly cause or accelerate death. In contrast, passive euthanasia was defined by the absence of such an act, primarily encompassing the withdrawal or withholding of medical treatment(s) that serve to sustain life. However, reliance cannot be placed solely on the binary of 'acts' and 'omissions' to distinguish the two.

(a) A more robust distinction between active and passive euthanasia lies in the source of the harm. Active euthanasia introduces a new, external agency of harm that disrupts the natural trajectory of life, effectively "causing death". Passive euthanasia, on the other hand, merely involves the withdrawal or withholding of medical treatment that sustained life and thus, can be effectively characterised as "allowing death to occur" on account of the underlying fatal condition and permitting the trajectory of life to resume its natural course.

(b) When viewed through this broader lens of "causing death" versus "allowing death to occur", the role of acts and omissions becomes more intelligible. While the physical mechanics of withdrawing life support may technically involve an 'act', its legal and substantive effect is that of an omission, i.e., an omission to treat. Thus, even when a physical action is required to stop a

machine, the essence of the conduct remains an omission to continue life-prolonging measures.

294. This Court in Common Cause 2018 (supra) unequivocally held that the withdrawing or withholding of medical treatment is constitutionally permissible under Article 21 of the Constitution of India, provided it is exercised in the best interests of the patient. The rationale of this Court in arriving at this conclusion can be summarised as follows:

(a) The fundamental right to live with dignity envisages and encompasses dignity until death, including a dignified dying process. Consequently, the right to live with dignity under Article 21 includes a right to die with dignity. This Court reasoned that the withdrawal or withholding of medical treatment merely allows the natural path of life to run its inevitable course and therefore cannot be termed as the extinguishment of life or an unnatural termination of life. Consequently, the same was held not to fall foul of Article 21.

(b) For competent patients, this permissibility is clearly rooted in the common law and constitutional right to refuse medical treatment. This refusal is a manifestation of dignity intersecting with privacy, autonomy, and self-determination. Crucially, for a competent individual, this right to refuse medical treatment is unencumbered, i.e., they possess the absolute authority to reject treatment when it is the outcome of informed decision-making. This choice requires no justification to the State and is not subject to the supervisory control of any outside entity.

(c) This Court recognised that the withdrawal or withholding of medical treatment is equally permissible for incompetent patients, though the legal basis may slightly shift. Here, it is rooted on the standalone basis of dignity and also dignity viewed through the lens of bodily integrity. Subjecting a patient to treatment that is futile, which only artificially prolongs the dying process and the accompanying pain, is an affront to their dignity and bodily integrity. Consent to treatment cannot be presumed to continue forever when the intervention yields no result. However, unlike the unencumbered right of competent patients to refuse treatment, this exercise for incompetent patients is conditional and can only occur when specific threshold conditions/medical parameters, as discussed above, are met.

(d) Withdrawal or withholding of medical treatment, when carried out in the patient's best interests, does not constitute a breach of the doctor's duty of care. The medical duty to care does not include an obligation to continue treatment ad infinitum. In fact, when the best interests of the patient dictate such withdrawal or withholding, such action is taken in furtherance and is a manifestation of the doctor's duty of care.

295. Further, this Court in Common Cause 2018 (supra) held that since active euthanasia involves a positive act designed to extinguish life, it falls foul of Article 21 of the Constitution of India, which prohibits deprivation of life except according to a procedure established by law. Consequently, in the absence of an explicit legislative enactment authorising such an act, active euthanasia remains a penal offence under our existing laws. This Court has firmly held that the prerogative to validate such a practice lies exclusively with the Parliament.

296. This Court in Common Cause 2018 (supra) held that AMDs are legally valid documents. AMDs serve as instruments that enable individuals to exercise the right to self-determination and autonomy even when they have lost the capacity to communicate. However, this Court was conscious of the potential for abuse and thus, restricted the enforcement of AMDs to strictly those scenarios in which the specific threshold conditions/medical parameters were met and in accordance with the procedural safeguards laid down therein.

297. In giving effect to the recognition of the right to die with dignity, this Court also laid down a detailed procedure which is to be followed for the withdrawal or withholding of medical treatment for incompetent patients, both in scenarios where an AMD exists and where it is absent.

298. On a cumulative reading of Common Cause 2018 (supra), any decision to withdraw or withhold medical treatment must withstand scrutiny on two primary grounds: first, the intervention in question must qualify as "medical treatment", and second, its withdrawal must strictly be in the patient's "best interests". Consequently, the inquiry in the present matter also broadly revolved around two inquiries:

- (i) whether the CANH being administered to the applicant can be termed as 'medical treatment'; and
- (ii) whether withdrawing or withholding of such medical treatment would be in the applicant's best interest.

(b) CANH is a medical treatment

299. In the present matter before us, the applicant has sustained non-progressive, irreversible brain damage having suffered severe traumatic brain injury with diffuse axonal injury at the time of the fateful incident. Following his discharge from the hospital in the immediate aftermath of the incident, his fragile health condition necessitated frequent hospital admissions for the treatment of his head injury, seizures, pneumonia and bedsores. However, his medical condition has been such that it did not warrant continuous

hospitalisation all the time and, therefore, he has largely been cared for at home, albeit with a tracheostomy tube, urinary catheter, and PEG tube in situ.

He retains intact brainstem function and breathes spontaneously with the tracheostomy tube in place. Nonetheless, due to his PVS condition, his survival is dependent upon the continued administration of CANH. Since the applicant is being sustained through the provision of CANH, through a PEG tube, it is only in the event that CANH is recognised as a medical treatment, as opposed to being regarded as basic primary care, that the withdrawal or withholding of such treatment would be permissible and amenable to the same principles governing the withdrawal or withholding of any other form of medical treatment.

300. The prescription and administration of CANH involves careful consideration of a multitude of clinical factors, ranging from installation of the CANH device (placed surgically or otherwise), precise assessment of the patient's nutritional requirements, the underlying clinical condition of the patient, gastrointestinal tolerance, potential metabolic instability, assessment of the anticipated duration of CANH support, and the potential risks of complications that are associated with CANH such as the risk of aspiration pneumonia, peritonitis, wound/stoma site infection. Administration of CANH also requires a periodic medical review of its indications, route of administration, risks, benefits and therapeutic goals.

301. The clinical and procedural characteristics of CANH, therefore, indicate, without an iota of doubt, that CANH cannot be regarded as a mere means of basic sustenance or primary care, but should be recognised as a technologically mediated medical intervention that is prescribed, supervised and periodically reviewed by trained healthcare professionals in accordance with established medical standards.

302. When comparing CANH with normal feeding, it is incorrect to direct exclusive attention to the fact that nourishment is being provided. Rather, regard should be had for the whole regime of artificial feeding, which involves the use of catheters and enemas and the constant combating of potentially deadly infection(s).

303. Merely because routine feeding in the form of CANH can be administered at home, by an informed lay person, it cannot be relegated to a non-medical status. CANH, even when administered at home, remains a medical procedure because such administration of nutrition and hydration must necessarily be performed under regular medical and nursing supervision, involving skills and protocols which the lay person would need to specifically obtain by drawing upon medical knowledge.

304. In the present matter before us, the applicant is sustained through the CANH in medically prescribed quantities of certain prescribed feed, via a surgically installed PEG tube. The continuation of such CANH requires an ongoing clinical decision-making process, through routine medical supervision, periodic evaluation, and emergency medical management in case of infection or dislodgment of the CANH device. Consequently, it is beyond question that administration of CANH in this case is to be considered as medical treatment. Further, as we have already explained hereinabove, the fact that the applicant is administered CANH at home does not displace the status of such CANH as being considered as a medical treatment.

305. Therefore, in line with our considered view that CANH constitutes medical treatment, it is permissible for the primary medical board and secondary medical board to exercise their clinical judgment with regard to the continuation or withdrawal or withholding of the CANH, like any other form of medical treatment, in accordance with the guidelines as laid down in Common Cause (supra).

(c) Best Interest Principle

306. In addition to the above, it is also abundantly clear that decisions concerning the withdrawal or withholding of medical treatment, in cases of incompetent patients, are required to be taken in accordance with the best interest principle. We have endeavoured to explain when the "best interest of the patient" principle comes into application; who applies it; why it is applied; and what the contours of the best interest principle are.

We have attempted to answer these questions by undertaking an exhaustive examination of (i) a series of decisions across various jurisdictions, (ii) the deliberations of the Law Commission under its 196th and 241st Reports, and (iii) the concurring opinions of the Constitution Bench of this Court in Common Cause 2018 (supra). Our analysis addresses the above four questions in the following manner: When does the best interest of the patient principle come into play?

307. The best interest principle comes into play when the withdrawal or withholding of medical treatment is contemplated for an incompetent patient who is unable to make an informed decision for himself. Who applies the best interest principle?

308. During the entire process as envisaged under the guidelines as laid down in Common Cause (supra), there is a need to adhere to the best interest principle at every stage while determining whether withdrawal or withholding of medical treatment must be undertaken, by all stakeholders and decision-

makers, including the medical boards, the patient's next of kin/next friend/guardian, and the courts (if involved). Why is the best interest of the patient principle applied?

309. The answer to this question lies somewhere between the realms of a doctor's continuing duty to provide treatment and the lawful discharge of that duty, once the threshold conditions/medical parameters under the guidelines as laid down in Common Cause (supra) are satisfied. In this context, a doctor's duty to continue treatment to a patient obliges until such treatment is capable of conferring some therapeutic benefit upon the patient.

However, where the patient is diagnosed with a terminal illness or is in PVS, with no hope of recovery, and the continuation of treatment merely prolongs his biological existence without any therapeutic benefit, that duty no longer mandates continuing with the medical treatment. In determining whether or not such a stage has been reached, the best interests principle is to be applied. What are the contours of the best interest principle?

310. Our analysis shows that the correct inquiry is not whether it is in the best interests of the patient that he should die, but rather whether it is in the best interests of the patient that his life should be prolonged by the continuance of such forms of medical treatment.

311. While answering this inquiry, the best interest principle cannot be construed as a narrow, rigid, formulaic and straight-jacketed single test. A true and holistic application of this principle would require the evaluation of all relevant circumstances and considerations, both medical and non-medical.

312. Further, at an initial and foundational level, the best interest of any patient would be anchored upon a strong presumption in favour of preserving his life. However, this presumption is not absolute, and the same may be displaced where both medical and non-medical considerations warrant the discontinuation of a particular medical treatment.

313. The medical considerations may entail a determination of whether a particular treatment has ceased to serve any therapeutic purpose, i.e., becomes futile, merely prolongs the suffering without the hope of recovery or causes indignity to the life of the patient.

314. The non-medical considerations may entail a determination of what the patient would have wanted for himself had he possessed the decision making capacity. In this context, decision-makers must try to put themselves in the place of the individual patient and ask what his wishes and attitude to the treatment are or would be likely to be. They must not factor in their own wishes, feelings, beliefs, values etc.; and they must consult others who are

looking after him or are interested in his well-being, in particular for their view of what the patient would have wanted. It is to be borne in mind that this does not entail the application of the caregiver's standard which is centred on what a reasonable person would do in such circumstances. Rather, it involves the application of the substituted judgment standard wherein the determination is based upon what decision the patient himself would have made had he possessed the competence to do so.

315. The best interests principle must incorporate a strong element of the non-medical considerations under the substituted judgment standard as aforesaid, requiring the decision-maker to consider, in a patient-centric manner, what that patient would have wanted if he possessed the requisite capacity. However, this substituted judgment standard would not operate autonomously or in an overriding manner. The ultimate governing test or question would, nevertheless, be - what course of action serves the patient's best interest.

316. Lastly, after ascertaining both medical and non-medical considerations, the decision-makers must draw a balance sheet which would involve weighing the potential benefits of continued treatment against its burdens. The decision-makers must make entries of medical and non-medical considerations on such a balance sheet.

317. In facts of the present case, the patient's next of kin/next friend/guardian, the primary medical board and the secondary medical board respectively, after considering the medical as well as non-medical considerations, have reached the opinion that the CANH being administered to the applicant, should be discontinued as the continuation of the same is not in his best interests. In the given circumstances, they are of the view that nature should be allowed to take its own course.

318. In the present matter, the decision to withdraw or withhold medical treatment of the applicant could have been put into effect automatically upon the submission of the secondary medical board's opinion, since it was in concurrence with the primary medical board's opinion. Both the primary medical board and the secondary medical board have unequivocally certified that the withdrawal of CANH from the applicant would be in his best interest.

In other words, we would like to reiterate that if both the primary medical board and secondary medical board certify the withdrawal or withholding of medical treatment, there is no further requirement for Court intervention. However, given that this is the first case that has reached this Court wherein the Common Cause Guidelines are being applied in their full measure, we deemed it necessary to further delve and expound on issues relating to the legal framework surrounding the withdrawal and withholding of medical treatment.

(d) Palliative and EOL Care

319. Once a decision to withdraw or withhold medical treatment is taken in accordance with the guidelines as laid down in Common Cause (supra), its implementation must be humane and reflective of a responsible and sensitive discharge of the doctor's continuing duty of care towards the patient. The withdrawal or withholding of treatment must not, in effect or execution, result in the abandonment of the patient. Rather, it must signify a transition from curative intervention to a carefully structured and medically supervised palliative and EOL care plan, directed towards the alleviation of pain and distress, management of symptoms, and preservation of the patient's dignity. The palliative and EOL care plan must ensure that a decision taken in the patient's best interests is translated into clinical practice in a manner that minimises suffering and upholds dignity.

320. In this regard, we strongly disapprove of the routine practice of "discharge against medical advice" (also known as "leaving against medical advice" or "discharge at own risk") which is misused in situations where medical treatment stands discontinued. Resorting to such a course of action in substitution of a structured palliative and end-of-life care plan, risks amounting to an abdication of medical responsibility and undermines the very rationale of treatment limitation, which is founded upon the patient's best interests. The choice to withdraw or withhold treatment does not entail a forfeiture of the patient's right to medically supervised care.

321. We deem it necessary to further clarify that it is legally permissible for hospitals to admit patients who are undergoing treatment in home settings, where a reassessment of the patient's best interests is sought. Healthcare institutions and practitioners ought not to hesitate in admitting such patients, as institutional admission facilitates compliance with the procedural safeguards recognised in law. Upon admission, the treating physician is authorised to initiate the structured evaluative process to determine whether the continuation, withholding, or withdrawal of treatment serves the patient's best interests. Such an approach furthers the patient's right to dignity, enables a legitimate re-determination of treatment goals, and ensures access to appropriate palliative and end-of-life care, in accordance with law.

(e) Streamlining of the Common Cause Guidelines

322. Further, in view of the practical uncertainty, difficulties, and dilemmas faced by all stakeholders, we have endeavoured to explain and streamline the Common Cause Guidelines so that the constitutional principles recognised by this Court in Common Cause 2018 (supra) are translated into a workable, humane, and practically secure process. In essence, we have clarified that:

- (i) The Constitution Bench consciously embedded multiple safeguarding checkpoints in the Guidelines to address the hesitation and apprehension amongst doctors in initiating the envisaged process;
- (ii) The role of the patient's next of kin/next friend/guardian remains integral, as their written consent embodies, as far as possible, the patient's own wishes had he possessed decisionmaking capacity, without which consent the process may be stalled;
- (iii) Where medical care is predominantly provided at home, the patient's next of kin/next friend/guardian may admit the patient to a hospital of their choice, or alternatively approach a hospital for the limited purpose of designating a primary treating physician, who shall thereafter initiate the process in accordance with the Common Cause Guidelines;
- (iv) To prevent administrative delays in constituting the secondary medical board, CMOs of all concerned districts would be required to maintain a panel of qualified registered medical practitioners and nominate one, preferably within 48 hours of a hospital's request, on a case to case basis;
- (v) Where the treating physician or hospital fails to commence the process despite satisfaction of the threshold conditions/medical parameters, the patient's next of kin/next friend/guardian may seek appropriate directions from the High Court under Article 226 of the Constitution of India; and
- (vi) Once both the medical boards have concurred in their decision to withdraw or withhold medical treatment, such decision shall be implemented only after a reconsideration period of 30 days, during which an aggrieved person may approach the appropriate court of law, subject to establishing locus, for the purpose of challenging the concurring opinions of the medical boards. It is to be borne in mind that courts must exercise restraint and due caution in unsettling the process that has already culminated after a due and careful consideration of the patient's best interests.

(f) Need for a comprehensive statutory framework

323. The prolonged absence of a comprehensive legislation on end-of-life care has compelled this Court, time and again, to step in to fill the vacuum, out of constitutional necessity rather than institutional choice. While the guidelines as laid down in Common Cause (supra) have served as an important interim safeguard to protect the right to live and die with dignity, they were never intended to operate as a permanent substitute for legislation. Therefore, we urge the Union Government to consider enacting a comprehensive legislation on the subject in consonance with the vision of the Constitution Bench in Common Cause 2018 (supra). Such a legislation would provide more clarity,

coherence, and certainty to these pertinent, practical and emotionally charged issues.

II. The Final Order

324. In the facts and circumstances of the present case, we record our satisfaction that the twin legal requirements for the withdrawal and withholding of medical treatment have been unequivocally met. First, it is established that the CANH currently being administered to the applicant constitutes "medical treatment". Secondly, it has been conclusively determined that the continued administration of the same is no longer in the "best interests" of the applicant. In light of the unanimous consensus arrived at by the parents/next of kin and the constituted medical boards respectively, we are of the opinion that the medical treatment ought not to be prolonged any further.

325. The right to die with dignity is inseparable from the right to receive quality palliative and EOL care. It is imperative to ensure that the withdrawal process is not marred by pain, agony, or suffering. Therefore, we deem it necessary to issue certain directions to the respondent no. 2/AIIMS as regards the further steps to be undertaken for giving effect to the withdrawal or withholding of the applicant's medical treatment.

326. Further, as discussed above, the nomination of a registered medical practitioner by the CMO may also cause administrative delays in the process of constitution of the secondary medical board, largely owing to the failure of the CMOs to make such nominations in a timely manner. Therefore, we are also of the opinion that certain directions are required to be made to the CMOs of all concerned districts across the country for the purpose of maintaining a panel of registered medical practitioners.

327. For the reasons stated hereinabove and in the concurring opinion, we hereby dispose of the present MA with the following directions:

- (a) The medical treatment, including CANH, being administered to the applicant shall be withdrawn and/or withheld.
- (b) In the peculiar facts and circumstances of the present matter, the reconsideration period of 30 days stands waived, as all stakeholders are unanimous in their opinion that the medical treatment being administered to the applicant be withdrawn and/or withheld.
- (c) The respondent no. 2/AIIMS shall grant admission to the applicant in its Palliative Care department so that the withdrawal and/or withholding of the applicant's medical treatment, including CANH, can be given effect to. For this

purpose, respondent no. 2/AIIMS shall provide all necessary facilities for shifting the applicant from his residence to the said Palliative Care department.

(d) The respondent no. 2/AIIMS shall ensure that such withdrawal and/or withholding is carried out through a robust palliative and EOL care plan, which is specifically tailored to manage symptoms without causing any discomfort to the applicant, and ensuring that his dignity is preserved to the highest degree.

(e) The High Courts of all States shall issue appropriate directions to all Judicial Magistrates of First Class (JMFC) within their jurisdiction to receive intimation from the hospital, in accordance with the guidelines as laid down in Common Cause (supra), in the event the primary medical board and secondary medical board are unanimous in their decision to withdraw and/or withhold the medical treatment of any patient.

(f) The respondent no.1/Union of India in coordination with the respective Secretaries of Health & Family Welfare of all States/UTs, shall ensure that the CMOs of all concerned districts across the country, forthwith prepare and maintain a panel consisting of registered medical practitioners possessing qualifications in accordance with the guidelines as laid down in Common Cause (supra), for the purpose of nomination to the secondary medical board.

The panel so prepared shall be periodically reviewed and updated by the CMOs at regular intervals not exceeding twelve months, so as to ensure availability, suitability, and continued compliance with the requirements under the guidelines as laid down in Common Cause (supra). It shall be the duty of the Secretaries of Health & Family Welfare of each State/UT to make sure that such periodic review and updation at regular intervals is undertaken by the CMOs of all districts falling within their respective State/UT.

328. The Registry shall notify this matter once again before this very bench after a period of 1 month for the purpose of reporting compliance with the directions (a) to (e) as above-mentioned. 329. For the purpose of reporting compliance with direction (f) as abovementioned, the Registry shall notify this matter once again before this very bench sometime in August 2026.

330. Throughout the adjudication of this matter, we have been gripped by profound sadness. The issues in this matter have once again brought to the fore the fragility and transient nature of the life we live, and how swiftly the tide can turn for the worse. For the past thirteen years, the applicant has lived a life defined by pain and suffering. A suffering made all the more cruel by the fact that, unlike most of us, he was stripped of the ability to even give voice to his anguish.

However, while this case highlights how unforgiving life can be, it is easy to lose sight of another vital fact. We note with immense respect that the applicant's parents and siblings have stood as unyielding pillars of support. They have exhausted every effort to care for him and continue to do so with unwavering dedication. We can only place on record our deepest appreciation for their boundless love, endurance, and kindness in the face of such adversity.

331. Among the manifold truths about human existence that this case reveals, the most enduring is the resilience of love. In our considered opinion, the greatest tragedy in life is not death, but abandonment. Despite the catastrophic tragedy that struck the applicant, his family never left his side. He has been cared for, protected, and cherished at every moment. To us, this unwavering vigil is a testament to the true meaning of love. To love someone is to care for them not just in times of joy, but in their saddest and darkest hours. It is to care for them even when the horizon is devoid of hope. It is to stand by them as they prepare to cross the threshold into the beyond. Ultimately, to love is nothing but to care deeply, softly, and endlessly.

332. Our decision today does not neatly fit within logic and reason alone. It sits in a space between love, loss, medicine and mercy. This decision is not about choosing death, but is rather one of not artificially prolonging life. It is the decision to withdraw lifesustaining treatment when that treatment no longer heals, restores, or meaningfully improves life. It is allowing nature to take its course when medicine can only delay the inevitable because survival is not always the same as living.

333. To Harish's family, we want to acknowledge the deep emotional weight this decision carries. This decision can feel like an act of surrender, but we believe it is, in truth, an act of profound compassion and courage. You are not giving up on your son. You are allowing him to leave with dignity. It reflects the depth of your selfless love and devotion towards him.

334. We direct the Registry to send one copy each of our judgments to all the High Courts.

.....J. (J.B. Pardiwala)

.....J. (K.V. Viswanathan)

New Delhi;

March 11, 2026.

1 Peter J. Riga, "Privacy and the Right to Die", The Catholic Lawyer (2017) Vol. 26: No. 2, Article 2

2 Mirko Bagaric, Euthanasia: Patient Autonomy versus the Public Good, 18 University of Tasmania Law Review 149 (1999).

3 Jonathan Herring, Relational Autonomy and Family Law, 11 (Springer, New York, 2014).

4 D. Feldman, Civil Liberties and Human Rights in England and Wales, 2nd ed. (Oxford, 2002), 241.

5 Jonathan Herring and Jesse Wall, The Nature and Significance of the Right to Bodily Integrity, 76(3) Cambridge Law Journal 577, 2017

6 Ibid at 581.

7 Para 198.1.1 of Common Cause 2018.

8 Para 198.1.2 of Common Cause 2018.

9 Para 198.1.3 of Common Cause 2018.

10 Para 198.1.4 of Common Cause 2018.

11 Para 198.2.1 of Common Cause 2018.

12 Para 198.2.2 of Common Cause 2018.

13 Para 198.2.3 of Common Cause 2018

14 Para 198.2.4 of Common Cause 2018.

15 Para 198.2.5 of Common Cause 2018, as modified by Common Cause 2023.

16 Para 198.2.6 of Common Cause 2018.

17 Para 198.3.1 of Common Cause 2018, as modified by Common Cause 2023.

18 Para 198.3.2 of Common Cause 2018, as modified by Common Cause 2023.

19 Para 198.3.5 of Common Cause 2018, as modified by Common Cause 2023.

20 Para 198.3.6 of Common Cause 2018, as modified by Common Cause 2023.

21 Para 198.6.1 of Common Cause 2018.

22 Para 198.4.8 of Common Cause 2018.

23 Para 198.6.2 of Common Cause 2018.

24 Para 198.6.3 of Common Cause 2018.

25 Para 198.4.1 of Common Cause 2018, as modified by Common Cause 2023.

26 Para 198.4.2 of Common Cause 2018.

27 Para 198.4.3 of Common Cause 2018, as modified by Common Cause 2023.

28 Para 198.4.4 of Common Cause 2018, as modified by Common Cause 2023.

29 Para 198.4.5 of Common Cause 2018, as modified by Common Cause 2023.

30 Para 198.4.6 of Common Cause 2018, as modified by Common Cause 2023.

31 Para 198.4.7 of Common Cause 2018, as modified by Common Cause 2023.

32 Para 198.5.1 of Common Cause 2018, as modified by Common Cause 2023.

33 Para 198.5.2 of Common Cause 2018.

34 Para 198.5.3 of Common Cause 2018.

35 Para 198.6.4 of Common Cause 2018, as modified by Common Cause 2023.

36 Para 199.1 of Common Cause 2018, as modified by Common Cause 2023.

37 Para 199.2 of Common Cause 2018, as modified by Common Cause 2023.

38 Para 199.4 of Common Cause 2018, as modified by Common Cause 2023.

39 ASPEN (American Society for Parental and Enteral Nutrition), What is Enteral Nutrition?, available at: <https://nutritioncare.org/about/what-we-do/nutrition-support/what-is-enteral-nutrition/> (last visited on:05.02.2026)

40 Ibid.

41 Bedfordshire Hospitals, NHS Foundation Trust, Having a PEG Tube Inserted, available at: <https://www.bedfordshirehospitals.nhs.uk/patient-information-leaflets/having-a-peg-tube-inserted/>, (Last visited on : 10.02.2026); Cambridge University Hospitals, NHS Foundation Trust, Direct (Surgically placed) Jejunostomy tube- information for parents/carers, available at:

<https://www.cuh.nhs.uk/patientinformation/direct-surgically-placed-jejunostomy-tube-information-for-parentscarers/>, (Last visited on: 10.02.2026)

42 Ibid.

43 National Collaborating Centre for Acute Care at The Royal College of Surgeons of England, Nutrition Support for Adults Oral Nutrition Support, Enteral Tube Feeding and Parenteral Nutrition: Methods, Evidence & Guidance, 2006, (Last updated: July 2017), available at: <https://www.nice.org.uk/guidance/cg32/evidence/full-guideline-194889853>, (Last visited on: 06.02.2026)

44 Royal Berkshire NHS Foundation Trust, Percutaneous Endoscopic Gastrostomy (PEG) tube- what is it?, (Last updated : February 2025), available at: https://www.royalberkshire.nhs.uk/media/ji4ptjfd/peg-tubewhat-is-it_feb25.pdf, (Last visited on: 10.02.2026)

45 North Tees and Hartlepool, NHS Foundation Trust, Percutaneous Endoscopic Gastrostomy (PEG): A Patient leaflet for those having a PEG feeding tube inserted, (Last updated : 09.05.2025) available at: <https://www.nth.nhs.uk/resources/percutaneous-endoscopic-gastrostomy-peg/>, (last visited on 10.02.2026); Kent Community Health, NHS Foundation Trust, Care of a PEG feeding tube, (Last updated: on 05.02.2024), available at: <https://www.kentcht.nhs.uk/leaflet/care-of-a-peg-feeding-tube/>, (Last visited on 10.02.2026);

46 American College of Gastroenterology, Enteral and Parenteral Nutrition, available at: <https://gi.org/topics/enteral-and-parenteral-nutrition/>, (Last visited on 05.02.2026)

47 Ibid.

48 Ibid.; Tees, Esk and Wear Valleys, NHS Foundation Trust, Enteral Feeding (PEG) Procedure (Adults): Ref CLIN-0077-v3, available at <https://www.tewv.nhs.uk/wp-content/uploads/2021/12/Enteral-feeding-PEG-procedure-adults.pdf>, (Last updated on: 08.04.2021), (Last visited on 10.02.2026); Milton Keynes University Hospital, NHS Foundation Trust, Adult Enteral Tube Feeding Guidelines for Clients in their own Homes or Care Homes, (Last updated on August, 2016), available at <https://www.mkuh.nhs.uk/wpcontent/uploads/2019/01/Adult-Enteral-Tube-Feeding-Guidelines-for-adults-in-their-own-homes-orcarehomes.pdf>, (Last visited on 10.02.2026); The Leeds Teaching Hospitals NHS Trust,

Jejunostomy feeding tube care advice- information for patients, available at: <https://www.leedsth.nhs.uk/patients/resources/jejunostomy-feeding-tube-care-advice/>, (Last visited on 10.02.2026)

49 Ibid.

50 North Tees and Hartlepool, NHS Foundation Trust, Percutaneous Endoscopic Gastrostomy (PEG): A Patient leaflet for those having a PEG feeding tube inserted, (Last updated: 09.05.2025) available at: <https://www.nth.nhs.uk/resources/percutaneous-endoscopic-gastrostomy-peg/>, (last visited on 10.02.2026); Kent Community Health, NHS Foundation Trust, Care of a PEG feeding tube, (Last updated: on 05.02.2024), available at: <https://www.kentcht.nhs.uk/leaflet/care-of-a-peg-feeding-tube/>, (Last visited on 10.02.2026); NHS England, Patient safety alert: Nasogastric tube misplacement: continuing risk of death and severe harm, (Last updated on 14.02.2022), available at: <https://www.england.nhs.uk/publication/patient-safety-alert-nasogastric-tube-misplacement-continuingrisk-of-death-and-severe-harm/>, (Last visited on 11.02.2026)

51 Sandwell and West Birbingham Hospitals NHS Trust, Nasogastric tube feeding : Information and advice for patients (2012), available at: <https://www.swbh.nhs.uk/wp-content/uploads/2012/07/Nasogastric-tubefeeding-ML4763.pdf>, (Last visited on 11.02.2026).

52 Indian Council of Medical Research, Definition of Terms used in Limitation of Treatment and Providing Palliative Care at End of Life, published in March, 2018, available at: https://www.icmr.gov.in/icmrobject/custom_data/pdf/downloadablebooks/Definition_of_terms_used_in_limitation_of_treatment_and_providing_palliative_care_at_end_of_life.pdf, (Last accessed on 06.02.2026)

53 Raj K Mani, Sushma Bhatnagar, et. al., Indian Society of Critical Care Medicine and Indian Association of Palliative Care Expert Consensus and Position Statements for End-of-life and Palliative Care in the Intensive Care Unit, published on 29.02.2024, available at: <https://www.ijccm.org/doi/pdf/10.5005/jpjournals-10071-24661>, (Last visited on 05.02.2026)

54 All India Institute of Medical Sciences, New Delhi, Guidelines for End of Life Care, Last updated on: 24.02.2021, available at: https://www.aiims.edu/images/pdf/notice/Final_EOLC%20Final%20AIIMS%2

0(1).pdf,
(last visited on: 05.02.2026)

55 Law Commission of India, 196th Report titled "Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners" submitted in year 2006; Law Commission of India, 241st report titled 'Passive Euthanasia - A Relook' submitted in year 2012.

56 Shri Uttam Rao Dhikale, "Introduction of The Euthanasia (Regulation) Bill, 2002" in Lok Sabha on 21.02.2002; Shri C. K. Chandrappan, "Introduction of The Euthanasia (Permission and Regulation) Bill, 2007" in Lok Sabha on 24.07.2007; Shri Bhartruhari Mahtab, "Introduction of The Euthanasia (Regulation) Bill, 2014" in Lok Sabha on 12.12.2014 and reintroduced on 26.07.2019.

**Harish Rana
Vs.
Union of India & Ors.**

[Miscellaneous Application No. 2238 of 2025]

[Special Leave Petition (C) No. 18225 of 2024]

K. V. Viswanathan, J.

BRIEF FACTS

WRIT PETITION BEFORE THE HIGH COURT

PROCEEDINGS BEFORE THIS COURT ON SPECIAL LEAVE

EVENTS SUBSEQUENT TO THIS COURT'S ORDER OF 08.11.2024

SALIENT FEATURES OF COMMON CAUSE (2018) 5 SCC 1

CONSTITUENTS OF THE PRIMARY MEDICAL BOARD AND
SECONDARY MEDICAL BOARD

CONSTITUTION OF THE PRIMARY AND SECONDARY MEDICAL
BOARD

QUESTION FOR CONSIDERATION

ANALYSIS AND CONCLUSION

DIFFERENCE BETWEEN "ACTIVE AND PASSIVE EUTHANASIA"
.....

ADVANCE DIRECTIVE AND CASES WITH NO ADVANCE
DIRECTIVE

ESSENTIAL PREREQUISITES FOR CONSTITUTION OF THE
PRIMARY MEDICAL BOARD AND CONSEQUENTLY THE
SECONDARY MEDICAL BOARD

CLINICALLY ASSISTED NUTRITION AND HYDRATION (CANH) -
DOES IT QUALIFY AS MEDICAL TREATMENT?

BEST INTEREST OF THE PATIENT - SCOPE

APPLICATION TO THE FACTS OF THE PRESENT CASE

CONCLUSION

POSTSCRIPT

"The best interest of the patient is the only interest to be considered."

Dr. William J.Mayo

1. I have had the benefit of reading the erudite judgment of my esteemed Brother J.B. Pardiwala, J. While concurring with the said judgment, considering the importance of the issue involved, I am penning my thoughts and views independently.

BRIEF FACTS:-

2. A and N, deponents to this Application are parents of the petitioner-Harish Rana ('Harish' for short). Harish was pursuing his B.Tech from Punjab University when he, unfortunately, fell down from the fourth floor of his paying guest accommodation on 20.08.2013. He is in a permanent vegetative state and has been suffering from quadriplegia for the last more than 12 years. In these proceedings, primarily the relief prayed for, as set out in the application read with the written submissions, is as follows: -

"It is respectfully prayed that in view of the settled legal position laid down by this Hon'ble Court in Common Cause v. Union of India (2018) as modified in 2023, the unanimous medical opinion of both the Primary and Secondary Medical Boards confirming the Petitioner's irreversible permanent vegetative state, the absence of any benefit from the continued provision of clinically assisted nutrition and hydration, and the considered, consistent and voluntary wishes of the Petitioner's parents and siblings acting in his best interest, this Hon'ble Court may be pleased to permit the withdrawal of clinically assisted nutrition and hydration to the Petitioner, in accordance with an appropriate palliative care protocol and under medical supervision at the Institute of Human Behaviour and Allied Sciences (IHBAS), New Delhi, (Govt. of NCT of Delhi)."

Certain other reliefs consequential to the direction in Common Cause vs. Union of India¹ have also been sought.

3. After the unfortunate fall, Harish was treated at the Postgraduate Institute of Medical Education and Research, Chandigarh, from 21st to 27th August, 2013, where he was managed conservatively, provided respiratory support and underwent a tracheostomy (a surgically created hole through the front of the neck and into the windpipe, through which a tube is placed to provide a direct airway to the windpipe). He was advised feeding through a Ryle's tube (nasogastric tube). Later, he received treatment at the Jai Prakash Narayan Trauma Centre at the All India Institute of Medical Sciences, New Delhi, as well as at the Dr. Ram Manohar Lohia Hospital, New Delhi and Safdarjung Hospital, New Delhi between 2014 and 2017. For better nutrition, a Percutaneous Endoscopic Gastrostomy tube (for short the "PEG tube") was also inserted.

4. It is undisputed that the petitioner suffered diffuse axonal injury resulting in quadriplegia and is in a permanent vegetative state with 100% permanent disability with complete sensorimotor dysfunction. The Application states that Harish's condition is irreversible and incurable.

5. Harish has been entirely bedridden for the past over 12 years and has undergone numerous hospitalizations including the last one being in May, 2025. He is unable to carry out any bodily functions on his own, is catheterized and diapered.

6. Harish is artificially fed through a PEG tube, which is being replaced at a hospital every two months. He suffers from bedsores which bleed occasionally. Harish's hands make reflexive thrashing movements and, hence, his hands have to be bound so that the PEG tube is not involuntarily removed. He receives multiple medications, including antiseizure drugs, on a regular basis. Harish has no awareness of his surroundings.

WRIT PETITION BEFORE THE HIGH COURT:-

7. On 03.04.2024, on behalf of Harish, a Writ Petition was filed before the High Court of Delhi, in substance, seeking a direction to constitute a Medical Board to examine whether life support/life-sustaining treatment in the form of PEG tube could be withdrawn. The prayer was based on the judgment of Common Cause (supra), as modified by the judgment of this Court dated 24.01.2023 in Miscellaneous Application No.1699 of 2019 in W.P (C) No. 215 of 2005.

8. On 02.07.2024, a learned Single Judge of the High Court declined to refer Harish to the Medical Board holding that the petitioner is not being kept alive

mechanically and is able to sustain himself without any extra external aid. The High Court held that active euthanasia was legally impermissible and as such the High Court observed that no directions could be given.

PROCEEDINGS BEFORE THIS COURT ON SPECIAL LEAVE:-

9. Aggrieved, a Special Leave Petition was filed before this Court. At that stage, this Court, by an order of 20.08.2024, requested the Union of India to explore alternative solutions to provide adequate care to the petitioner. A Status Report was filed. Taking on record the Status Report, this Court disposed of the Special Leave Petition on 08.11.2024 in the following terms:-

"1. A petition under Article 226 of the Constitution was instituted before the Delhi High Court seeking a direction to constitute a Medical Board to examine the health condition of the petitioner who is in a permanent vegetative state and to facilitate the administration of passive euthanasia. The petitioner is stated to suffer from 100% disability with Quadriplegia.

2. On 20 August 2024, while issuing notice to the Union of India, this Court had requested Ms Aishwarya Bhati, Additional Solicitor General to explore alternative solutions for providing adequate care to the petitioner.

3. A status report has been submitted before this Court by the Under Secretary to the Government of India in the Ministry of Health and Family Welfare. Anneuxre R-3 of the status report contains a report of the Central Government in the matter. The solutions which have been provided in the report are in the following terms:

"Consequent upon all the efforts made by the Central Government in compliance with the instructions given by the Hon'ble Supreme Court of India on 20 August, 2024, the following viable solutions have emerged for consideration of the Hon'ble Supreme Court of India:

(i) Home care of Shri Harish Rana with assistance from the Government of Uttar Pradesh as under:

- a. Regular Physiotherapist's visit
- b. Regular Dietician's visit
- c. Medical Officer on call
- d. Nursing care provision at home
- e. Availability of all required medicines and consumables free of cost.

(ii) If home care is not feasible, shifting of Shri Harish Rana to District Hospital, Noida, Sector-39 for ensuring availability of proper medical care considering his health condition.

(iii) Support from NGOs, if deemed fit, may also be considered."

4. Mr Manish Jain, counsel appearing on behalf of the petitioner, who is represented by his mother in these proceedings, states that the matter has been resolved satisfactorily and both the parents are agreeable to accepting the course as suggested in the above extracts.

5. The Special Leave Petition is accordingly disposed of taking the arrangement on the record. However, liberty is granted to either of the parents of the petitioner to move the Court in future should it become necessary to obtain further directions."

EVENTS SUBSEQUENT TO THIS COURT'S ORDER OF 08.11.2024:-

10. Pursuant to the order of this Court dated 08.11.2024, Harish was under home care with assistance. Harish was hospitalized from 17.05.2025 to 24.05.2025 at the District Hospital, Ghaziabad for treatment of coughing and bedsores. During the said period, another tracheostomy was performed. The Application avers that at that point considerable distress was caused to the deponent-parents and it was clear that it was futile to prolong medical intervention. The present Application, for the relief set out above, was filed on 21.10.2025, pursuant to the liberty given in the order dated 08.11.2024.

11. It is averred in the Application that Common Cause (supra) recognizes that life-sustaining treatment can be withdrawn in circumstances where there is no hope of cure or recovery. It is averred that the High Court of Delhi erred in holding that Harish is able to sustain himself without any external aid. It is submitted that Harish requires Clinically Assisted Nutrition and Hydration (for short "CANH") in the form of a PEG tube, which constitutes external aid.

It is averred that Harish is in a permanent vegetative state, which is irreversible and incurable, and is receiving life-sustaining treatment through the PEG tube. It was prayed that determination must be made in accordance with the Common Cause (supra) guidelines to decide whether the continued provision of CANH is in the petitioner's best interest. It is stated in the Application that Harish's continued existence in his present state is a violation of his fundamental right to dignity, protected under Article 21 of the Constitution of India.

12. It is made clear that the Application does not pray assisted dying, namely "active euthanasia". The scope of the Application was confined to seeking a

referral to the Primary Medical Board in accordance with the procedure laid down in Common Cause (supra). It was averred that the purpose of such referral was to obtain an expert medical opinion on the advisability of continuing CANH, which constitutes a form of life sustaining treatment.

It was stated that such a determination was imperative to safeguard the dignity of the petitioner, which is an integral facet of the right to life under Article 21 of the Constitution of India. It was submitted in the Application that Harish receives artificial nutrition and hydration through a PEG tube and that a PEG tube is a form of a mechanical life support - CANH. It is averred in the application that it is widely recognized, both medically and legally, as a form of life-sustaining treatment. It is also submitted that in Common Cause (supra), the Constitution Bench has recognized that feeding tubes constitute a form of life support.

13. Reference was made to the 241st Report of the Law Commission of India on passive euthanasia which recognized artificial feeding as a means of life support. Reference was also made to the guidance for decision making on CANH issued by the Royal College of Physicians in the United Kingdom to reinforce the submission.

14. It is submitted that the High Court erred in reading the Common Cause (supra) to hold that withdrawal of life sustaining treatment applied only to terminally ill patients. Reference was made to Common Cause (supra) to contend that the principle in Common Cause (supra) applies to individuals, like Harish, who are in a permanent vegetative state. Reference was made to the guidelines in Common Cause (supra), as modified in 2023, and the procedure laid down for withholding and withdrawal of life-sustaining treatment. Grievance was made that Primary and Secondary Medical Boards in accordance with Common Cause (supra) guidelines have not been implemented across most States.

The requirement to nominate a medical practitioner to the Secondary Medical Boards by the Chief Medical Officer has not been complied with. It is averred that the Common Cause (supra) guidelines required hospitals to intimate the Judicial Magistrate of the First Class regarding the withholding and withdrawal of the life-sustaining treatment but the Judicial Magistrates are not aware since no directions have been received from the respective High Courts. It is in this background that primarily a prayer for referring the petitioner for a Primary Medical Board was made.

SALIENT FEATURES OF COMMON CAUSE (2018) 5 SCC 1:-

15. In Common Cause (supra), the Constitution Bench dealt with two categories of cases -

i) cases where an advance medical directive is left by the patient; and ii) cases where there is no advance directive.

16. Admittedly, the case of Harish is a case where there is no advance directive. It will be useful to extract the modified guidelines laid down in Common Cause (supra) with regard to the category of cases where there is no advance directive:-

Cases where there is No Advance Directive	
Para 199.1	In cases where the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is incurable or where there is no hope of being cured, the physician may inform the hospital, which, in turn, shall constitute a Primary Medical Board in the manner indicated earlier. The Primary Medical Board shall discuss with the family physician, if any, and the patient's next of kin/next friend/guardian and record the minutes of the discussion in writing. During the discussion, the patient's next of kin/next friend/guardian shall be apprised of the pros and cons of withdrawal or refusal of further medical treatment to the patient and if they give consent in writing, then the Primary Medical Board may certify the course of action to be taken preferably within 48 hours of the case being referred to it. Their decision will be regarded as a preliminary opinion.
Para 199.2	In the event the Primary Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall then constitute a Secondary Medical Board comprising in the manner indicated hereinbefore. The Secondary Medical Board shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the Primary Medical Board. In that event, intimation shall be given by the hospital to the JMFC and the next of kin/next friend/guardian of the patient preferably within 48 hours of the case being referred to it.

CONSTITUENTS OF THE PRIMARY MEDICAL BOARD AND SECONDARY MEDICAL BOARD:-

17. It is essential to set out the constituents of the Primary and Secondary Medical Board. Para 198.4.4 and 198.4.5 of the Common Cause (supra), as modified, read as under:-

Para	The hospital where the executor has been admitted for medical

198.4.4	treatment shall then constitute a Primary Medical Board consisting of the treating physician and at least two subject experts of the specialty concerned with at least five years' experience, who, in turn, shall visit the patient in the presence of his guardian/close relative and form an opinion preferably within 48 hours of the case being referred to it whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded as a preliminary opinion.
Para 198.4.5	In the event the Primary Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the hospital shall then immediately constitute a Secondary Medical Board comprising one registered medical practitioner nominated by the Chief Medical Officer of the district and at least two subject experts with at least five years' experience of the specialty concerned who were not part of the Primary Medical Board. They shall visit the hospital where the patient is admitted and if they concur with the initial decision of the Primary Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive. The Secondary Medical Board shall provide its opinion preferably within 48 hours of the case being referred to it.

18. The case of Harish had certain peculiarities. As set out earlier, since 2013 when Harish had the fall from the fourth floor, he has been treated at several hospitals. He was first treated at Postgraduate Institute of Medical Education and Research, Chandigarh and then at the All India Institute of Medical Sciences, Dr. Ram Manohar Lohia Hospital and Safdarjung Hospital, all at New Delhi, between 2014 and 2017. Apart from this, the petitioner over the past 12 years has indisputably undergone numerous hospitalisations and the last one was in May, 2025.

19. Pursuant to the Status Report of the Union of India and the order of this Court dated 08.11.2024, Harish was under home care. Between 17.05.2025 to 24.05.2025, the petitioner was hospitalized at District Hospital, Ghaziabad for palliative care, and treatment for cough and bedsores. Thereafter, under the suggestions made in the Status Report, the homecare of the petitioner continued. A perusal of the Status Report and the suggestions indicate that the homecare offered to the petitioner which the petitioner accepted with support of physiotherapist, dietician, medical officer on call, nursing care at home and supply of all medicines, virtually treated the home as an extension of the hospital.

CONSTITUTION OF THE PRIMARY AND SECONDARY MEDICAL BOARD:-

20. It was in this scenario that when the matter came up, by order dated 26.11.2025, after recording the fact that Harish's condition has gone from bad to worse and that he is in a persistent vegetative state suffering from 100% disability with quadriplegia and not responding to any treatment and is being artificially kept alive, this Court directed the constitution of a Primary Medical Board of doctors in terms of Common Cause (supra), to give a report as to whether the life sustaining treatment can be withdrawn. Pursuant to this order, the Primary Medical Board submitted the following report:-

"This is to say that after consulting with CMO Ghaziabad we have visited residential place of Mr. Harish Rana S/O Mr. A R/O- AM-1314, Raj Empire, Rajnagar Extention, Ghaziabad for evaluation of his health condition. The team included a neuro surgeon, a neurologist, a plastic surgeon and a critical care expert. Attendants Mr. AR (brother) and Ms. BR (sister) were present during evaluation. Harish Rana suffered injuries about 13yrs back since that time he is under medical care under many centers. At present Patient was lying in bed with tracheostomy tube for respiration and gastrostomy for feeding. Patient was opening eyes spontaneously. His breathing was spontaneous with tracheostomy tube.

He was emaciated and contractures were present in both lower limb and upper limb at shoulder, elbow, wrist, fingers, knee, ankle and toes. His pupils were normal in size but sluggish in reaction with no movement restriction. No facial asymmetry present. Gag reflex present. He was having spasticity all over both upper limb and lower limb with deep tendon exaggerated at bicep, triceps, supinator, knee, ankle. Sensory and cerebellar examination could not be accurately assessed due to his state. He had intact brainstem function but due to his vegetative state he requires external support for his feeding, bladder bowel and back. He needs constant physiotherapy and tracheostomy tube care. The chances of his recovery from this state is negligible.

Sd/-	Sd/-	Sd/-	Sd/-
Neurologist	Plastic Surgeon	Anaesthesiologist	Neuro Surgeon"

[Emphasis supplied]

21. When the matter came up for hearing on 11.12.2025, after noticing report of the Primary Medical Board, this Court in accordance with the judgment in Common Cause (supra), directed that a Secondary Medical Board be constituted for the purpose of examination of Harish. In this regard, a request was made to the Director, All India Institute of Medical Sciences, New Delhi, to constitute a Secondary Medical Board, as referred to above, and report by 17.12.2025.

22. At the hearing on 18.12.2025, after directing the report of the Secondary Medical Board which had arrived since then to be given to the counsel for the parties, this Court expressed a desire that the counsel for the parties speak to the parents and other family members of Harish and give a report. This Court also recorded that the Court would like to speak to the parents personally.

23. In the Secondary Medical Report, the following conclusions were recorded:-

"Based on the history and examination findings, the medical board is of the following opinion: -

"a. Mr. Harish Rana has non-progressive, irreversible brain damage following severe traumatic brain injury with diffuse axonal injury. He fulfills the criteria of permanent vegetative state (PVS) and has been in this state for the past 13 years.

b. The continued administration of clinically assisted nutrition and hydration is required for the sustenance of his survival. However, it may not aid in improving his medical condition or repairing his underlying brain damage."

[Emphasis supplied]

24. Pursuant to the order dated 18.12.2025, Ms. Aishwarya Bhati, learned Additional Solicitor General, Ms. Rashmi Nandakumar, learned counsel for Harish, met with the parents, brother, sister and brother-in-law of Harish. They submitted a Report. The relevant parts of the Report which are comprehensive is set out hereinbelow: -

"3. At the beginning of our interaction, we requested the parents to share their thoughts, wishes, and concerns in their own words. Mr. A, the father of Mr. Harish Rana, told us that the family has been caring for their son continuously for more than thirteen years and that they have done everything within their human capacity during this period. He said that their son no longer has a voice of his own, and therefore they feel it is their moral responsibility to speak for him. He also expressed gratitude that their concerns have been heard by this Hon'ble Court.

4. He told us that his son:

- Cannot speak, hear, see, recognise anyone, or eat on his own;
- Is entirely dependent on artificial life support, including a feeding tube.

5. He shared his deep worry that both parents are now ageing, and asked, with visible concern, who would take care of Mr. Harish if anything were to happen

to either of them. Mr. A expressed that their family's earnest request is that the feeding tube / life sustaining medical support may be withdrawn under proper medical supervision.

6. Mr. A also shared that while the Government authorities have extended assistance over the years, the family has continuously faced practical difficulties in day-to-day medical care, availability of skilled personnel, and emergency medical support, despite their best efforts.

7. Mrs. N, the mother of Mr. Harish Rana, told us that they have tried everything within their means for the last many years in the hope that their son may recover, but there has been no improvement. She stated that her son has not responded to touch or affection for the past 13 years.

8. She expressed that watching her son in this condition day and night has become extremely painful, and that his continued existence in the present condition causes him suffering which they are unable to alleviate. She was clear in telling us that the decision being expressed is not out of despair or pressure, but after prolonged thought, years of care, and acceptance that there is no medical hope of recovery of their son.

9. Upon being specifically asked whether she would feel regret or emotional distress if her son were to pass away, she replied that the greater distress is watching him suffer continuously in his present state, and that she believes the family has done everything possible.

Views of the Siblings of Mr. Harish Rana

10. The brother of Mr. Harish Rana - Mr. AR, told us that the family has given more than their full capacity over the last 13 years, emotionally, physically and financially. He shared that after exhaustive efforts and consultations, the family has reached this decision with great difficulty, believing that continued medical intervention no longer serves any meaningful purpose for his brother and only prolongs his agony.

11. Ms. BP, the sister of Mr. Harish Rana, told us that at the time of the incident they were children, and today she herself is a mother. She shared that the family has lived through years of hardship and that the decision being taken is, in their belief, in the dignity and best interests of their brother.

Observations

15. It is humbly submitted that throughout the interaction:

- The parents and family members appeared fully conscious, coherent, and consistent in their statements;
- Their views were expressed calmly, repeatedly, and without any sign of coercion, confusion, or external pressure;
- The decision articulated by them appears to be the result of long contemplation over many years, and not a momentary or impulsive reaction."

[Emphasis supplied]

25. Further, as has been set out in the written submissions of Ms. Aishwarya Bhati, learned Additional Solicitor General, a video conference was conducted on 08.01.2026 and the meeting apart from the learned ASG was attended by representatives of the Ministry of Health and Family Welfare, the doctors who constituted the Secondary Medical Board Prof. (Dr.) DV, Prof. (Dr.) NG, along with the concerned officials. During the course of the meeting, the following points were deliberated upon:-

"(a) Present Medical Status of the Petitioner as per Clinical Findings

- (i) The petitioner has been in an irreversible permanent vegetative state for the last 13 years;
- (ii) There is no chance of improvement or repair of the medical condition, rendering continued treatment futile;
- (iii) There exists a clear, unequivocal and wellconsidered view of the parents of the petitioner, who are also the primary caregivers, arrived at after informed interaction and deliberation."

26. In the order dated 13.01.2026, after interacting with the parents and younger brother of Harish, the following observations were recorded:-

"6. All the three, i.e., the father, mother and younger brother, in one voice and with lot of pain in their hearts, made a fervent appeal before us to take necessary steps to ensure that Harish does not suffer any more. What they tried to convey, in their own way, was that the medical treatment imparted over a period of almost 12 years be discontinued and nature be allowed to take its own course. According to them if the medical treatment is not making any difference, then there is no point in continuing with such medical treatment and making Harish suffer for no good reason.

7. They believe that Harish is suffering like anything, and he should be relieved of all further pain and suffering.

8. They may not be aware of the legal nuances involved in this litigation. However, they are very clear that in view of the two reports filed by the Primary Board and the Secondary Board, respectively, there is no sign, or rather no hope, for Harish to recover.

9. Ms. Bhati submitted that she had a talk with the team of doctors, i.e., the members of the Primary Board as well as the members of the Secondary Board, and the doctors are of the opinion that the medical treatment should be discontinued as the continuation of the same is not in the best interest of Harish Rana, and that in the given circumstances, nature should be allowed to take its own course. The doctors are also of the opinion that Harish would remain in this permanent vegetative state (PVS) for years to come, with the tubes inserted all over his body. However, he would never be able to recover and live a normal life.

10. In such circumstances, referred to above, we should now hear the matter further in the Court. We request the learned counsel appearing for both parties to assist us on all issues.

11. Post the matter on Thursday, i.e., 15.1.2026, as the first item on the Board."

QUESTION FOR CONSIDERATION:

27. In view of the unanimous opinion of the Primary and Secondary Medical Boards confirming Harish's irreversible permanent vegetative state; the absence of any benefit from continued provision of CANH and keeping in mind the nonmedical considerations and after consultations with the family members, what are the consequential directions that deserve to be made? In answering this question, several incidental questions do arise which have been discussed in the course of the judgment.

28. Heard Ms. Rashmi Nandakumar and Ms. Dhvani Mehta, ably assisted by Ms. Shivani Mody, Ms. Anindita Mitra, Ms. Yashmita Pandey, Mr. Manish Jain, Mr. Vikash Kumar Verma and Mr. Jugal Kishore Gupta, learned counsels for the petitioner. Ms. Rashmi Nandakumar and her team, while reiterating the averments in the application, have very ably presented the case for the petitioner and filed detailed written submissions covering all aspects and have referred to a large number of judgments, including judgments from other countries.

29. Equally, Ms. Aishwarya Bhati, learned Additional Solicitor General, conducted the case in a non-adversarial manner keeping in line with the highest traditions of the office of the Additional Solicitor General. She was ably assisted by Ms. Sushma Verma, Ms. Shreya Jain, Ms. Shivika Mehra, Mr. B.L.

Narasamma Shivani, Mr. Arun Kanwa, Mr. Sudarshan Lamba and Mr. Amrish Kumar, learned counsels for the respondent.

ANALYSIS AND CONCLUSION:

Difference between "Active and Passive Euthanasia"

30. Common Cause (supra) has clearly set out that active euthanasia also known as "positive euthanasia" or "aggressive euthanasia" is a type of euthanasia that entails the positive act causing intentional death of a person by direct intervention. The present case is not of this category.

31. Passive euthanasia also known as "negative euthanasia" or "non-aggressive euthanasia" entails withdrawing of life support measures or withholding of medical treatment for continuance of life. Common Cause (supra) relying on *Vacco vs. Quill*² observed that when the death of a patient occurs due to removal of life-supporting measures, the patient dies due to an underlying fatal disease without any intervening act on the part of the doctor or medical practitioner.

32. Active euthanasia would be illegal unless there is valid legislation permitting it. [Dipak Misra, CJ in Common Cause (supra)]

33. Further, in Common Cause (supra), it was set out relying on *Smt. Gian Kaur vs. State of Punjab*³ that the word "life" under Article 21 has to be construed as "life with human dignity" and that it takes within its ambit the "right to die with dignity" being part of the "right to live with dignity". It was also observed that the "right to live with human dignity" would mean existence of such a right up to the end of natural life which would include the right to live a dignified life up to the point of death including the dignified procedure of death.

This Court in Common Cause (supra) observed that the sequitur of this exposition was that there was little doubt that a dying man who is terminally ill or in a persistent vegetative state can make a choice to accelerate the process of natural death as being a facet of Article 21 of the Constitution of India. This Court further observed that if that choice is guaranteed as being part of Article 21, there was no necessity of any legislation for effectuating that fundamental right which was his natural human right.

34. Further, this Court in Common Cause (supra), reinforcing the aspect of dignity as an inseparable part of the right to life which engulfs the dignified process of dying, observed as follows:-

"178. It is to be borne in mind that passive euthanasia fundamentally connotes absence of any overt act either by the patient or by the doctors. It also does not involve any kind of overt act on the part of the family members. It is avoidance of unnecessary intrusion in the physical frame of a person, for the inaction is meant for smooth exit from life. It is paramount for an individual to protect his dignity as an inseparable part of the right to life which engulfs the dignified process of dying sans pain, sans suffering and, most importantly, sans indignity."

ADVANCE DIRECTIVE AND CASES WITH NO ADVANCE DIRECTIVE:-

35. This Court in Common Cause (supra) dealt with cases where patients had made an advance medical directive and cases where there was no advance medical directive. The present is a case where there is no advance medical directive. Elaborate procedures were laid down, the essential parts of which have been tabulated in the earlier part of this judgment. Para 198-199 of Common Cause (supra) which are crucial are set out herein below: -

"198. In our considered opinion, Advance Medical Directive would serve as a fruitful means to facilitate the fructification of the sacrosanct right to life with dignity. The said directive, we think, will dispel many a doubt at the relevant time of need during the course of treatment of the patient. That apart, it will strengthen the mind of the treating doctors as they will be in a position to ensure, after being satisfied, that they are acting in a lawful manner. We may hasten to add that Advance Medical Directive cannot operate in abstraction. There has to be Safeguards." Safeguards and directions with regard to

- 1) Who can execute the Advance Directive and how?
- 2) What should it contain?
- 3) Manner of recording and preservation;
- 4) Persons who can give effect to?
- 5) Position when permission is refused by the Medical Board; and
- 6) When Revocable and inapplicable were all provided for.

"199. It is necessary to make it clear that there will be cases where there is no Advance Directive. The said class of persons cannot be alienated. In cases where there is no Advance Directive, the procedure and safeguards are to be same as applied to cases where Advance Directives are in existence and in addition there to, the following procedure shall be followed."

[Emphasis supplied]

The procedure set out has already been extracted hereinabove.

ESSENTIAL PREREQUISITES FOR CONSTITUTION OF THE PRIMARY MEDICAL BOARD AND CONSEQUENTLY THE SECONDARY MEDICAL BOARD:-

36. The High Court, while dismissing the writ petition, clearly erred in holding that Harish was not terminally ill and hence his case was not covered by the four corners of the Common Cause (supra) judgment. Harish has been in a vegetative state for the last more than 12 years and clinically assisted nutrition and hydration is required for the sustenance of his survival. Even the said life support/lifesustaining treatment would not aid in improving his medical condition. This aspect now stands confirmed by the opinion of both the Medical Boards.

37. Even though the case of Harish is a case of no advance medical directive, however, while considering the correctness of the High Court finding about the necessity of the patient being terminally ill, it will be useful to refer to the relevant paragraphs from Common Cause (supra) which is said in the context of persons with advance medical directive.

Para 198.4.2 and 201.10 of Common Cause (supra) read as under:-

"198.4.2. The instructions in the document must be given due weight by the doctors. However, it should be given effect to only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is no hope of him/her being cured.

202.10. It has to be stated without any trace of doubt that the right to live with dignity also includes the smoothening of the process of dying in case of a terminally-ill patient or a person in PVS with no hope of recovery."

[Emphasis supplied]

38. Ms. Rashmi Nandakumar learned Counsel also drew our attention to Para 197 where this Court observed as under:-

"197. The directions and guidelines to be given in this judgment would be comprehensive and would also cover the situation dealt with in Aruna Shanbaug case."

39. Learned Counsel contended that Aruna Ramachandra Shanbaug v. Union of India⁴, did not concern a terminally ill person but an individual in a permanent vegetative state which is the same condition Harish is in. The direction in Aruna Ramachandra Shanbaug (supra) in not granting relief to discontinue life support was not on the ground that Aruna Ramachandra Shanbaug was not terminally ill. In fact, a reading of para 17 read with para 124 of the judgment reveals that this Court considered KEM Hospital staff as the next friend and not Ms. P, who had moved the petition. According to the learned counsel, but for the issue of locus standi, Aruna Shanbaug (supra) was a case where the patient was in a permanent vegetative state, and would have qualified the pre-requisites for constitution of Medical Boards.

40. Hence, the conclusion in para 199.1 and 199.2 of Common Cause (supra) read in the entire context of the judgment in Common Cause (supra) would indicate that for constitution of Primary Medical Board and consequently Secondary Medical Board, the patient need not necessarily be terminally ill. If the patient is in a permanent vegetative state or in any other like condition and is undergoing prolonged treatment in respect of ailment which is incurable or where there is no hope of being cured, the essential prerequisites would be satisfied.

41. On reference to the Primary Medical Board, the Primary Medical Board shall discuss with the family physician, if any, and the patient's next of kin/ next friend/guardian and record the minutes of the discussion in writing. During the discussion, patient's next of kin/ next friend/guardian shall be apprised of the - i) pros and cons of withdrawal or refusal of further medical treatment to the patient and, ii) if they give consent in writing, the Primary Medical Board may certify the course of action to be taken preferably within 48 hours of the case being referred to it.

42. Common Cause (supra) read with the modification order dated 24.01.2023, further holds that in the event the Primary Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall then constitute a Secondary Medical Board. The Secondary Medical Board should visit the hospital for physical examination of the patient and after studying the medical papers may concur with the opinion of the Primary Medical Board. In that event, intimation shall be given by the hospital to the Judicial Magistrate First Class and the next of kin/ next friend/guard of the patient preferably within 48 hours of case being referred to it. In the case of Harish, the Primary and the Secondary Medical Board have concurred with each other.

43. Separate procedure has been set out where the Primary Medical Board does not take a decision to the effect of withdrawing of medical treatment. That aspect does not arise herein.

44. The High Court erred in rejecting the case of Harish on the ground that he was not terminally ill without considering the alternative criterion, which he clearly fulfilled.

Clinically Assisted Nutrition and Hydration (CANH) - Does it qualify as medical treatment?

45. Common Cause (supra) has put this issue beyond any controversy. Justice Sikri J. in his opinion while elucidating on the aspect of passive Euthanasia had the following to observe.

"219. Passive euthanasia occurs when medical practitioners do not provide life-sustaining treatment (i.e. treatment necessary to keep a patient alive) or remove patients from life-sustaining treatment. This could include disconnecting life support machines or feeding tubes or not carrying out lifesaving operations or providing life-extending drugs. In such cases, that omission by the medical practitioner is not treated as the cause of death; instead, the patient is understood to have died because of its underlying condition."

[Emphasis supplied]

46. Equally, Justice D. Y. Chandrachud (as the learned Chief Justice then was), in his concurring opinion, observed as under.

"359. Individuals who suffer from chronic disease or approach the end of the span of natural life often lapse into terminal illness or a permanent vegetative state. When a medical emergency leads to hospitalisation, individuals in that condition are sometimes deprived of their right to refuse unwanted medical treatment such as feeding through hydration tubes or being kept on a ventilator and other life support equipment. Life is prolonged artificially resulting in human suffering. The petition is founded on the right of each individual to make an informed choice.

Documenting a wish in advance, not to be subjected to artificial means of prolonging life, should the individual not be in a position later to comprehend or decline treatment, is a manifestation of individual choice and autonomy. The process of ageing is marked by a sense of helplessness. Human faculties decline as we grow older. Social aspects of ageing, such as the loss of friendships and associations combine with the personal and intimate to enhance a sense of isolation. The boundaries and even the limits of constitutional law will be tested as the needs of the ageing and their concerns confront issues of ethics, morality and of dignity in death."

[Emphasis supplied]

47. The above two passages make it abundantly clear that administration of feeding tubes constitute medical treatment. The case of Harish falls within the contours of Common Cause (supra) judgment. The issue is well settled here. This is also the position in other jurisdictions.

48. In Airedale NHS Trust v. Bland⁵, a judgment of the House of Lords, Lord Keith of Kinkel observed in this regard as under:-

"As regards this latter argument, I am of opinion that regard should be had to the whole regime, including the artificial feeding, which at present keeps Anthony Bland alive. That regime amounts to medical treatment and care, and it is incorrect to direct attention exclusively to the fact that nourishment is being provided. In any event, the administration of nourishment by the means adopted involves the application of a medical technique. But it is, of course, true that in general it would not be lawful for a medical practitioner who assumed responsibility for the care of an unconscious patient simply to give up treatment in circumstances where continuance of it would confer some benefit on the patient.

On the other hand a medical practitioner is under no duty to continue to treat such a patient where a large body of informed and responsible medical opinion is to the effect that no benefit at all would be conferred by continuance. Existence in a vegetative stage with no prospect of recovery is by that opinion regarded as not being a benefit, and that, if not unarguably correct, at least forms a proper basis for the decision to discontinue treatment and care: Bolam v. Friern Hospital Management Committee [1957] 1 W.L.R. 582."

In the same judgment, Lord Goff of Chieveley, observed: "Anthony is not merely incapable of feeding himself. He is incapable of swallowing, and therefore of eating or drinking in the normal sense of those words. There is overwhelming evidence that, in the medical profession, artificial feeding is regarded as a form of medical treatment; and even if it is not strictly medical treatment, it must form part of the medical care of the patient.

Indeed, the function of artificial feeding in the case of Anthony, by means of a nasogastric tube, is to provide a form of life support analogous to that provided by a ventilator which artificially breathes air in and out of the lungs of a patient incapable of breathing normally, thereby enabling oxygen to reach the bloodstream. The same principles must apply in either case when the question is asked whether the doctor in charge may lawfully discontinue the life-sustaining treatment or care; and if in either case the treatment is futile in the sense I have described, it can properly be concluded that it is no longer in the best interests of the patient to continue it."

49. Hence, there is no iota of doubt that the case of Harish is covered by the four corners of Common Cause (supra) since clinically assisted nutrition and hydration will constitute medical treatment.

BEST INTEREST OF THE PATIENT - SCOPE:-

50. Dealing as we are with a case of individual for whom withdrawal or refusal of medical treatment is under consideration, it is implicit that all those involved in the decision-making process act in the "best interest of the patient". This phrase in the context of passive euthanasia was highlighted in Common Cause (supra) while discussing the 241st report of the Law Commission of India on passive euthanasia. The Law Commission report referred to opinion of Lord Keith in Airedale NHS Trust (supra).

51. Adverting to the report, Chief Justice Dipak Misra, in Common Cause (supra), observed as under.

129. The Report rightly points out that a rational and humanitarian outlook should have primacy in such a complex matter. Recognising that passive euthanasia, both in the case of competent and incompetent patients, is being allowed in most of the countries subject to the doctor acting in the best interests of the patient, the Report summarised the broad principles of medical ethics which shall be observed by the doctor in taking the decision. The said principles as obtained in the Report are the patient's autonomy (or the right to self-determination) and beneficence which means following a course of action that is best for the patient uninfluenced by personal convictions, motives or other considerations.

The Report also refers to the observations made by Lord Keith in Airedale case providing for a course to safeguard the patient's best interest. As per the said course, which has also been approved by this Court, the hospital/medical practitioner should apply to the Family Division of the High Court for endorsing or reversing the decision taken by the medical practitioners in charge to discontinue the treatment of a PVS patient. With respect to the ongoing debates on "legalising euthanasia", the Report reiterates the observations made in Airedale that euthanasia (other than passive euthanasia) can be legalised by means of legislation only.

[Emphasis supplied]

52. Hence, it is very clear that the fulcrum on which the decision of the Primary Medical Board and the Secondary Medical Board as well as the other functionaries wherever they are involved would be that, all decisions in this regard are to be taken keeping in mind "the best interests of the patient".

53. However, in considering as to what factors would constitute "best interest", courts have in the process of deciding individual cases laid down certain essential factors, while cautioning that no single factor can be determinative.

54. Lord Goff in Airedale NHS Trust (supra) while determining as to what the right question to ask would be in this scenario observed as under:-

"The correct formulation of the question is of particular importance in a case such as the present, where the patient is totally unconscious and where there is no hope whatsoever of any amelioration of his condition. In circumstances such as these, it may be difficult to say that it is in his best interest that the treatment should be ended. But if the question is asked, as in my opinion it should be, whether it is in his best interest that treatment which has the effect of artificially prolonging his life should be continued, that question can sensibly be answered to the effect that his best interest no longer required that it should be."

[Emphasis supplied]

55. In Aintree University Hospitals NHS Foundation Trust v. James⁶, Lady Hale J. observed as under:-

"39. The most that can be said, therefore, is that in considering the best interests of this particular patient at this particular time, decision-makers must look at his welfare in the widest sense, not just medical but social and psychological; they must consider the nature of the medical treatment in question, what it involves and its prospects of success; they must consider what the outcome of that treatment for the patient is likely to be; they must try and put themselves in the place of the individual patient and ask what his attitude to the treatment is or would be likely to be; and they must consult others who are looking after him or interested in his welfare, in particular for their view of what his attitude would be."

56. In NHS Windsor and Maidenhead Clinical Commissioning Group v. SP⁷, Lord Justice Williams of the Court of Protection quoting with approval the judgment In Re A (A Child) 2016 EWCA 759 of the Court of Appeal [which, in turn, relied on NHS Trust vs. MB and Others, [2006] EWHC 507 (Fam)] said:-

"In considering the balancing exercise to be conducted:

"1. The decision must be objective; not what the judge might make for him or herself, for themselves or a child;

2. Best interest considerations cannot be mathematically weighed and include all considerations, which include (non-exhaustively), medical, emotional, sensory (pleasure, pain and suffering) and instinctive (the human instinct to survive) considerations;

3. There is considerable weight or a strong presumption for the prolongation of life but it is not absolute;

4. account must be taken of the pain and suffering and quality of life, and the pain and suffering involved in proposed treatment against a recognition that even very severely handicapped people find a quality of life rewarding.

5. Cases are all fact specific."

33. Therefore, a host of matters must all go into the balance when the judge seeks to arrive at his objective assessment of whether this treatment is in this patient's best interests. In particular I must consider the values and beliefs of SP as well as any views she expressed when she had capacity that shed light on the likely choice she would make if she were able to and what she would have considered relevant or important. Where those views can be ascertained with sufficient certainty they should carry great weight and usually should be followed; as they would be for a person with capacity who did express such views."

57. In NHS South East London Integrated Care Board v. JP8 the Court of Protection in para 11 and 15 observed as under:-

"11. Both Professor Turner-Stokes and Dr Hanrahan have concluded that clinically-assisted nutrition and hydration (CANH) is a 'futile' treatment for JP. This requires to be understood. CANH will preserve JP in his present condition. With CANH and good nursing care, Dr Hanrahan is of the view that JP's actuarial life expectancy could be between 5 and 10 years. However, CANH will not reverse his profound brain injury, nor restore him beyond his presently disordered consciousness, which has persisted for 9 years.

It will most decidedly not restore him either to the person he was or to the life he enjoyed, with such vigour, prior to his brain injury. Alongside this, it is necessary to balance the obvious burdens of continuing treatment, which include the difficulty in managing his PEG and tracheostomy site. JP requires 24/7 care to keep him stable which is burdensome for him. In addition, JP requires care for the ongoing challenges of his cardiac condition and any acquired infection.

15. In resolving a 'best interests' decision, the judge must always consider the broader evidential canvas and the imperative to determine, to the extent that it

may be possible, what the protected party (P) would want for themselves. JP did not make any advanced decision, and so it is his family who must be the conduit by which his views are understood and articulated in the courtroom."

58. A survey of the precedents on "Best Interest of the patient" lead to the irresistible conclusion that the test is fact specific and will depend on the facts and circumstances of each case. A holistic assessment of all relevant circumstances should be undertaken since no single factor can be determinative. Without being exhaustive some of the factors which would play a role are:

- i) There is a strong presumption in favour of preservation of life grounded in the sanctity of life principle.
- ii) The presumption in favour of life can be displaced when continuation of treatment would no longer serve the patient's overall welfare.
- iii) A careful weighing and balancing among a range of different and competing considerations have to be undertaken.
- iv) The starting point of the enquiry should not be whether it will be in the best interest of the patient that the treatment should be ended, but the question should be whether it is in the best interest if the treatment that has the effect of artificially prolonging the life be continued.
- v) Whether at all any benefit would accrue by the continuance of the treatment to the patient.
- vi) Whether the continuation of treatment serves any therapeutic purpose;
- vii) The indignity the patient is subjected to by prolongation of the treatment.
- viii) Futility of the treatment;
- ix) The opinion of the responsible body of the medical experts who have arrived at a reasonable conclusion.
- x) The consideration of the medical and non-medical aspects like emotional and welfare issues.
- xi) Consultation with the family members of the patient. It is reiterated that the above factors are illustrative and are in no manner bound to be exhaustive.

59. In *Portsmouth NHS Trust v. Wyatt and Wyatt*, *Southampton NHS Trust Intervening*,⁹ Hedley J. pertinently pointed out as under:

"The infinite variety of the human condition never ceases to surprise and it is that fact that defeats any attempt to be more precise in a definition of best interests. That said, helpful attempts have been made to tease out this concept but they always have to be viewed as no more than attempts at illumination."

(Emphasis supplied)

APPLICATION TO THE FACTS OF THE PRESENT CASE:-

60. I) The Primary Medical Report and the Secondary Medical Report are unanimous that:-

a) Harish is in a vegetative state and has been in that situation for the last more than 12 years.

b) He requires external support for his feeding, bladder, bowel and back.

c) The continued administration of CANH is required for sustenance and survival, though it may not aid in improving his medical condition or repairing his underlying damage.

d) He fulfils all the parameters for permanent vegetative state.

II) The general examination from the Secondary Medical Board as well as the parameters for permanent vegetative state are as under:-

"General examination:

He is bedbound and cachexic with evident muscle wasting. He maintains a generalized flexed posture. His body is lean with a tracheostomy tube, urinary catheter and PEG in situ.

He was afebrile to touch, pulse rate of 90/minute, regular and normovolemic. His blood pressure shown in the monitor was 130/80 mm Hg and his respiratory rate was 16/minute. There were no signs of respiratory distress. On general examination, there was mild pallor, no jaundice, and nails and teeth were normal. Although the skin was normal, there was a healing bed sore over the lower back. In addition, there were contractures in both upper and lower limbs.

Neurological examination:

His eyes were open with normal blinks with no purposeful movement or response to auditory, verbal, tactile or painful stimulus (supraorbital pressure).

The pupils were bilaterally normal and reacting. There were no eye tracking movements to light or auditory stimuli. There were flexion contractures of all limbs and attempts for passive movement did not elicit any facial grimace or voluntary resistance.

To summarize, there was spontaneous, but non-purposive eye opening, no vocalization (or attempt thereof, since the patient was tracheostomized), and flexion of limbs on stimulus.

No visual, cognitive or communication abilities could be ascertained. His deep tendon reflexes were elicitable. Sensory and cerebellar functions could not be examined.

Other observations made and diagnostic criteria that were applied:

There were secretions from the tracheotomy tube requiring periodic suctioning. The patient did not show any evidence of contact with the surroundings, and while his family members were called to the meeting room, he remained in the same state.

Table 2: Diagnostic criteria of Permanent Vegetative State

1. Exhibits no evidence of awareness of themselves or their environment; they are incapable of interacting with others.	Yes
2. Exhibits no evidence of sustained, reproducible, purposeful, or voluntary behavioral response to visual, auditory, tactile, or noxious stimuli.	Yes
3. Exhibits no evidence of language comprehension or expression.	Yes
4. Exhibits intermittent wakefulness manifested by the presence of sleep-wake cycles.	Yes
5. Have sufficiently preserved autonomic functions of the hypothalamus and brain stem that enable them to survive given medical and nursing care.	Yes
6. Exhibit bowel and bladder incontinence.	Yes
7. Have some preserved cranial nerve reflexes (pupillary, oculocephalic, corneal, vestibulo-ocular, gag) and spinal reflexes.	Yes

III) As is clear from the joint report filed by the learned counsel and also the Court's interaction with the parents and siblings, the parents and siblings firmly believe that the medical treatment is not making any difference and that there was no point in continuing with such treatment and making Harish suffer for no good reason.

IV) The treatment is, according to the medical board, offering no benefit to Harish. V) It serves no therapeutic purpose.

VI) Harish is subjected to a lot of indignity.

VII) The futility of the treatment, the medical, emotional and welfare aspects all point to only one direction, namely, withdrawal of medical treatment.

VIII) There is no benefit much less continuing benefit from the treatment. 61. All the above factors cumulatively lead to the sole irresistible conclusion that it will not be in Harish's best interest to continue with the treatment and artificially prolong his life.

CONCLUSION:-

62. In view of what has been held hereinabove, a direction ought to be issued that in view of the concurrence of the Primary Medical Board and the Secondary Medical Board, the consequences provided in Common Cause (supra) should operate.

63. The Miscellaneous Application is allowed in terms of the directions contained in the judgment authored by my esteemed brother J.B.Pardiwala, J.

POSTSCRIPT:-

64. Now that the legal aspect of the matter is concluded, a mention needs to be made of the love and affection by which the parents and the siblings have nursed Harish for the last more than 12 years. Harish has been in a vegetative state but the parents and siblings have left no stone unturned in ensuring best treatment for Harish. It is only when the matter reached a point of no return, that to relieve Harish from what he is undergoing they have resorted to this legal course of action. One can only imagine the agony they would have undergone during this period. As the ancient Shubashristha in Sanskrit goes -

चिता चिंता द्वयोर्मध्ये,
Chita Chinta Dwayoormadhya,
चिंता तत्र गरीयसी ।
Chinta Tatra Gariyasi.
चिता दहति निर्जीवं,
Chita Dahati Nirjivam,
चिंता दहति सजीवकम् ॥
Chinta Dahati Sajeevakam

"Between the funeral fire and the mental worry, it is the mental worry which is more devastating. While the funeral fire burns only the dead body, the mental worry burns the living one."

65. On the implementation of this order, it is not as if their agony will be entirely wiped off. However, the distress that they experience due to what Harish is undergoing will at least be over. Though the judgment is not based on this aspect and has proceeded on the applicable legal principles by keeping the best interest of Harish, it will be very naive to ignore this harsh reality.

.....J. [K. V. Viswanathan]

New Delhi;

March 11, 2026

1 (2023) 14 SCC 131

2 138 L.Ed. 2d 834

3 (1996) 2 SCC 648

4 (2011) 4 SCC 454

5 1993 AC 799

6 2013 UKSC 67

7 2018 EWCOP 11

8 [2025] EWCOP 4 (T3)

9 [2004] EWHC 2247 (Fam)

IN THE SUPREME COURT OF INDIA

Union of India and Ors.

Vs.

Rohith Nathan and Anr. Etc.

[Civil Appeal No(s). 2827 - 2829 of 2018]

Union of India

Vs.

Ketan and Ors. Etc.

[Civil Appeal No(s). 3130 - 3141 of 2024]

Union of India & Anr.

Vs.

Dr. Ibson Shah. I. and Anr.

**[Civil Appeal No(s)._____ of 2026
arising out of SLP (C) No. 17651 of 2022]**

Head Note – 'Creamy Layer' status for reservation under the Other Backward Classes (OBC) category cannot be determined solely on the basis of parental income, without reference to the posts and status held by the parents in their organisations.

JUDGMENT

R. Mahadevan, J.

1. Leave granted in SLP (C) No. 17651 of 2022.
2. This judgment deals with three matters arising out of separate orders passed by different High Courts. Since the questions of law involved in all the cases are substantially identical and common, they were heard together and are being decided by this common judgment.

FACTUAL BACKGROUND

3. The facts giving rise to the respective appeals are set out below.

C.A. No(s). 2827 - 2829 of 2018 [Union of India & Ors. v. Rohith Nathan and Anr. Etc.]

4. The present Civil Appeals have been filed against the common judgment dated 31.08.2017 passed by the High Court of Judicature at Madras in W.P.

Nos. 6387, 6388 and 6389 of 2017, whereby the High Court dismissed the writ petitions filed by the appellants and affirmed the common order dated 12.01.2017 passed by the Central Administrative Tribunal¹, Chennai Bench in O.A. Nos. 1133, 1132 and 1375 of 2014.

4.1. Respondent No. 1 in CA. Nos. 2827 and 2828 of 2018, Rohith Nathan, secured All India Rank 174 in the Civil Services Examination, 2012 under the OBC category. His father was employed in a private organisation namely M/s. HCL Technologies Ltd., and was drawing a salary exceeding the prescribed creamy layer limit under the extant guidelines. On that basis, he was treated as falling within the creamy layer.

Though he was recommended by the UPSC as a General Merit candidate and allocated to the Indian Police Service against an unreserved vacancy, Respondent No. 1 sought benefit of OBC reservation and allocation to the Indian Foreign Service against the vacancy reserved for OBC candidates by treating him as OBC (Non-Creamy Layer) candidate. He accordingly filed O.A. No. 1132 of 2014 before the CAT, Chennai seeking a direction for allotment to the Indian Foreign Service as per his OBC rank in the Civil Services Examination, 2012. He also filed O.A. No. 1133 of 2014 seeking to quash the portion relating to Category II(C) in the Schedule to the Office Memorandum dated 08.09.1993 (O.M. No. 36012/22/93-Estt (SCT)).

4.2. Respondent No. 1 in C.A. No. 2829 of 2018, G. Babu, appeared in the Civil Services Examination, 2013 under the OBC category and secured Rank 629. His father was employed in a Public Sector Undertaking namely Neyveli Lignite Corporation, as a Senior Executive Engineer. As his father's salary income exceeded the prescribed limit, he was also treated as falling within the creamy layer under the applicable guidelines. To claim the benefit of OBC reservation for allocation to a service against a vacancy reserved for OBC candidates, Respondent No. 1 filed O.A. No. 1375 of 2014 before the CAT, Chennai Bench seeking reallocation to the Indian Police Service or any other service as per his OBC rank.

4.3. The CAT, having heard the parties, held that under the Office Memorandum dated 08.09.1993, income from salary and agricultural income stood excluded from the Income / Wealth Test for determination of creamy layer status. It further held that paragraph 9 of the clarificatory letter dated 14.10.2004, insofar as it directed inclusion of salary income of PSU and private sector employees under Category II(C), resulted in hostile discrimination between the wards of Government servants and those of PSU/private sector employees. By its common order dated 12.01.2017, the CAT allowed all three Original Applications and directed as follows:

"We direct the DoPT to withdraw the clarification in para 9 of the OM dated 14.10.2004 to the extent it is made applicable to II-C and reformulate it appropriately in the light of the observations made herein within a period of three months. The respondents are also directed to reallocate the service of the two applicants on the basis of their OBC status within a period of three months from the date of receipt of a copy of this order."

4.4. Aggrieved, the Union of India and others filed W.P. (C) Nos. 6387, 6388 and 6389 of 2017 before the High Court of Madras. By common judgment dated 31.08.2017, the High Court dismissed all three writ petitions primarily on two grounds:

(i) The failure of the Union of India to formulate an equivalence / comparability test resulted in placing the sons and daughters of PSU employees at a disadvantage compared to similarly placed Government servants; and

(ii) When salary income of parents serving in State/Central Government in Group C and D posts, or those entering Group B and A posts, after attaining the age of 40 years, was not considered for creamy layer determination, inclusion of salary income of PSU employees under Category II-C introduced an element of hostile discrimination.

4.5. Challenging the aforesaid common judgment, the appellants have preferred the present Civil Appeals.

C.A. No(s). 3130 - 3141 of 2024 [Union of India v. Ketan and others etc.]

5. The present batch of Civil Appeals has been preferred against the common judgment dated 22.03.2018 passed by the High Court of Delhi at New Delhi in W.P. Nos. 3073 - 3084 of 2017. By the said judgment, the High Court disposed of the writ petitions, set aside Letter No. 36033/5/2004- Estt. (Res.) dated 14.10.2004, and directed the appellants to verify the creamy layer status of the respondent candidates (except Sagar Chourasia, who had already been selected) strictly in terms of Office Memorandum dated 08.09.1993.

5.1. According to the appellants, the respondents had appeared in the Civil Services Examination, 2015 claiming reservation under the OBC (non-creamy layer) category. The parents of all respondent candidates were PSU employees, bank employees or otherwise fell under Category II(C) of the Schedule to the Office Memorandum dated 08.09.1993. The candidates were recommended by the UPSC for service allocation. While forwarding their dossiers, UPSC requested verification of their creamy layer status.

5.2. Upon verification, it was found that equivalence of their parents' posts qua Government posts had not been established. Accordingly, applying the 1993

OM read with the clarificatory letter dated 14.10.2004, the department applied the "income / wealth test" under Category VI and computed the parents' salary income for the preceding three years. Since the income exceeded the prescribed ceiling, the respondents were treated as falling within the creamy layer. Consequently, by publication dated 22.06.2016, the respondents were denied allocation under the OBC category.

5.3. Challenging the same, the respondent candidates filed W.P. Nos. 3073 - 3084 of 2017 before the Delhi High Court inter alia seeking quashment of the clarificatory letter dated 14.10.2004 and issuance of a direction for allocation of services treating them as OBC (Non-Creamy Layer) candidates.

5.4. During the pendency of the matter, the Union of India issued Office Memorandum No. DPE-GM-/0020/2014-GM-FTS-1740 dated 25.10.2017, clarifying gradation and creamy layer criteria in Central Public Sectors Enterprises, indicating that Board level and Managerial-level posts (below Board level) subject to the proviso that executives whose annual income as per 1993 OM was less than Rs. 8 lakhs, would not fall under the creamy layer.

5.5. By the impugned judgment dated 22.03.2018, the Delhi High Court disposed of the writ petitions, by holding that the 1993 OM contemplated consideration only of income from "other sources" for applying the Income / Wealth Test where equivalence had not been established. It further held that the clarificatory letter dated 14.10.2004 impermissibly introduced salary income as a determinative factor and lacked rational basis. Consequently, the High Court set aside the letter dated 14.10.2004 and directed re-verification strictly in accordance with the 1993 OM.

5.6. Pursuant thereto, the appellants issued a speaking order dated 22.05.2018 reconsidering the matter under the 1993 OM, but again rejected the claim of Non-Creamy Layer status by taking into account parental salary. Certain respondents thereafter filed Contempt Petition (C) Nos. 684/2018, 972/2018 and 973/2018 before the Delhi High Court, in which notices were issued.

5.7. Apprehending coercive proceedings, the appellants have preferred the present appeals.

Civil Appeal @ SLP (C) No. 17651 of 2022 [Union of India & Anr. v. DR. Ibson Shah. I. and Anr.]

6. This Civil Appeal challenges the final judgment dated 25.02.2022 passed by the High Court of Kerala at Ernakulam in OP (CAT) No. 94 of 2021, whereby the High Court declined to interfere with the order dated 13.10.2020 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 718 of 2018.

6.1. The UPSC had issued notification for the Civil Services Examination, 2016 and the Department of Personnel and Training³ notified the detailed rules vide Gazette Notification dated 27.04.2016. Rule 24 required candidates to possess requisite certificates in the prescribed format for OBC reservation. Rule 25 stipulated that OBC status, including creamy layer determination would be reckoned as on the closing date of applications.

6.2. Respondent No. 1 appeared in the Civil Services Examination, 2016 and the Civil Services Examination, 2017 under the OBC category and secured Rank 540 (2016) and Rank 620 (2017). His father had been directly recruited as a Lower Division Clerk (Group C) in the Legal Metrology Department, Government of Kerala, and died in 2012. His mother was directly recruited as Junior Assistant (Group C clerical cadre) in Kerala State Financial Enterprises (KSFE), a State PSU.

6.3. Upon verification, DoPT found that the mother, being employed in a PSU under Category II(C), earned salary exceeding Rs. 6 lakhs per annum for three consecutive years (as revised by the Office Memorandum dated 27.05.2013). Accordingly, Respondent No. 1 was treated as falling within the creamy layer. In CSE-2017 he was denied allocation; in CSE-2016 he was treated as a General Merit candidate and allocated Indian Defence Accounts Service (IDAS) vide letter dated 21.08.2017.

6.4. Aggrieved, Respondent No. 1 filed O.A. No. 718/2018 before the CAT, Ernakulam, which ruled in his favour on 13.10.2020. The High Court of Kerala affirmed the same and dismissed OP(CAT) No. 94/2021 filed by the appellants, on 25.02.2022, inter alia holding that:

- The respondent possessed a valid OBC-NCL certificate before the cut-off date;
- Both parents were Group C entrants (clerical cadre) below Group A and B;
- Under Category II of the 1993 OM, mere parental service in a PSU could not lead to creamy layer exclusion;
- The comparability exercise under Category II(C) was transitional;
- The Government's failure to determine equivalence could not prejudice candidates; and
- Denial of OBC-NCL status to wards of PSU employees, while granting it to similarly placed Government servants, would constitute hostile discrimination.

Therefore, the appellant, Union of India, is before this Court with the present appeal.

SUBMISSIONS OF THE PARTIES

7. The learned Additional Solicitor General of India appearing for the appellant in CA Nos. 2827 - 2829 of 2018 / Union of India submitted that the impugned judgment dated 31.08.2017 passed by the High Court of Madras in W.P. Nos. 6387, 6388 and 6389 of 2017 is ex facie unsustainable in law and 10 deserves to be set aside. It was urged that the exclusion of persons falling within the Creamy Layer is aimed at ensuring that reservation benefits are not extended to those who are no longer backward. Any legislative or executive action to remove such persons, individually or collectively, cannot be constitutionally invalid but is in consonance with the principle laid down by this Court in *Indra Sawhney v. Union of India and others*⁴.

This Court in *Indra Sawhney v. Union of India and others*⁵, explained the rationale underlying the rule of exclusion of the Creamy Layer, holding that non-exclusion thereof would amount to discrimination and violation of Articles 14 and 16, inasmuch as unequals cannot be treated as equals. It was further submitted that the Union of India was fully competent and empowered to issue the clarificatory letter dated 14.10.2004 in order to ensure that the intended benefits of reservation reach the truly deserving candidates among the backward classes.

To sustain the spirit of the constitutional provisions of equality, it is obligatory on the State to identify the most deserving candidates, as the State is obliged to remove inequalities and backwardness from society. If non-deserving candidates are given the benefit of reservation, it would breach the spirit of the constitutional provision. Reliance was also placed on the decision in *Ashok Kumar Thakur v. Union of India*⁶, wherein this Court held that the Government should not proceed on the basis that once a class is considered backward, it should continue to be backward for all times, as such an approach would defeat the very purpose of reservation.

7.1. The learned counsel further submitted that the respondents have reached a comparatively higher level of social advancement and economic status, and therefore, as a matter of law, the declaration of such persons as being non-entitled to be treated as backward is sustainable. The Department has rightly considered the respondents as falling under the Creamy Layer, and vacancies reserved for OBC candidates are earmarked and allocated to other non-Creamy Layer candidates who are eligible and entitled.

7.2. It was contended that the High Court erred in dismissing the writ petitions solely on the ground of alleged discrimination between wards of PSU employees and wards of Government employees, without examining the merits of the individual cases decided by the Tribunal. The income from the salary of

the parents of the respondents was not considered by the High Court while deciding the case. The delay in determination of equivalence between PSU employees and Government employees should not result in providing an undue advantage to the respondent candidates who belong to a comparatively higher strata of the OBC category by virtue of their parents' salary income as this would deny the benefit of reservation to deserving candidates.

7.3. It was further contended that the 1993 OM has been upheld by this Court in Ashok Kumar Thakur (supra), and the High Court erred in holding that the 1993 OM and the clarificatory letter dated 14.10.2004 bring about hostile discrimination. Clause II-C of the Schedule to the 1993 OM clearly states that employees in PSUs, banks, insurance organisations, universities etc. are to be treated on the same footing as Government employees, and pending evaluation of equivalence, the criteria specified in Category VI would apply.

All candidates producing certificates for claiming the benefit of reservation under the OBC Non-Creamy Layer category must undergo all six tests given in the Schedule to the 1993 OM to determine their Creamy Layer status. The service status of the parents of persons employed in PSUs or private enterprises, in which equivalence has not been established vis-à-vis Government services is determined by the quantum of salary that they receive.

7.4. It was submitted that the clarificatory letter dated 14.10.2004 was issued only to clarify the procedure to be adopted for applying the income / wealth test in the case of sons and daughters of parents employed in PSUs, etc., where equivalence has not been established. The High Court erred in holding that para 9 of the letter was not in consonance with the 1993 OM. The timely rise in the income of Government servants through successive Pay Commissions has not erased the importance of the social status criteria to be adopted in their case. For determining Creamy Layer status, the sons and daughters of Government servants undergo both social and economic tests, whereas those of PSU and private employees undergo only the economic test.

7.5. The learned counsel further contended that an appointment given to a non-eligible candidate deprives an eligible Non-Creamy Layer OBC candidate of appointment. The judgment of the High Court is contrary to the established policy of the Government. This Court has held that it is not within the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise or acceptable, or whether a better policy could be evolved. Such a policy decision would normally not be interfered with unless it is capricious, arbitrary, or offends Article 14.

7.6. It was thus submitted that the 1993 OM and the letter dated 14.10.2004 form part of a consistent and constitutionally sound framework for the

identification of the creamy layer, and that the inclusion of salary in gross annual income aligns with the principle of substantive equality and prevents distortion of the reservation system. Further, it was contended that the exclusion of salary would subvert the constitutional goal of social justice, lead to reverse discrimination, and create administrative chaos, thereby undermining the rights of genuinely backward OBC candidates.

7.7. On these grounds, the learned counsel prays that the impugned judgment of the High Court dated 31.08.2017 deserves to be quashed and that the respondents be declared as falling within the Creamy Layer and not entitled to reservation benefits under the OBC category.

8. The learned senior counsel appearing for Respondent No.1 (Rohith Nathan) submitted that the 1993 OM carries the authority of law, having been issued pursuant to the directions in *Indra Sawhney and others v. Union of India and others*⁷ after due deliberation by an Expert Committee, parliamentary scrutiny, and inter-ministerial consultation.

He pointed out that the Expert Committee had evolved criteria for the exclusion of socially advanced persons from the benefit of reservation for OBCs, with emphasis on social status and high income from business, profession, or other sources, while expressly excluding income derived from salary and agricultural land. The report of the Committee was laid before both Houses of Parliament and formally accepted by the Government, and the 1993 OM was issued after vetting by the Law Ministry and consultation with the Ministry of Social Justice & Empowerment.

8.1. In contrast, the learned senior counsel submitted that the clarificatory letter dated 14.10.2004⁸ was issued without consultation, deliberation, or any traceable administrative record, and by the DoPT, which was not the competent authority under the Allocation of Business Rules, 1961. He referred to RTI responses confirming that no consultation with the Ministry of Social Justice & Empowerment preceded the issuance of the 2004 letter, and that the file notings were not traceable. He therefore contended that the 2004 Letter is non est in law and cannot override or dilute the binding effect of the 1993 OM.

8.2. The learned senior counsel further submitted that the implementation of the 1993 OM itself demonstrates that salary and agricultural income are excluded from the income/wealth test. He referred to the DoPT's Office Memorandum dated 15.11.1993 annexing a model application form which expressly excluded salary and agricultural income, and pointed out that various State Governments such as Andhra Pradesh, Telangana, and Tamil Nadu, as well as statutory bodies including the National Commission for Backward

Classes and the Ministry of Social Justice & Empowerment, have consistently followed this principle.

8.3. The learned senior counsel contended that it is incorrect for the Government to submit that OBCs belonging to Category IIC of the 1993 OM are to suffer exclusion until the equivalence of posts is conducted. The Expert Committee had expressly recommended that, pending evaluation of equivalence of posts in PSUs and other bodies, persons falling under Category IIC would still be entitled to reservation, subject only to exclusion under Category VI by application of the income/wealth test.

8.4. The learned senior counsel also submitted that the Government's interpretation of Explanation (i) to the income/wealth test is erroneous. The Government has contended that either income from salary or income from agricultural land is to be considered, but not both excluded, in determining whether the monetary limit has been exceeded. He argued that this interpretation is unsupported by reasoning, contrary to the consistent implementation of the 1993 OM, and inconsistent with the Union's own stand in *Neil Aurelio Nunes v. Union of India*⁹. In that case, the Union distinguished OBC and EWS criteria by clarifying that for OBCs, salary income is excluded, whereas for EWS, salary income is included. Acceptance of the Government's present stand would obliterate this distinction, leading to arbitrariness and inconsistency.

8.5. Thus, the learned senior counsel urged that the 1993 OM, having statutory force and having been consistently implemented, must prevail, and that the 2004 Letter, lacking authority, cannot dilute or override the settled criteria.

9. The learned counsel appearing for Respondent No. 1 (G. Babu) submitted that the DoPT cannot question the validity of an OBC certificate once it has been duly issued by the competent authority. He contended that DoPT is not the authority empowered to issue or scrutinize OBC certificates. Under the DoPT Office Memorandum dated 15.11.1993, the competent authorities for issuance and verification of OBC certificates are District Magistrates, Collectors, Deputy Commissioners, Sub-Divisional Magistrates, Tehsildars and other designated revenue officers. These authorities are specially entrusted with determining whether an applicant belongs to the OBC category and whether he or she falls within the Creamy Layer, strictly in accordance with the criteria prescribed in the Schedule to the 1993 OM.

9.1. The learned counsel emphasised that the model application form appended to the 1993 OM mandates disclosure of detailed particulars regarding parental qualifications, employment, income, assets and wealth, which are verified by the issuing authority. Further, the revised OBC certificate format introduced by

the DoPT's Office Memorandum dated 30.05.2014 expressly requires the certifying authority to declare that the candidate does not belong to the Creamy Layer.

The certificate is thus issued after comprehensive scrutiny of contemporary data, including parental income for the preceding three financial years. He contended that such certificates cannot be lightly disregarded or questioned in a cavalier manner. Reliance was placed on *Madhuri Patil v. Commissioner, Tribal Development*¹⁰, wherein this Court held that a social status certificate remains valid unless it is found to be false or fraudulently obtained pursuant to investigation by a duly constituted Scrutiny Committee.

9.2. The learned counsel further submitted that the 1993 OM issued pursuant to the recommendations of the Mandal Commission, the directions of this Court in *Indra Sawhney and others v. Union of India and others*¹¹, and the report of the Expert Committee of the Ministry of Social Justice, comprehensively delineates the categories falling within the Creamy Layer exclusion.

He argued that the Union of India seeks to rely upon the 2004 Letter; however, such a letter cannot override or qualify the binding provisions of the 1993 OM. It was submitted that while the 1993 OM excluded salary and agricultural income from the income / wealth test, the 2004 Letter sought to include salary income in the case of PSU employees, thereby introducing an artificial and hostile discrimination between children of government servants and those of PSU employees.

9.3. It was further submitted that it is settled law that a mere executive letter cannot override or amend a subsisting Office Memorandum. In support, reliance was placed upon *R.P. Bhardwaj v. Union of India*¹², wherein this Court held that an operative Office Memorandum cannot be modified or curtailed through a mere circulation of a letter. Reference was also made to *K. Sampath v. State of Tamil Nadu*¹³ reiterating the same principle. Accordingly, the 2004 Letter was contended to be devoid of statutory authority and incapable of diluting the binding effect of the 1993 OM.

10. The learned counsel appearing for the Intervenors submitted that the Intervenors adopt the oral and written submissions advanced on behalf of the respondents. He urged that no separate or novel relief is required to be crafted. The present Civil Appeals were instituted by the Union of India against judgments of various High Courts, seeking direction to the DoPT to reallocate services to the concerned applicants. In the event of dismissal of the appeals, the said directions would revive, and the DoPT would be obligated to proceed with reallocation and verification of OBC status in accordance with law.

10.1. The learned counsel submitted that the Union of India has been aware of these directions since 2017, 2018 and 2022, and had in certain matters obtained interim orders of stay. The Union was thus fully conscious that, if unsuccessful, it would be required to implement the High Court directions. It cannot now plead administrative inconvenience. He drew attention to the 21st Report of the Parliamentary Committee on Welfare of Other Backward Classes (2018-19), wherein representatives of the DoPT had informed the Committee that supernumerary posts would be created to implement the decision of the Delhi High Court dated 22.03.2018. It was argued that having undertaken to create such posts, the Union cannot resile from its stated position upon dismissal of the appeals.

10.2. The learned counsel further submitted that this Court in W.P.(C) No. 914/2016, by order dated 20.03.2017, had directed that candidates selected through the Civil Services Examination, 2016 be notified that their selection and seniority would remain subject to the outcome of litigation initiated by OBC candidates. The DoPT complied with this direction by issuing an Office Memorandum dated 20.12.2016. It was contended that delays in disposal of the present batch were attributable to repeated adjournments sought by the Union of India. In such circumstances, the Union cannot invoke equitable considerations to avoid compliance with binding directions.

10.3. It was submitted that this Court possesses ample powers under Article 142 of the Constitution to direct creation of supernumerary posts where candidates have been wrongfully denied appointment or promotion. In this regard, reliance was placed upon decisions including *Sushma Gosain v. Union of India*¹⁴, *Dr. PPC Rawani v. Union of India*¹⁵, *Union of India v. Vijay Kumari*¹⁶, *Dr. D.K. Reddy v. Union of India*¹⁷, *Delhi Administration v. Nand Lal Pant*¹⁸ and *Union of India v. Parul Debnath*¹⁹, wherein directions for creation of supernumerary posts were issued in exceptional circumstances. While acknowledging that cadre management ordinarily falls within the executive domain, it was contended that in special situations, this Court may exercise its plenary power to do complete justice.

10.4. Finally, it was urged that upon dismissal of the Civil Appeals and application of the doctrine of merger, subordinate fora would be bound to apply the ratio of this Court in the present batch, namely, that Creamy Layer status must be assessed without reference to the 2004 Letter. Relegation would only result in multiplicity of proceedings, delay and administrative uncertainty. Many Intervenors have been litigating the issue for more than five years. It was therefore submitted that this is a fit case for exercise of power under Article 142 to render complete justice by extending the benefit of the present decision to the Intervenors, thereby conserving judicial and administrative resources and minimizing disturbance to existing cadres and seniority positions.

11. The learned Additional Solicitor General of India for the appellant in CA. Nos. 3130 - 3141 of 2024 / Union of India submitted that the Delhi High Court fundamentally erred in construing Column 3 of the Schedule to the 1993 OM as being confined merely to an "officer class" criterion.

11.1. It was further submitted that the High Court erred in holding that Category VI of the 1993 OM excludes the component of "salary" entirely from the expression "gross annual income". According to the learned counsel, there are three distinct components of income - income from salary, income from other sources, and income from agriculture - and Explanation (a) to Category VI merely prohibits the clubbing of salary and agricultural income with income from other sources; it does not mandate exclusion of salary per se. The income from each source, it was contended, must be assessed separately. If either the income from salary or the income from other sources exceeds the prescribed threshold for three consecutive years, the candidate would fall within the creamy layer.

11.2. With respect to Category II-C of the 1993 OM, which pertains to employees of PSUs, banks and similar institutions where equivalence with Government posts has not been established, it was submitted that the 1993 OM itself provides that pending evaluation of equivalence, the criteria specified under Category VI, namely, the Income / Wealth Test, shall apply. In such circumstances, Clause VI operates as the primary test for determination of creamy layer, and exclusion of salary from consideration would render the test otiose. The 2004 Letter, it was argued, merely harmonizes Paras 9 and 10 of the 1993 OM and does not override or amend the 1993 OM; rather, it clarifies that in the absence of established equivalence, income from salary is relevant for applying the income test.

11.3. It was further contended that a purposive interpretation must be given to the expression "gross annual income". Exclusion of salary of PSU or private employees from consideration would lead to anomalous and absurd consequences, whereby children of highly placed PSU executives drawing substantial salaries could continue to claim non-creamy layer status merely because their income from other sources falls below the threshold. Such an interpretation, it was submitted, would defeat the constitutional principle of qualitative exclusion recognized in Ashok Kumar Thakur (supra) and reaffirmed subsequently, and would run contrary to the object underlying the creamy layer doctrine.

11.4. The learned counsel contended that exclusion of the creamy layer is a constitutional imperative and that the State possesses policy latitude in identifying reasonable parameters for such exclusion. In the absence of established equivalence between Government posts and PSU posts, there

exists, according to the Union, an intelligible differentia which justifies a distinct method of applying the income test to Category II-C employees. The delay in determining equivalence, it was submitted, cannot operate to confer an unintended benefit upon comparatively advanced sections within the OBCs.

It was further argued that the High Court failed to consider the broader policy framework and instead proceeded on an erroneous assumption of discrimination, without appreciating that the income test under Category VI would be rendered redundant if salary were excluded in cases where equivalence had not been determined. Consequently, the impugned judgment, which has the effect of nullifying the 2004 Letter and reopening settled selections, was stated to be unsustainable in law and contrary to the constitutional scheme governing OBC reservations.

12. The learned senior counsel for Respondent(s) in CA. Nos. 3130 - 3141 of 2024 submitted that the Constitution Bench in *Indra Sawhney v. Union of India* (supra) directed the Union of India to specify appropriate socio-economic criteria for excluding the socially advanced sections - commonly referred to as the Creamy Layer - from the ambit of Other Backward Classes. Pursuant thereto, the Government constituted the Ram Nandan Prasad Committee, whose report was laid before both Houses of Parliament. The recommendations of the Committee were accepted in toto and culminated in the issuance of the 1993 OM.

12.1. It was submitted that under the 1993 OM, the sons and daughters of Government officers directly recruited to Class I posts, and those promoted from Class II to Class I before the age of 40, were to be treated as falling within the creamy layer. Children of employees in autonomous bodies, public sector undertakings, banks, insurance organisations, universities and private enterprises were to be considered creamy layer where their parents held posts equivalent or comparable to those specified for Government servants. Further, the income / wealth test prescribed that persons whose gross family income for the preceding three years exceeded the notified threshold (Rs. 6,00,000 at the relevant time; presently Rs. 8,00,000) would fall within the creamy layer. Crucially, income from salaries and agricultural land was expressly excluded from such computation.

12.2. Learned counsel emphasised that DoPT itself interpreted the 1993 OM as excluding salary income, as reflected in its Office Memorandum dated 15.11.1993 and the Model Form appended thereto. The Model Form specifically required disclosure of income excluding salary income. This form, it was submitted, continues to be uniformly adopted by all certificate-issuing authorities across the country without modification.

12.3. Reference was then made to the 2004 Letter. Paragraph 3 thereof acknowledged that the criteria prescribed for Government servants were to apply mutatis mutandis to similarly placed employees of PSUs, banks and other organisations. Paragraph 10 reiterated that income from salaries and agricultural land shall not be taken into account while applying the income / Wealth Test. However, paragraph 9 of the same 2004 Letter, it was contended, introduced a contradictory position by providing that where equivalence of posts had not been determined, income from salaries and other sources was to be assessed separately, and if either exceeded the prescribed limit, the candidate would be treated as creamy layer. Agricultural income alone was excluded.

12.4. According to the learned counsel, paragraph 9 effectively introduced a discriminatory regime whereby salary income would be counted in the case of PSU employees and others falling within Category IIC, but not for Government servants, armed forces personnel, or constitutional functionaries. The failure of the Government to determine equivalence of posts could not justify imposing dual income thresholds for Category IIC. Such an interpretation, it was argued, runs contrary to the spirit of the Expert Committee's report and the 1993 OM, and may lead to anomalous results - disqualifying even the wards of lower-level employees such as peons, drivers or typists solely on account of salary progression.

12.5. It was further submitted that paragraph 9 of the 2004 Letter was not operationalized until the Civil Services Examination 2015 and even thereafter its implementation remained confined to the UPSC Civil Services Examination, without adoption by other recruiting bodies. The interpretation is thus peculiar to DoPT and lacks uniform application.

12.6. On the aspect of estoppel and legitimate expectation, learned counsel contended that the Union of India is precluded from assailing the impugned judgment of the Delhi High Court dated 22.03.2018, having complied with it by issuing a Compliance Order dated 22.05.2018. Having accepted and acted upon the judgment, the Union of India cannot now resile therefrom without first recalling or withdrawing its compliance.

12.7. It was also urged that the Government cannot adopt a stand before this Court diametrically opposed to its representations before Parliament, the National Commission for Backward Classes 20 and this Court in other proceedings. Reliance was placed on:

1. Legal Opinion of the Law Secretary dated 06.02.2019 opining that pending determination of equivalence, salary cannot be used as a criterion for Category IIC and that such cases must fall for consideration under Clause VI(b).

2. The observations of the Parliamentary Committee recommending withdrawal of the Union's affidavit founded upon paragraph 9 of the 2004 Letter, as being contrary to the Law Ministry's advice and the NCBC's stance.

3. The Tenure Report (2019-2022) of the NCBC holds that salary ought not to be included in computing gross total income for creamy layer determination.

4. The affidavit filed by the Union in Neil Aurelio Nunes v. Union of India, WP(C) No. 961 of 2021 (EWS matter), wherein it was specifically distinguished that the Rs. 8 lakh thresholds for EWS includes salary income, whereas the threshold for OBC creamy layer excludes salary income.

5. The inconsistency between the stand taken in the EWS matter and the position now advanced in Union of India v. Ketan (Civil Appeal No. 3130 of 2024).

12.8. On the strength of these representations, it was argued that a legitimate expectation has arisen that the Government would maintain consistency in its stand. Any deviation would not only defeat such expectation but also undermine parliamentary accountability and the constitutional principle of collective responsibility.

12.9. Lastly, learned counsel submitted that this Court by order dated 28.11.2016 in WP(C) No. 914 of 2016 and connected matters, directed that all subsequent selections would be subject to the final outcome of the pending petitions. The matters were transferred to the Delhi High Court, which rendered its judgment on 28.03.2018. The same was complied with on 22.05.2018. The present appeals were filed after a delay of more than 600 days, without withdrawal of the compliance order. In these circumstances, the concurrent findings of the CAT, Madras Bench; the Delhi High Court; the Madras High Court; and the Kerala High Court warrant affirmation along with consequential relief.

13. Adding further, it was submitted on behalf of the appellant in SLP (C) No. 17651 of 2022 that the 1993 OM expressly employs the expression "gross annual income" and therefore, the Kerala High Court erred in inferring that only "income from other sources" forms the basis for determination of creamy layer status in the case of PSU employees where equivalence has not been established. According to the learned counsel, such an interpretation is contrary to the spirit and consistent understanding of the 1993 OM, as clarified on multiple occasions by the Reservation Division, and amounts to reading into the 1993 OM, a restriction which it does not contemplate.

13.1. It was further submitted that equivalence of posts in State PSUs vis-à-vis Central or State Government posts has not yet been comprehensively

undertaken, as the exercise involves complex comparative assessment of a multitude of posts across States and Union Territories, differing pay structures, service conditions, and attendant perks and privileges. It was contended that precisely to address such contingencies, the 1993 OM provides under Category VI for application of the Income / Wealth Test pending evaluation of equivalence, and that this mechanism ensures continued implementation of the creamy layer principle even in the absence of formal equivalence.

13.2. The learned counsel also assailed the Government Order dated 31.05.2018 issued by the State of Kerala purporting to determine equivalence in respect of posts in the Kerala State Financial Enterprises, contending that the said order was passed on the basis of an individual representation and not as a policy decision founded upon objective and quantifiable data. It was urged that such an exercise is not in consonance with the principles laid down in *Indra Sawhney and others v. Union of India* and others²¹, which require identification of socially and educationally backward classes based on objective criteria and quantifiable data before extending reservation benefits.

13.3. It was further submitted that in any event, even assuming the validity of the Government Order dated 31.05.2018, the said equivalence determination came into existence subsequent to the relevant selection process and was not in force at the time of consideration of the respondent's candidature. Reliance was placed on Rule 10 of the Civil Services Examination Rules, 2017, to contend that candidates seeking reservation benefits must be in possession of requisite and valid certificates in support of their claim as on the closing date of the application, i.e. 17.03.2017. Since the equivalence, even if assumed valid, was not operative on the relevant date, the respondent could not claim its benefit retrospectively.

13.4. On these grounds, learned counsel prayed for setting aside the impugned judgment and allowing the appeal.

14. The learned counsel for Respondent No. 1 in SLP (C) No. 17651 of 2022 submitted that by the impugned judgment dated 25.02.2022 passed by the Kerala High Court, the respondent was directed to be considered as an OBCNCL candidate in the merit list for the Civil Services Examination, 2017. This was on the ground that the sole surviving parent (mother) of the respondent was appointed as a Group C employee in a Public Sector Undertaking owned by the Government of Kerala, and that the PSU was governed by a subsisting order of equivalence with corresponding posts in the Government of Kerala. The said equivalence order had been produced before the DoPT by the candidate.

14.1. It was further contended that the High Court in its judgment, examined the validity of the equivalence order and held that such an order could only have been issued by the Government of Kerala. The High Court substantively validated the equivalence order after examining the comparability methodology adopted therein. In paragraph 27 of the judgment, it was categorically held that the post to which the candidate's mother was appointed was equivalent to a Group C post in the public services of the Government of Kerala. In paragraph 30, the High Court declared that the DoPT had erred in denying OBC-NCL allocation to the candidate. It was submitted that the DoPT had adopted a mutually contradictory position first demanding an equivalence order and thereafter disregarding it when duly furnished.

14.2. It was submitted that the High Court highlighted the arbitrary conduct of the DoPT in paragraphs 20 and 25 of the judgment. The DoPT had altered the procedure for verification of Creamy Layer status of candidates whose parents were appointed to State Public Sector Enterprises, both during the Civil Services Examination, 2016 and midway through the CSE-2017 process, without any public notice or notification, thereby violating settled procedures and principles of natural justice. In 2016, the procedure adopted was to seek clarification from the concerned State Government regarding comparability of posts. However, in 2017 midway through the examination process, the DoPT began insisting upon formal equivalence orders issued by the State Governments.

14.3. Reference was also made to paragraph 31 of the judgment, wherein the High Court observed that there was no justification for the DoPT to reject the equivalence order issued by the State Government. It clarified that the equivalence order to be submitted could only be an order of the State Government, and in the present case, one issued by the Government of Kerala.

It was contended that "State Public Services" and "State Public Service Commissions" fall within the exclusive domain of the State List under the Seventh Schedule to the Constitution. Consequently, the jurisdiction to declare comparability or equivalence between posts in the public services of the State of Kerala and Public Sector Enterprises owned by it lies exclusively within the State Government. It was urged that this constitutional demarcation had been disregarded by the DoPT in filing the present appeal.

14.4. It was further submitted that the DoPT had not disputed the status of the post held by the candidate's deceased father (who passed away in 2012) which had been accepted as a Group C post in the Government of Kerala based on orders issued by the same State Government. However, the DoPT was disputing the equivalence order issued by that very Government in relation to the candidate's mother, who was appointed to a Group C post in a State PSU.

This differential treatment, it was contended, amounted to discrimination against the candidate's mother alone and reflected arbitrariness in administrative decisionmaking. The High Court had noted such arbitrariness in paragraph 33 of its judgment and dismissed the petition filed by the DoPT.

14.5. It was also contended that the action of the DoPT in treating the salary of an employee of a State PSU, irrespective of the post held, as income for determining Non-Creamy Layer status was discriminatory, particularly when, in the case of employees of the Central Government, State Governments, or Central PSUs, salary income was exempted from such computation. This aspect had been extensively dealt with by the High Court.

14.6. Finally, it was submitted that the DoPT lacked locus standi to raise disputes on behalf of the Union Government against orders issued by State Governments regarding equivalence of posts within the State. The DoPT's powers are circumscribed by the Allocation of Business Rules, 1961, and the subject matter of challenging equivalence determinations of State Governments does not fall within its assigned business. It was contended that the DoPT neither possesses authority to reject orders issued by the appropriate State Government nor to issue directions or requisitions to State Governments in that regard. Consequently, the challenge to the equivalence order issued by the Government of Kerala was said to be contrary to the Allocation of Business Rules, 1961, and violative of Article 77(3) of the Constitution of India.

14.7. It was emphasized that procedural violations were writ large in the actions of the DoPT in altering verification norms during the conduct of the Civil Services Examinations and in adopting inconsistent verification practices from year to year. Until 2016, the DoPT had sought clarification from State Governments regarding the nature of posts held by parents serving in State PSUs. In 2017, however, it insisted upon formal equivalence orders midway through the examination process, without amending the governing rules or issuing any notification, and thereafter rejected or ignored such orders when produced.

According to the learned counsel, this arbitrary shift in procedure appeared designed to deny OBC claims of candidates whose parents were employees of State Public Sector Enterprises. It was further submitted that State Governments have consistently exercised their constitutional authority under the Seventh Schedule to issue equivalence orders whenever officers of State Public Services are posted to State PSUs. By disputing such actions of the "appropriate Government" within the exclusive domain of the State, the DoPT was alleged to have engaged in unconstitutional overreach in filing the present appeal.

15. The learned counsel appearing for the Union Public Service Commission (UPSC) submitted that the role of the said respondent is strictly confined to conducting the Civil Services Examination in accordance with the Rules and Regulations framed by the DoPT. The UPSC conducts the examination, processes the results, and makes recommendations for appointment to the various services based on the vacancies requisitioned by the respective Cadre Controlling Authorities. It was contended that the UPSC neither frames policy nor possesses the authority to adjudicate upon issues relating to reservation status or the application of the Creamy Layer criteria.

15.1. It was further submitted that the determination of eligibility for reservation benefits, including verification of OBC Non-Creamy Layer status, falls exclusively within the domain of the DoPT, which is the appellant herein and the nodal authority for such matters. Therefore, the issues raised in the present proceedings, as well as the reliefs sought by the appellants pertain solely to the DoPT, and no substantive relief has been claimed or could be claimed against the UPSC.

DISCUSSION & FINDINGS

16. We have heard learned counsel appearing for the parties at length and perused the materials available on record.

17. The present batch of Civil Appeals arises from judgments of the Madras High Court, Kerala High Court and Delhi High Court. By the impugned judgments, the respective High Courts adjudicated upon the eligibility of certain candidates claiming the benefit of OBC (Non-Creamy Layer) reservation in the Civil Services Examination conducted in different years.

18. It is not in dispute that the respondent candidates were successful in the Civil Services Examination. However, as the equivalence of posts in Public Sector Undertakings, banks and other organisations vis-à-vis Government posts had not been formally determined, the DoPT applied the Income /Wealth Test under Category VI of the 1993 OM read with 2004 Letter. Upon assessing the parental income of the respective candidates for the preceding three financial years, the DoPT classified them as falling within the Creamy Layer of the Other Backward Classes, thereby rendering them ineligible for OBC (Non-Creamy Layer) reservation benefits.

Consequently, their cases were not considered for service allocation under the reserved category. Aggrieved thereby, the respondent candidates approached the CAT and obtained orders in their favour. The writ petitions filed by the appellants challenging the said orders were dismissed by the High Courts of

Madras, Delhi and Kerala. It is in these circumstances that the present Civil Appeals filed by the appellants have been placed before us for consideration.

19. The issues involved are allied and overlapping, though they require distinct treatment for the purpose of analysis. The first issue is whether the clarificatory letter dated 14.10.2004 can have any overriding or superseding effect over the Office Memorandum dated 08.09.1993, which expressly lays down the criteria for exclusion from the benefit of reservation for OBCs by identifying the creamy layer namely, the socially advanced persons of sections among the Socially and Educationally Backward Classes. The second issue is whether there can be hostile discrimination between employees of the Government and those working in Public or Private Sector Undertakings, when both occupy posts of the same grade or class.

20. Since the issues raised are broader in nature and concern the constitutional architecture governing identification of the creamy layer, the validity and interpretation of executive instructions, and the equality mandate under Article 14, it is neither necessary nor appropriate for this Court to enter into the granular factual matrix of each individual case. Moreover, the judgments impugned before us record largely concurrent findings on the material aspects. The controversy, therefore, turns essentially on questions of law of general public importance, warranting authoritative determination by this Court.

21. Before proceeding further, it is apposite to examine the constitutional and statutory background of reservation in India.

21.1. India's reservation framework for Other Backward Classes (OBCs)/ Socially and Educationally Backward Classes (SEBCs) has evolved through a sustained dialogue between constitutional text, legislative intervention, and judicial doctrine. The objective has consistently been to reconcile the mandate of substantive equality with the imperatives of administrative efficiency.

Constitutional framework

21.2. The Constitution embedded the principle of advancement of weaker sections through:

- Article 46 (Directive Principles of State Policy), which mandates the State to promote with special care the educational and economic interests of the weaker sections, particularly, Scheduled Castes and Scheduled Tribes;
- Article 15(4) (inserted by the First Constitutional Amendment, 1951), enabling the State to make special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes;

- Article 16(4) empowering the State to make provisions for reservation in appointments or posts in public services for any backward classes inadequately represented;
- Article 15(5), later inserted, enabling reservation in admissions to educational institutions, including private educational institutions whether aided or unaided by the State, other than the minority educational institutions. For ease of reference, the above provisions read as under:

"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.-

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth-

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

"16. Equality of opportunity in matters of public employment-

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

From its inception, Article 16(4) was conceived not as an exception to equality, but as an instrument to achieve it.

Early Judicial Evolution

21.3. In *M.R. Balaji and others v. State of Mysore*²², this Court held that caste may be a relevant factor in identifying backwardness, but it cannot be the sole or dominant test. Social backwardness, the Court observed, is on the ultimate analysis closely linked with poverty, and excessive reservation under the guise of special provisions would subvert the constitutional scheme. The Court broadly indicated that reservation should ordinarily remain below 50%, recognising the need to balance advancement of weaker sections with societal interests at large. The following paragraphs are pertinent:

"23. Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in toto from the operation of Article 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward.

That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens.

34. If admission to professional and technical colleges is unduly liberalised, it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits.

The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State

reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the present prevailing circumstances in each case."

Similarly, in *State of Andhra Pradesh and another v. P. Sagar*²³, this Court reiterated that classification for the purposes of Article 15(4) cannot rest solely upon caste; the objective remains the advancement of socially and educationally backward classes.

Socio-Economic Refinement and Means Test

21.4. By 1985, the doctrine had matured further in *K.C. Vasanth Kumar and another v. State of Karnataka*²⁴, where a Seven-Judge Bench emphasised that reservation policy cannot remain static but must be subjected to periodic review to ensure that the truly backward continue to receive its benefits. Justice D.A.Desai in his concurring opinion, stressed that economic criteria must increasingly inform the identification of beneficiaries and cautioned that reservation cannot be allowed to crystallise into a vested or hereditary entitlement.

The Court endorsed the "caste-cum-means" test, drawing support from *K.S. Jayasree v. State of Kerala*²⁵, where the imposition of an income ceiling within backward classes was upheld as constitutionally valid. Likewise, in *R. Chitralekha v. State of Mysore*²⁶, the Court recognised income and occupation as permissible indicators of backwardness. These decisions marked a decisive shift towards economic refinement within socially backward classes, a principle that ultimately took firm doctrinal shape in *Indra Sawhney v. Union of India* (supra), where the exclusion of the 'creamy layer' was constitutionally crystallised. The relevant paragraphs from the judgment in *K.C. Vasanth Kumar* read as under:

"26. Therefore, a time has come to review the criterion for identifying socially and educationally backward classes ignoring the caste label. The only criterion which can be realistically devised is the one of economic backwardness. To this may be added some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. but by and large economic backwardness must be the loadstar. Why I say this?

30. Let me conclude. If economic criterion for compensatory discrimination or affirmative action is accepted, it would strike at the root cause of social and educational backwardness, and simultaneously take a vital step in the direction

of destruction of caste structure which in turn would advance the secular character of the Nation. This approach seeks to translate into reality the twin constitutional goals: one, to strike at the perpetuation of the caste stratification of the Indian Society so as to arrest regressive movement and to take a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the mainstream of life which means eradication of poverty.

31. Let me make abundantly clear that this approach does not deal with reservation in favour of Scheduled Castes and Scheduled Tribes. Thousands of years of discrimination and exploitation cannot be wiped out in one generation. But even here economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefited by it and improved their position. And finally reservation must have a time span otherwise concessions tend to become vested interests.

This is not a judgment in a lis in an adversary system. When the arguments concluded, a statement was made that the Government of State of Karnataka would appoint a Commission to determine constitutionally sound and nationally acceptable criteria for identifying socially and educationally backward classes of citizens for whose benefit the State action would be taken. This does not purport to be an exhaustive essay on guide lines but may point to some extent, the direction in which the proposed Commission should move."

125. While caste or community is a relevant factor in determining the social and educational backwardness, it cannot be said that all members of a caste need be treated as backward and entitled to reservation under Article 15(4) or Article 16(4). Caste-cum-means test would be a rational test in identifying persons who are entitled to the benefit of those provisions. This principle has received acceptance at the hands of this Court in *K.S. Jayasree v. State of Kerala* [(1976) 3 SCC 730].

In that case a Commission appointed by the Government of the State of Kerala to enquire into the social and economic conditions of the people of that State and to recommend as to what sections of the people should be extended the benefits under Article 15(4) of the Constitution found that only the rich amongst certain castes or communities were enjoying the benefit of reservations made earlier. It, therefore, recommended adoption of a means-cum-caste/community test for determining the sections of the people who should be given the benefit under the relevant constitutional provisions. The State Government accordingly stipulated that applicants who were members of certain castes or communities and whose family income was less than Rs 10000 per year were only entitled to reservation under Article 15(4).

The petitioner in the above case who belonged to one such community but whose family income was above Rs 10,000 per year questioned the order before the Kerala High Court on the ground that the imposition of the ceiling of family income was unconstitutional. The learned Single Judge who heard the petition allowed it. The Division Bench of the Kerala High Court, however, reversed the decision of the learned Single Judge and dismissed the petition. On appeal, this Court while affirming the decision of the Division Bench in the above case on the question of social backwardness observed at pp. 199-200 thus: (SCC p. 735, para 21)

143. Since economic condition is also a relevant criterion, it would be appropriate to incorporate a "means test" as one of the tests in determining the backwardness as was done by the Kerala Government in Jayasree case⁶³. These two tests namely, that the conditions of caste or group or community should be more or less similar to the conditions in which the Scheduled Castes or Scheduled Tribes are situated and that the income of the family to which the candidate belongs does not exceed the specified limit would serve as useful criteria in determining beneficiaries of any reservation to be made under Article 15(4). For the purpose of Article 16(4) however, it should also be shown that the backward class in question is in the opinion of the Government not adequately represented in the Government services.

144. There is one other basis on which a classification made for purposes of Article 15(4) or Article 16(4) of the Constitution has received the approval of this Court in Chitralekha case. In that case the Court was concerned with a list of backward classes prepared on the basis of economic condition and occupation. According to that Government Order, persons whose family income was Rs 1200 per annum or less and who were engaged in occupations such as agriculture, petty business, inferior services, crafts or other occupations involving manual labour were treated as belonging to backward classes. The petitioner who had filed the petition in the High Court did not challenge the validity of the said classification. But on a submission made on behalf of the State Government, the Court expressed its general approval to the method of classification."

21.5. Thus, the above decisions collectively established three guiding propositions:

1. Caste may serve as an initial identifying marker but cannot be the exclusive determinant.
2. Economic condition is a relevant and rational refining criterion.

3. Reservation policy must balance social justice with broader societal interests.

Mandal Commission and OBC Reservation

21.6. The Mandal Commission, formally known as the Socially and Educationally Backward Classes Commission (SEBC) was constituted in 1979 under the chairmanship of B.P. Mandal with the mandate to identify the socially and educationally backward classes in India. In its 1980 report, drawing upon data from the 1931 Census (the last caste-based census) along with contemporaneous sample studies, the Commission estimated that Other Backward Classes (OBCs) constituted approximately 52% of the population. It recommended 27% reservation in civil posts and services under the Government of India and Public Sector Undertakings, as well as in higher educational institutions, thereby bringing the total reservations for SCs, STs and OBCs to 49.5%.

21.7. Acting upon the said report, the Government of India issued an Office Memorandum dated 13.08.1990 providing for 27% reservation in civil posts and services for Socially and Educationally Backward Classes (SEdBCs). The said O.M. was amended on 25.09.1991 to provide that preference within the 27% reservation would be given to candidates belonging to the poorer sections among the SEdBCs. The implementation of the Mandal recommendations led to widespread public debate and social unrest, ultimately resulting in a constitutional challenge before this Court.

21.8. The validity of the above mentioned 1990 O.M. was considered by nine-Judge Bench in Indra Sawhney and others v. Union of India and others²⁷. This Court upheld the constitutional validity of 27% reservation for OBCs under Article 16(4), but imposed crucial limitations. It held that total reservations ordinarily should not exceed 50%, save in extraordinary circumstances, and most significantly, it mandated the exclusion of the "creamy layer" from among the OBCs. The Court emphasised that backwardness under Article 16(4) is primarily social and that reservation cannot be sustained purely on economic criteria.

21.9. Justice Sahai, while concurring with the majority, underscored that backwardness is not static and that individuals within a backward class who have achieved higher social or economic status must be excluded to prevent monopolisation of benefits. He observed that while a collectivity may be backward, individuals from that group who have achieved advancement in status, service, or affluence must be disentitled from claiming reservation. The exclusion of the creamy layer was thus articulated as a constitutional necessity

to preserve substantive equality. The following passage from the decision in Indra Sawhney is relevant:

"629. More backward and backward is an illusion. No constitutional exercise is called for it. What is required is practical approach to the problem. The collectivity or the group may be backward class but the individuals from that class may have achieved the social status or economic affluence. Disentitle them from claiming reservation. Therefore, while reserving posts for backward classes, the departments should make a condition precedent that every candidate must disclose the annual income of the parents beyond which one could not be considered to be backward.

What should be that limit can be determined by the appropriate State. Income apart, provision should be made that wards of those backward classes of persons who have achieved a particular status in society either political or social or economic or if their parents are in higher services then such individuals should be precluded to avoid monopolisation of the services reserved for backward classes by a few.

Creamy layer, thus, shall stand eliminated. And once a group or collectivity itself is found to have achieved the constitutional objective then it should be excluded from the list of backward class. Therefore, (1) No reservation can be made on economic criteria. (2) It may be under Article 16(4) if such class satisfies the test of inadequate representation. (3) Exclusion of creamy layer is a social purpose. Any legislative or executive action to remove such persons individually or collectively cannot be constitutionally invalid."

21.10. The Court further directed the Government of India to specify, within four months, the socio-economic criteria for excluding socially advanced persons or sections from the OBC category and made implementation of the 1990 O.M. subject to such exclusion. It is in furtherance of these directions that the Ministry of Social Justice appointed an Expert Committee to evolve criteria for exclusion of the socially advanced sections, the term "creamy layer" being only a shorthand expression for this constitutional principle.

The Expert Committee, keeping in view the directions in Indra Sawhney, evolved criteria centred primarily on social status arising from positions and placements in life, rather than on income alone. The guiding principle was to identify positions whose occupants could reasonably be deemed to have ceased to be socially backward and to have attained social advancement. Accordingly, the Committee framed exclusion criteria under various categories, including the Service Category.

21.11. Under the Service Category, the Committee recommended that the criteria applicable to officers directly recruited in Central and State Government services should apply mutatis mutandis to officers in equivalent or comparable posts in Public Sector Undertakings, Banks, Insurance Corporations, Universities, Autonomous Bodies, Local Self-Government Bodies and other similar institutions. Importantly, to avoid delay in implementation pending equivalence evaluation, the Committee recommended that during the interim period, the Income / Wealth Test (Category VI) would apply to such persons.

21.12. The Expert Committee made it explicit that even during this interim phase, persons falling within such PSU and analogous categories would continue to be entitled to reservation, and exclusion, if any, could only be on the basis of the prescribed Income / Wealth criteria. The intent was clear: statusbased exclusion would operate once equivalence is determined; until then, economic filtering under structured criteria alone could apply.

Evolution of Non-Creamy Layer

21.13. The doctrine of exclusion of the "creamy layer", crystallised by this Court in Indra Sawhney and others v. Union of India and others²⁸, forms the constitutional foundation of the 1993 OM. The subsequent executive framework must therefore be understood as an operational mechanism to give effect to that binding constitutional mandate.

1993 OM

21.14. Pursuant to the said constitutional mandate and the recommendations of the Expert Committee, the Government of India issued the 1993 OM, which codified the above structural framework. For better appreciation, the OM is reproduced below:

"No.36012/22/93-Estt. (SCT)

Government of India
Ministry of Personnel, Public
Grievances & Pensions (Department of Personnel & Training)

New Delhi, the
8th September, 1993

OFFICE MEMORANDUM

Subject:- Reservation for Other Backward Classes in Civil Posts and Services under the Government of India - Regarding.

The undersigned is directed to refer to this Department's O.M. No. 36012/31/90-Estt. (SCT), dated the 13th August, 1990 and 25th September, 1991 regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgment in the Indra Sawhney and others Vs. Union of India and others case [Writ Petition (Civil) No. 930 of 1990] the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office Memorandum No. 36012/31/90-Estt. (SCT), dated 13.08.90 referred to in Para(1) above is hereby modified to provide as follows:

(a) 27% (twenty seven percent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.

(c)(i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum.

(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.

(d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the report of the Mandal Commission and the State Government's Lists. A list of such castes and communities is being issued separately by the Ministry of Welfare.

(e) The aforesaid reservation shall take immediate effect. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of this order. 3. Similar instructions in respect of public sector undertaking and financial institutions including public sector banks will be issued by the Department of Public Enterprises and by the Ministry of Finance respectively effective from the date of this Office Memorandum.

Sd/-
(Smt.
Joint
Government of India

Sarita
Secretary
to

Prasad)
the

To

All Ministries/Department of Government of India."

The Schedule appended to the above 1993 OM enumerated specific categories for exclusion and operationalised the status-based criteria, while providing a residual Income / Wealth Test under Category VI.

Under Category II (Service Category), the Schedule classified Government servants into sub-categories II A and II B, referring respectively to officers directly recruited to Class I (Group A) and Class II (Group B) services. These provisions unmistakably pertain to higher echelons of service and do not concern lower-level employees. Category II C extends the same principle to employees of Public Sector Undertakings, Banks, Insurance Organisations, Universities and similar bodies, by stipulating that the criteria in sub-categories II A and II B shall apply mutatis mutandis to officers holding equivalent or comparable posts in such organisations.

Income / Wealth Test

21.15. However, the 1993 OM expressly provides that pending evaluation of equivalence or comparability of posts vis-à-vis Government services, the Income / Wealth Test under Category VI alone would apply. This is significant. The specific criteria for disentitlement under II C, namely direct recruitment to a post equivalent to Class I / Group A, or promotion to such post before the age of 40, remain inoperative until equivalence is determined. Thus, in the absence of such evaluation, the entire category II C cannot be automatically deprived of reservation; exclusion, if any, can only be under Category VI.

Category VI, which embodies the Income / Wealth Test operates as a residual filter. Explanation (i) under this category specifically provides that income from salaries and income from agricultural land shall not be clubbed with income from other sources for the purpose of computing gross annual income. Explanation (ii) pertains to the periodic revision of the prescribed income limit. The plain language of these explanations makes it clear that salary income and agricultural income are consciously kept outside the common pool while determining exclusion under the Income / Wealth Test.

2004 - Letter of Clarification

21.16. In 2004, a letter of clarification was issued to address practical issues that had arisen in implementation. The clarification recognizes that where equivalence of posts in PSUs and similar organisations has not been evaluated, creamy layer status must be determined on the basis of the Income / Wealth Test. It reiterates that income from salaries and income from agricultural land shall not be taken into account while applying the test. The clarification further explains that income from salaries and income from other sources (excluding salaries and agricultural land) are to be assessed separately, and exclusion would follow only if either component exceeds the prescribed limit for three consecutive years.

21.17. Thus, the evolution of the non-creamy layer principle demonstrates that the 1993 OM read with the 2004 Letter, preserves the primacy of statusbased exclusion and confines economic exclusion to the structured parameters of Category VI. Salary income cannot be mechanically aggregated in a manner that defeats the constitutional objective articulated in Indra Sawhney. The interpretation of the 1993 OM and its implementation in the present case must therefore be tested against this constitutional architecture.

In this backdrop, we now proceed to examine the issues involved herein.

Issue No. 1

Whether the clarificatory letter dated 14.10.2004 can have any overriding or superseding effect over the Office Memorandum dated 08.09.1993, which expressly lays down the criteria for exclusion from the benefit of reservation for OBCs by identifying the creamy layer namely, the socially advanced persons of sections among the Socially and Educationally Backward Classes?

22. A bare perusal of the 1993 OM makes it abundantly clear that certain categories of persons, namely, the sons or daughters of those holding Class I/Group A or Class II/Group B posts in the Civil Services of the Central and State Governments, have been excluded. The income/wealth test has also been stipulated in the office memorandum, which prescribes an Income / Wealth Test as an additional criterion of exclusion. Significantly, the 1993 OM provides that these criteria shall apply mutatis mutandis for exclusion from reservation in respect of the children of those working in Public Sector Undertakings, Banks, Insurance organisations, Universities and other similar institutions, as well as those holding equivalent or comparable positions in private employment.

23. The question of "equivalence of posts" as contemplated both in the 1993 OM and in the subsequent 2004 Letter, is fundamentally a matter of policy.

Such equivalence must be determined by the Government on the basis of a detailed analysis of data by experts in the field. Until such equivalence is formally evaluated and notified by the Government, the entitlement of candidates whose parent(s) work in organisations other than in Class I or II of the Central or State Civil Services, shall be decided by the Income/ Wealth Test. The core question therefore is whether paragraph 9 of the 2004 Letter merely explains the scheme of the 1993 OM or impermissibly alters its substantive structure of exclusion.

24. Before advertizing to the 2004 Letter, it is essential to reiterate the well-established principle that a mere government letter cannot have the effect of overriding, overruling or superseding any proceeding in the nature of an executive instruction or an Office Memorandum issued in exercise of executive power under Article 162 of the Constitution.

The clarificatory letter must, therefore, be construed strictly as one explaining or supplementing the foundational guidelines laid down in the 1993 OM, which was issued after due deliberation and following the requisite procedure and not as altering its substantive framework. It is settled law that a clarificatory instruction cannot introduce a substantive condition that does not exist in the parent policy. If it travels beyond explanation and alters rights or liabilities, it ceases to be clarificatory and assumes the character of an amendment.

25. In order to understand the impact of the clarificatory letter dated 14.10.2004, it is apposite to extract Paragraphs 7-10 thereof as follows:

"7. In regard to clause (v) of para 4, it is clarified that the sons and daughters of parents of whom only the husband is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 40 or earlier are treated to be in creamy layer. If the father is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer.

8. In regard to clauses (vi), (vii) and (viii) of para 4, it is clarified that the creamy layer status of a candidate is determined on the basis of the status of his parents and not on the basis of his own status or income or on the basis of status or income or on the basis of status or income of his/her spouse. Therefore, while determining the creamy layer status of a person the status or the income of the candidate himself or of his/her spouse shall not be taken into account.

9. In regard to clause (ix) of para 4, it is clarified that the creamy layer status of sons and daughters of persons employed in organizations where equivalence or comparability of posts vis-à-vis posts in Government has not been evaluated is

determined as follows: Income of the parents from the salaries and from the other Sources [other than salaries and agricultural land] is determined separately. If either the income of the parents from the salaries or the income of the parents from other sources [other than salaries and agricultural land] exceeds the limit of Rs.2.5 lakh per annum for a period of three consecutive years, the sons and daughters of such persons shall be treated to fall in creamy layer.

But the sons and daughters of parents whose income from other sources is less than Rs.2.5 lakh per annum and income from other sources is also less than Rs.2.5 lakh per annum will not be treated as falling in creamy layer even if the sum of the income from salaries and the income from the other sources is more than Rs.2.5 lakh per annum for a period of three consecutive years. It may be noted that income from agricultural land is not taken into account while applying the Test.

10. In regard to clause (x) of para 4, it is clarified that while applying the Income/Wealth Test to determine creamy layer status of any candidate as given in Category VI of the Schedule to the OM, income from the salaries and income from the agricultural land shall not be taken into account. It means that if income from salaries of the parents of any candidate is more than Rs.2.5 lakh per annum, income from agricultural land is more than Rs.2.5 lakh per annum, but income from other sources is less than Rs.2.5 lakh per annum, the candidate shall not be treated to be falling in creamy layer on the basis of Income/Wealth Test provided his parent(s) do not possess wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years."

26. The above extract makes it clear that income from salaries, agriculture or other sources cannot be clubbed for the purpose of applying the income/wealth test to determine the creamy layer status of a candidate. It is also evident from a comprehensive reading of the 1993 OM along with the clarificatory letter dated 14.10.2004 that income from salaries alone cannot be the sole criterion to decide whether a candidate falls within the creamy layer.

The status as well as the category of post to which a candidate's parent or parents belong is essential. The exclusion under Categories I to III of the Schedule is status-based rather than purely income-based, reflecting the policy understanding that advancement within the governmental service hierarchy denotes social progression independent of fluctuating salary levels. Mere determination of the status of a candidate as to whether he/she falls within the creamy layer or the non-creamy layer of the OBCs cannot be decided solely on the basis of the income.

27. In fact, paragraph 7 of the 2004 Letter makes it amply clear that a mechanical application of income thresholds may in certain situations, produce inequitable outcomes. To that limited extent, the 2004 Letter may be understood as reinforcing the scheme of the 1993 OM provided it is construed as explanatory and not as altering the substantive framework.

28. In this context, a perusal of the 21st Report of the Parliamentary Committee on Welfare of Other Backward Classes (2018-19) elucidates the evolution of the guidelines governing exclusion from reservation by identification of the creamy layer. It is also necessary to point out that the 21st report records that the 2004 Letter has done more to confuse the position than to clarify it, which was its intended purpose.

29. The observations of the Parliamentary Committee lend institutional support to the view that paragraph 9 has generated interpretative ambiguity and may have been applied beyond its intended contours. The Report records that the 2004 Letter did not emanate from the DoPT Secretariat and that its origin could not be traced in terms of the initial note file. It further observes that determining exclusion from reservation solely on the basis of income from salaries, as indicated in the 2004 Letter, would not be consistent with the original framework. The entire architecture of paragraph 9 of the 2004 Letter is premised on a prior determination of equivalence. Income is intended to operate only as a surrogate measure in the absence of such equivalence; it cannot supplant the primary status-based framework embodied in the 1993 OM.

30. In light of the foregoing, any attempt to read paragraph 9 of the 2004 Letter in isolation, so as to dilute or override the substantive scheme of the 1993 OM would be legally untenable. Overemphasis on the 2004 Letter to the extent of making income alone determinative without regard to parental status or category of service would defeat the structural framework of exclusion envisaged under the 1993 OM.

31. Thus, determination of creamy layer status solely on the basis of income brackets, without reference to the categories of posts and status parameters enunciated in the 1993 OM is clearly unsustainable in law. Issue No. 2 Whether there can be hostile discrimination between employees of the Government and those working in Public or Private Sector Undertakings, when both occupy posts of the same grade or class?

32. The second issue that needs to be decided here is whether caste, as a determining factor for entitlement to reservation, can be diluted or distorted by introducing invidious discrimination between similarly placed categories of persons.

33. At the outset, it must be noted that while caste may be an indicator of historical disadvantage, it cannot be treated as the sole determinant of backwardness. The exclusion of the creamy layer among the backward classes is not a matter of mere policy preference but a constitutional imperative intended to ensure that the benefits of reservation reach those who are socially and educationally backward in the true sense of the phrase. The principle seeks to prevent relatively advanced segments within the backward classes from siphoning off the advantages of affirmative action, so that the objective and purpose of the constitutional scheme of affirmative action, of which reservation is a reflection, are adhered to.

34. It is in this context that the Tribunal as well as the High Courts have held that Group C and Group D employees who, by virtue of promotion and efflux of time, surpass the income levels as stated in the excluded categories of persons in the Schedule to the Office Memorandum, which applies to Group A and Group B Government employees (direct recruits), and who by virtue of such income from salary alone do not stand excluded from reservation, cannot be treated differently from those employees of PSUs and private undertakings who also belong to or are equivalent to such Group C and Group D categories of posts.

Treating them differently, or in other words, treating the children of those employed in PSUs or private employment, etc., as being excluded from the benefit of reservation only on the basis of their income derived from salaries, and without reference to their posts (whether Group A or B, or Group C or D) would certainly lead to hostile discrimination between parties who are similarly placed and would amount to equals being treated unequally, thereby attracting the rigour of the equality doctrine under Articles 14, 15 and 16, of which reservation is a facet.

35. It is well settled that a classification, to withstand scrutiny under Article 14, must satisfy the twin requirements of (i) intelligible differentia distinguishing persons grouped together from others left out, and (ii) a rational nexus with the object sought to be achieved. If similarly situated persons are subjected to differential treatment without a constitutionally sustainable basis, such action would fall foul of Article 14.

36. The object of excluding the creamy layer is to ensure that socially advanced sections within the OBCs do not appropriate benefits meant for the genuinely backward; it is not to create artificial distinctions between equally placed members of the same social class.

37. The principle laid down in *Indra Sawhney and others v. Union of India and others*²⁹ that "To continue to confer upon such advanced sections special

benefits would amount to treating equals unequally; to rank them with the rest of the backward classes would amount to treating the unequals equally" would stand attracted equally to a case where proper identification of a section or class of persons or a person belonging to OBC as being either socially advanced or backward is not carried out by the Government.

In fact, it would not be an overstatement to say that if this exercise is not undertaken in a manner that is rational, non-arbitrary, reasonable and equal, it would lead to the illegal exclusion of genuine claimants and deserving persons within the OBC category from the benefit of reservation, which, being a facet of equality, is a right protected by the Constitution, as made amply clear by the judgments in *State of Kerala and Others v. N.M. Thomas and Others*³⁰ as well as *Indra Sawhney v. Union of India*.

To state it in other words, Article 16(4) is a structural reflection and a conceptualized representation of the principle of substantive equality embodied and envisaged under Article 16(1) of the Constitution. Therefore, any interpretation of the 1993 OM or the 2004 Letter that results in unequal treatment of similarly placed OBC candidates would not only be legally erroneous but constitutionally impermissible.

38. Relevant portion of the judgment in *State of Kerala v. N.M. Thomas* (supra) is extracted for reference:

"44. Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and Tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality.

Articles 15(4) and 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15(1) and 16(1). The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14.

Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the Constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a rational classification recognised by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

45. A rule in favour of an under-represented backward community specifying the basic needs of efficiency of administration will not contravene Articles 14, 16(1) and 16(2). The rule in the present case does not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who are promoted have to acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than others to acquire the qualification. Scheduled Castes and Tribes are descriptive of backwardness.

It is the aim of our Constitution to bring them up from handicapped position to improvement. If classification is permissible under Article 14, it is equally permissible under Article 16, because both the Articles lay down equality. The quality and concept of equality is that if persons are dissimilarly placed they cannot be made equal by having the same treatment. Promotion of members of Scheduled Castes and Tribes under the impeached rules and orders is based on the classification with the object of securing representation to members of Scheduled Castes and Tribes. Efficiency has been kept to view and not sacrificed.

46. All legitimate methods are available for equality of opportunity in services under Article 16(1). Article 16(1) is affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1). Article 16(1) using the expression "equality" makes it relatable to all matters of employment from appointment through promotion and termination to payment of pension and gratuity. Article 16(1) permits classification on the basis of object and purpose of law or State action except classification involving discrimination prohibited by Article 16(2). Equal protection of laws necessarily involves classification.

The validity of the classification must be adjudged with reference to the purpose of law. The classification in the present case is justified because the purpose of classification is to enable members of Scheduled Castes and Tribes to find representation by promotion to a limited extent. From the point of view

of time a differential treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with efficiency."

39. Approving the decision in *N.M. Thomas, this Court held in Indra Sawhney and Others v. Union of India and Others*³¹ as follows:

"741. In *Balaji* it was held - "there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2)". It was observed that Article 15(4) was inserted by the First Amendment in the light of the decision in *Champakam*, with a view to remove the defect pointed out by this Court namely, the absence of a provision in Article 15 corresponding to Clause (4) of Article 16. Following *Balaji* it was held by another Constitution Bench (by majority) in *Devadasan* - "further this Court has already held that Clause (4) of Article 16 is by way of a proviso or an exception to Clause (1)". Subbarao, J., however, opined in his dissenting opinion that Article 16(4) is not an exception to Article 16(1) but that it is only an emphatic way of stating the principle inherent in the main provision itself.

Be that as it may, since the decision in *Devadasan*, it was assumed by this Court that Article 16(4) is an exception to Article 16(1). This view, however, received a severe set-back from the majority decision in *State of Kerala and Ors. v. N.M. Thomas* MANU/SC/0479/1975 : (1976) 1 LLJ 376 SC. Though the minority (H.R. Khanna and A.C. Gupta, JJ.) stuck to the view that Article 16(4) is an exception, the majority (Ray, C.J., Mathew, Krishna Iyer and Fazal Ali, JJ.) held that Article 16(4) is not an exception to Article 16(1) but that it was merely an emphatic way of stating a principle implicit in Article 16(1). (Beg. J. took a slightly different view which it is not necessary to mention here).

The said four learned Judges - whose views have been referred to in para 41 - held that Article 16(1) being a facet of the doctrine of equality enshrined in Article 14 permits reasonable classification just as Article 14 does. In our respectful opinion, the view taken by the majority in *Thomas* is the correct one. We too believe that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally.

Not doing so, would perpetuate and accentuate inequality. Article 16(4) is an instance of such classification, put in to place the matter beyond controversy. The "backward class of citizens" are classified as a separate category deserving a special treatment in the nature of reservation of appointments/posts in the services of the State. Accordingly, we hold that Clause (4) of Article 16 is not

exception to Clause (1) of Article 16. It is an instance of classification implicit in and permitted by Clause (1).

The speech of Dr. Ambedkar during the debate on draft Article 10(3) [corresponding to Article 16(4)] in the Constituent Assembly - referred to in para 28 - shows that a substantial number of members of the Constituent Assembly insisted upon a "provision (being) made for the entry of certain communities which have so far been outside the administration", and that draft Clause (3) was put in recognition and acceptance of the said demand. It is a provision which must be read along with and in harmony with Clause (1). Indeed, even without Clause (4), it would have been permissible for the State to have evolved such a classification and made a provision for reservation of appointments/posts in their favour. Clause (4) merely puts the matter beyond any doubt in specific terms.

742. Regarding the view expressed in *Balaji* and *Devadasan*, it must be remembered that at that time it was not yet recognised by this Court that Article 16(1) being a facet of Article 14 does implicitly permit classification. Once this feature was recognised the theory of Clause (4) being an exception to Clause (1) became untenable. It had to be accepted that Clause (4) is an instance of classification inherent in Clause (1).

Now, just as Article 16(1) is a facet or an elaboration of the principle underlying Article 14, Clause (2) of Article 16 is also an elaboration of a facet of Clause (1). If Clause (4) is an exception to Clause (1) then it is equally an exception to Clause (2). Question then arises, in what respect is Clause (4) an exception to Clause (2), if 'class' does not mean 'caste'. Neither Clause (1) nor Clause (2) speak of class. Does the contention mean that Clause (1) does not permit classification and therefore Clause (4) is an exception to it. Thus, from any point of view, the contention of the petitioners has no merit".

40. Adopting an interpretation that disadvantages one segment of the same backward class without rational justification would amount to treating equals as unequals and would thus become the antithesis of equality, the corner stone of our Republic. Having regard to the peculiar facts of the present cases, the reasoning adopted by the High Court that treating similarly placed employees of private entities and PSUs differently from Government employees and their wards, while deciding their entitlement to reservation, would amount to hostile discrimination, is certainly one that inspires the confidence of this Court.

41. Thus, we find no infirmity in the judgments impugned before us. The civil appeals accordingly fail.

42. As regards the intervention applications, we find that several candidates who were successful in the Civil Services Examination of different years sought permission to intervene the present proceedings to advance their respective contentions. They submit, in substance, contentions similar to those urged by the respondent candidates in the civil appeals, asserting that they belong to the Non-Creamy Layer of the Other Backward Classes. It is their case that their applications, representations, or proceedings are presently pending consideration before the Department of Personnel and Training (DoPT), the High Courts or the Central Administrative Tribunal, and that any decision rendered in the present batch of matters would have a direct bearing upon their entitlement. Accordingly, they seek appropriate orders in the present proceedings.

43. At this juncture, it is to be noted that supernumerary posts have already been assured by the DoPT and this position stands recorded in the 21st Report of the Parliamentary Committee on the Welfare of Other Backward Classes. In view thereof, we find no difficulty in directing the appellants to create such supernumerary posts, as required, to accommodate the candidates who satisfy the non-creamy layer criteria as clarified in the present judgment, subject to their otherwise fulfilling eligibility conditions.

CONCLUSION

44. To sum up

(i) All the Civil Appeals are dismissed.

(ii) The appellants are directed to consider the claims of the respondent candidates and intervenors in accordance with the principles laid down in this judgment, and to implement the same within a period of six months from the date of this judgment.

(iii) There shall be no order as to costs.

(iv) Pending application(s) including Intervention Applications, stand disposed of accordingly.

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

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

New Delhi;

March 11, 2026.

- 1 For short, "CAT"
- 2 For short, "1993 OM"
- 3 For short, "DoPT"
- 4 1992 Supp (3) SCC 217
- 5 (2000) 1 SCC 168
- 6 (2008) 6 SCC 1
- 7 1992 Supp (3) SCC 217
- 8 For short, "2004 Letter"
- 9 (2022) 4 SCC 64
- 10 (1994) 6 SCC 241
- 11 1992 Supp (3) SCC 217
- 12 (2005) 10 SCC 244
- 13 MANU/TN/9958/2006
- 14 (1989) 4 SCC 468
- 15 (1992) 1 SCC 331
- 16 1994 Supp (1) SCC 94
- 17 (1996) 10 SCC 177
- 18 (1997) 11 SCC 488
- 19 (2009) 14 SCC 173
- 20 For short, "NCBC"
- 21 1992 Supp (3) SCC 217
- 22 AIR 1963 SC 649
- 23 1968 SCR (3) 595
- 24 1985 SCC OnLine SC 339

25 (1976) 3 SCC 730

26 (1964) 6 SCR 368 : AIR 1964 SC 1823

27 1992 Supp (3) SCC 217

28 1992 Supp (3) SCC 217

29 1992 Supp (3) SCC 217

30 MANU/SC/0479/1975 : 19.09.1975 - SC

31 1992 Supp (3) SCC 217

IN THE SUPREME COURT OF INDIA

M. Thanigivelu and Ors.

Vs.

Tamil Nadu Electricity Board and Ors.

[Civil Appeal No. 862 of 2026

arising out of SLP (C) No. 8374 of 2025]

Tamil Nadu Electricity Board Engineers Association

Vs.

Tamil Nadu Electricity Board and Ors.

[Civil Appeal Nos. 863-864 of 2026

arising out of SLP (C) Nos. 9095-9096 of 2025]

V. Ranganathan and Ors.

Vs.

Tamil Nadu Electricity Board and Ors.

[Civil Appeal No. 865 of 2026

arising out of SLP (C) No. 12940 of 2025]

Tamil Nadu Electricity Board and Ors.

Vs.

Rajan and Ors.

[Civil Appeal Nos. 866-872 of 2026

arising out of SLP (C) Nos. 14044-14050 of 2025]

Head Note – The seniority of a direct recruit is to be counted from the first date of their joining after which they were sent for training. The period therefor is irrelevant. It may change from time to time.

JUDGMENT

Rajesh Bindal, J.

1. Leave granted.

2. This judgment will dispose of a bunch of appeals involving identical issues. Vide common judgment¹, passed by the Division Bench of the High Court², seven writ appeals³ were disposed of. The Division Bench of the High Court had set aside the order passed by the Single Bench whereby writ petitions filed by the private respondents herein were dismissed. The dispute pertains to inter-se seniority of the Assistant Engineers (Electrical)⁴, directly recruited and internally selected candidates. The appellants are the direct recruits, and the private respondents are the internally selected candidates.

3. Briefly, the facts relevant to the issue under consideration, as pointed out by the learned counsel for the parties at the time of hearing, are as follows.

3.1 Tamil Nadu Electricity Board⁵ contemplated selection to the post of AE on direct recruitment basis and for internal candidates. Both have their separate quotas.

3.2. Vide Board Proceeding⁶ No.29 dated 27.11.2000 issued by the Board, written examination was introduced for the selection to the post of AE on direct recruitment basis. Vide another BP No.39 issued on 04.12.2000, for carrying out selection for the post of AE, even for internal candidates, a written examination was proposed. Prior to that, on 03.11.2000, the Board had called for information regarding eligible candidates for appearance in examination for the internal selection quota. It was for the purpose of considering their suitability for promotion as AEs.

3.3 The prospective candidates, seeking selection through internal selection process, challenged the communication dated 03.11.2000 by filing Writ Petition No.20512 of 2000 before the High Court. The High Court granted interim stay on 06.12.2000.

3.4 BP No.35 was issued by the Board on 13.12.2000 providing that all appointed as AE (Training) shall undergo training, for a period of two years including induction training of three months with consolidated emoluments of ₹7,500/- per month. After carrying out the process of selection in December 2000 on direct recruitment basis, 200 AEs were appointed.

3.5 Subsequent thereto, after due process of selection, 100 more AEs were appointed on direct recruitment basis on 28.03.2001.

3.6 BP No.59 was issued by the Board on 13.11.2001 to dispense with the written examination for internal candidates from the date of issuance of BP.

3.7 BP No.9 issued by the Board on 23.04.2002 pertains to direct recruits providing that on completion of 3 months of intensive training AE (Trainee) shall be designated as AEs and their probation shall commence from the date of joining in the Board and will be for two years.

3.8 Thereafter, the selection process for internal candidates was carried out and the select list was issued on 06.05.2002. Consequently, appointments were made in that quota.

3.9 Writ Petition No.19596 of 2002 was filed by the internal selectees challenging BP No.9 vide which the training period of the candidates selected on direct recruitment basis was reduced from two years to three months.

Subsequent thereto, number of other writ petitions were filed claiming the same relief.

3.10 On 31.10.2007, inter-se seniority of AEs selected in the year 2000 was issued. It was revised on 01.04.2008. The same was also impugned before the High Court in W.P. 20879/2008.

3.11 On 03.07.2008, inter-se seniority of AEs selected and appointed in the year 2001 was issued. The same was also the subject matter of the challenge in W.P. No.20875/2008.

3.12 In the year 2009, AEs appointed on direct recruitment basis in the year 2000 and 2001 were promoted to the post of Assistant Executive Engineer on the basis of their seniority.

4. The writ petitions⁷ filed by the internal selectees were dismissed by the Single Bench of the High Court holding that the directly recruited AEs in the year 2000 and 2001 were entitled to seniority from the date of their initial appointment. The aforesaid order was challenged by filing intra-court appeals before the Division Bench of the High Court.

5. The Division Bench set aside the order passed by the Single Bench and directed re-drawing of the seniority list treating that all the candidates were appointed in the year 2002.

6. It is this judgment of the High Court decided a bunch of appeals which is the subject-matter of challenge before this Court by the Board as well as the direct recruits. The respondents are the internal selectees.

ARGUMENTS ON BEHALF OF THE BOARD

7. Mr. Amit Anand Tiwari, learned counsel appearing for the Board, submitted that, in the case in hand, on direct recruitment basis 200 candidates were selected in December 2000, whereas 100 were selected and appointed on 28.03.2001. As against that, the internal candidates were selected and promoted on 06.05.2002. For the purpose of determining the issue as to whether the seniority of the direct recruits is to be reckoned from the date of their initial appointment, including the period of training or from the date when they were put on probation, after completion of training, he has referred to Regulation Nos. 10(9), 87 and 97 of the Tamil Nadu Electricity Board (Service Regulations), 1967.

7.1 The argument raised while referring to Regulation 10(9), is that a person is said to be on duty when he is performing the duties of a post or is undergoing the probation or training prescribed for the post.

7.2 While referring to Regulation 87(1), it was submitted that a person is said to be appointed to the service at the time he discharges for the first time, the duties on a post or commences probation or training prescribed therefor.

7.3 Referring to Regulation 97 dealing with the seniority, it was submitted that the seniority is to be determined with reference to the rank obtained by a candidate in the list of approved candidates by the appointing authority. It was submitted that the commencement of the probation is from the date a candidate joins duty, irrespective of his seniority. This has nothing to do with determination of inter-se seniority of the recruits from two different sources.

7.4 Explaining the proviso to the aforesaid Regulation, it was submitted that the same shall be applicable for determination of inter-se seniority of the direct recruits and the internal candidates in case both were recruited in the same calendar year. The case in hand does not fall in that category as the direct recruits were selected in the years 2000 and 2001, whereas the internal candidates were promoted in May 2002.

7.5 It was further argued that the Division Bench of the High Court has recorded erroneous findings to the effect that the seniority of the direct recruits is to be taken from the date when their probation started. The training period is to be excluded.

7.6 In support of the arguments, reliance was placed upon the judgments of this Court in R.S. Ajara and Others v The State of Gujarat⁹ and the State of H.P. v J. L. Sharma¹⁰.

ARGUMENTS ON BEHALF OF APPELLANTS / DIRECT RECRUITS

8. Mr. Nikhil Goel, learned senior counsel appearing for appellants, submitted that the problem arose on account of different B.Ps issued by the Board. He referred to B.P. No.35 dated 13.12.2000 whereby B.P. No.29 dated 27.11.2000 was amended. It clearly laid down that an incumbent shall be placed on probation for two years on completion of training. However, the same was never implemented.

He further referred to B.P. No.9 dated 23.04.2002 in which it has been noticed that representations had been made by AE (Trainee) stating that two years' training period on consolidated pay may be reduced as they are independently attending to the work attached to the post of AEs, three months after intensive training. Vide aforesaid circular, the training period of newly recruited AEs (Trainee) during December 2000 to March 2001 was reduced from two years to three months.

9. Promotions from the quota of internal candidates was made in May 2002. On 03.06.2002, W.P. No.19596 of 2002 was filed by the internal candidates who were appointed to the post of AE (Electrical) in May 2002, praying for the quashing of B.P. No.9 dated 23.04.2002 with a further direction that the service of the directly recruited AEs (Trainees) be regularised only on completion of two years from the date of appointment. It was argued that the aforesaid BP was administrative in nature and could not override the Regulations, which are quite explicit.

10. The Single Bench dismissed the Writ Petitions. However, the Division Bench, without pointing out any error in the judgment of the Single Judge, has just reversed the same. The import of the Regulations applicable to the post has not even been touched. As a result of the impugned judgment of the Division Bench, the date of appointment of the candidates who were appointed later will be ante-dated, whereas the direct recruits who were appointed earlier shall be deemed to be appointed later. The interpretation, as given by the Division Bench, runs contrary to the Regulations.

If there was any delay in selection of the internal candidates, they were to be blamed as they had challenged the condition of exam provided for their selection. The examination for internal candidates was prescribed vide letter dated 03.11.2000 and this came to be reiterated vide B.P. No.31 dated 04.12.2000. The aforesaid BP was challenged by the internal candidates by filing W.P. No.20512 of 2000 in which interim stay was granted by the High Court on 06.12.2000. Subsequently, the conditions for holding exam for internal candidates vide B.P. No.31 dated 04.11.2000 was withdrawn vide B.P. No.59 dated 13.11.2001.

11. It was further argued that it is the recruitment to the post of AE (Electrical) and not AE (Trainee). Training is the part of the service as is evident from the Regulations and after training, the probation starts. It cannot be argued that for the purpose of counting seniority of the directly recruited candidates, the period will be counted only from the date the probation started. In support of the argument, reliance was placed upon judgment of this Court in Govt. of A.P. v. P. Bhaskar¹¹.

ARGUMENTS ON BEHALF OF INTERNALLY SELECTED CANDIDATES/PRIVATE RESPONDENTS

12. On the other hand, Mr. Nikhil Nayyar, learned senior counsel appearing for the internal selected candidates submitted that the challenge made by them before the High Court was to the reduction of period of training for the direct recruits, as the same was affecting their seniority. He referred to B.P. No.29 dated 27.11.2000 and B.P. No.35 dated 13.12.2000 providing for training

period of 2 years inclusive of three month induction training for all appointees as Assistant Engineer/Electrical (Trainee) on a consolidated pay of ₹7,500/- p.m. The recruitment was subsequent to the issuance of the above B.Ps.

12.1 He further referred to appointment letter dated 15.12.2000 issued to directly recruited candidate in which a specific clause was put in that after completion of training, the candidate will be placed on probation for a period of two years on a regular pay scale. The same was to happen after completion of training for a period of two years on a consolidated pay. The aforesaid conditions were never challenged by any of the direct recruits.

12.2 He had referred to another appointment letter dated 27.12.2000 containing similar clause. This also provided that the newly recruited candidate will have to undergo training for a period of two years.

12.3 The argument was that the recruitment of direct recruits was made after the issuance of the aforesaid B.Ps. Subsequent thereto, B.P. No.9 dated 23.04.2002 was issued which reduced the period of training from two years to three months. The benefit of aforesaid BP was sought to be given to the candidates who had already been recruited. This was the reason for the internal candidates to approach the Court. This action of the Board was affecting the seniority of internal selected candidates.

The High Court had rightly opined that the aforesaid BP should be considered as prospective and not retrospective. Even referring to Regulations 89 and 97, the argument is that the seniority is to be counted only from the date probation starts. This is the opinion of the High Court as well. There is no error in the impugned judgment of the High Court. The appeals deserve to be dismissed.

13. Mr. Gautam Narayan, learned senior counsel appearing for the private respondents while adopting the arguments addressed by Mr. Nikhil Nayyar, Senior Advocate, submitted that the whole idea of issuing BP No.9 was to bypass the provisions of Regulation 97 which clearly provide the manner in which seniority of the direct recruits and the internal candidates is to be determined. In fact, the private respondents were eligible in the year 1997 for being promoted. However, the process of selection was delayed. As a result, there being no fault on their part, their position in the seniority is being compromised. He submitted that the delay in the process of promotion of the private respondents was caused by the direct recruits.

13.1 He further argued that appointment of internally selected candidates was stalled due to introduction of an exam for them. To substantiate the same, it was contended that service regulations did not provide for any such exam and the same was introduced by Board Proceeding. Even the Single Judge in Para

50 of the order, held that Board's issuance of BP, introducing written examinations for internal selectees in violation of service regulations, was the "root cause" for all the problems regarding fixation of inter-se seniority.

13.2 The learned senior counsel further added that an employee enters the cadre only when the period of probation starts and not on the initial date of appointment. This is what Regulation 97 also provides. The internally selected candidates were rightly aggrieved against BP No.9 vide which the period of training of direct recruits was reduced as it was substantially affecting rights of the internally selected candidates, who had much more experience of working in the Board as compared to the direct recruits who had just entered the service. The reason for reducing the period of training is evident from the Note dated 12.02.2002, which also clearly depicts that the training period was not to be counted for qualifying service for the purpose of terminal benefits.

DISCUSSION

14. Heard learned counsel for the parties and perused the relevant referred record.

15. The dispute in the present case pertains to inter-se seniority of AEs (Electrical) coming from two different sources, namely, direct recruits and internally selected candidates. The process is governed by Tamil Nadu Electricity Board Service Regulations, 1967.

16. To appreciate the contentions being raised by the learned counsel for the parties in our view certain Board Proceedings (BP) issued by the Board from time to time need to be summed up hereunder:

Brief narration of various BPs issued by Tamil Nadu Power Distribution Corporation Ltd. (TNPDC), Formerly Tamil Nadu Electricity Board (TNEB)

S. No.	Date	Particulars
1.	27.11.2000	Board Proceeding (BP) No. 29 was issued by TNEB. BP No. 29 provided for introduction of written examination for selection of AEs through direct recruitment. It further provided for consolidated emoluments of ₹7,500/- p.m. during the two-year probation period (as against 6 months at Rs. 2,500/- currently) and stated that after successful completion of probation they will be absorbed as regular AEs in the regular scale of pay.
2.	03.11.2000	TNEB, by letter No.116790/269/G55/G551/2000- 3,

		informed Chief Engineers and Superintending Engineers of TNEB that a written examination is proposed to be held on 11.11.2000 for internal selection of AEs. They were directed to send all eligible and qualified employees to attend the examination.
3.	04.12.2000	BP No. 31. Provided that written examination will be conducted for promotion to post of AE (Electrical) even for existing eligible employees who are qualified.
4.	13.12.2000	BP No. 35 was issued by TNEB, amending para 4 of BP No. 29, as follows: "All appointees as Assistant Engineer/Electrical (Trainee) shall be on training initially for a period of two years including induction training of three months with a consolidated pay of Rs.7,500/- p.m. On completion of the training, he/she will be placed on probation for two years in the time scale of pay which is applicable to the regulation Assistant Engineer/Electrical in the Tamil Nadu Electricity Board. "
5.	12.04.2001	BP No. 23 was issued by TNEB, to amend Annexure I of Service Regulations, as follows: "Internal Selection and Direct Recruitment shall be made in the ratio of 1:1. Internal selection shall be made based on the results of a written test and also based on a minimum length of service rendered after acquiring B.E. Degree or equivalent qualification as may be decided by the Board from time to time."
6.	23.04.2002	BP No. 9 was issued by TNEB. The BP pertained to direct recruits, and provided as under: "(i) On completion of three months intensive training the I Assistant Engineers/ Trainee shall be designated as Assistant Engineers with the duties and responsibilities of the regular Assistant Engineers. (ii) The Assistant Engineers (Trainee) recruited during December 2000 and March 2001 shall be given the time scale of pay on par with the regular Assistant Engineers after completion of 3 months intensive training. (iii) Their probation shall commence from the date of joining in the Board and will be for a period of two years within a continuous period of three years."

17. The relevant provisions or the Regulations dealing with the issue are extracted below: "10. Unless there be something repugnant in the subject or

context the terms defined in this chapter are used in these regulations in the sense here explained:

(9) DUTY: A person is said to be on duty a) when he is performing the duties of a post or is undergoing the probation, instructions or training prescribed for a post in a class of service;

87. (1) Appointed to a Class of Service: A person is said to be "appointed to a class of service" when in accordance with these regulations or in accordance with the Regulations applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such class of service or commences probation, instruction or training prescribed for members thereof.

Explanation: The appointment of person holding a post borne on the cadre of one category or class of service or a post in another category or class of service or to discharge the current duties thereof does not amount to appointment.

(2) Approved Candidate means, a candidate whose name appears in an authoritative list of candidates approved for appointment to any class of service or post borne on the cadre of a class of service.

97. SENIORITY:

(a) The seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Board or other appointing authority, as the case may be. The date of commencement of his probation shall be the date on which he joins duty irrespective of his Seniority. Provided that the seniority of Assistant Engineers (Electrical)/ (Civil)/ Mechanical recruited both by Internal Selection and direct recruitment in the ratio of 1:1 in a particular calendar year shall be fixed in the following cyclic order:

1. Internal Selection
2. Direct Recruitment"

Opinion Expressed By The High Court

18. The Division Bench of the High Court held that the Board has the power to prescribe training as a qualification for appointment. Consequently, B.P. No. 35, which mandated a two-year training period for direct recruits, was deemed valid and consistent with the Regulations. Further, regarding B.P. No. 9, issued on 23.04.2002, reducing the training period to three months, the Division

Bench opined that this proceeding could not be applied retrospectively to start probation of the direct recruits from initial joining dates in 2000 or 2001.

There cannot be any quarrel with the aforesaid view expressed by the High Court as it only talks about period of training of a direct recruit. The Division Bench ruled that direct recruits could only be considered to have started their probation on and after 23.04.2002 (the date B.P. No. 9 was issued). Before this date, they were designated as "trainees" and, by the express terms of the BPs, were prohibited from exercising the powers and duties of regular AEs. Since both the direct recruits and the internal selectees were now considered recruited in the same calendar year (2002), the Division Bench directed the Board to redraw the seniority list.

CONCLUSION

19. As far as the date of appointment of the candidate from two different sources of recruitment is concerned, the direct recruits were selected and appointed in December 2000 to March 2001 whereas the internally selected candidates were appointed by way of promotion in May 2002.

20. The issue to be considered in the present appeals is as to what is to be taken as the date of the appointment of the direct recruits. In our opinion, instead of going into the language used in various BPs issued by the Board, which had merely resulted in creating confusion to some extent, the complete answer lies in the Regulations.

21. Chapter 2 of the Regulations provides for the definition of 'Duty' in Regulation 10(9). From a bare perusal thereof, it is evident that a person is said to be on 'duty' when he is performing the duties of the post or is undergoing probation or training prescribed for the post. In the case in hand, the argument raised by the counsel for the respondent runs contrary to the plain language of Regulation 10(9) as noticed above. They wish to state that the period during which the direct recruits were undergoing training should not be counted for the purpose of seniority, while the Regulation treats them on duty.

22. If we go further, Regulation 87 which is part of Chapter 10 again containing certain definitions with the title 'Appointed to a Class of Service'. It clearly mentions that a person shall be appointed to a class of service when he discharges for the first time, the duties of the post or commences probation or training prescribed therefor.

22.1 Taking this further, even Regulation 97 is also in the same line and consistent with the aforesaid two regulations. Regulation 97 talks about seniority. It does not talk about the date of appointment which in fact had already been clarified in Regulations 10(9) and 87. It only mentions that the

seniority shall be determined on the basis of the rank obtained by a candidate in the list of approved candidates drawn by the Board or any other appointing authority. Date of commencement of probation shall be the date on which he joins duty, irrespective of seniority.

22.2 In our opinion, from the plain language used in the aforesaid Regulation, it is evident that seniority is to be counted from the placement of a candidate in the merit list which is prepared at the time when recruitment takes place. As provision has been made for two years' probation after selection, different candidates may join on different dates during the permitted joining time. The period of probation he had to undergo will remain two years from the date he joins duty. The merit will not affect completion of probation.

22.3 Proviso to the aforesaid regulation will not come in aid of the respondents, as it talks about the seniority of Assistant Engineers recruited from two sources i.e. both by way of internal selection and direct recruitment in a particular calendar year in the ratio of 1:1. It is for the reason that selection in the case in hand of direct recruits was made in December 2000 and March 2001 whereas the internal selected candidates were promoted in May 2002. In case, the argument raised by learned counsel for the respondents is accepted, it will wash off the service rendered by the direct recruits from the date of their initial appointment.

At the cost of repetition, it is added that training is a part of service which is imparted after an incumbent joins duty. Even Regulations treat this as a part of duty. Merely payment of consolidated sum during the period of training and regular scale when the probation starts will not make any difference. That is why Regulations 97 does not say anything to the contrary to what is clearly provided in Regulations 10(9) and 87. No Regulation has been cited before us from which it can be inferred that the seniority is to be counted from the date a candidate starts his probation.

23. Even issuance of B.P. No.9 dated 23.04.2002 vide which the training was reduced from two years to three months will not have any bearing on the case in hand. The High Court has misdirected itself in treating that BP to be relevant for the purpose of determination of seniority of the direct recruits in the case in hand. No doubt, it will have application from the date on which the same has been issued.

However, only for the purpose of the period of training, any candidate recruited and sent for training even if for a period of three months will be treated to have been recruited on day when he joins service and sent for training. In fact, this BP did not give a cause of action to the internal candidates to challenge the same, even if it had reduced training period of directly recruited candidates. It

is the wisdom of the employer regarding how much period of training is to be imparted to a candidate selected for the post. Nothing was mentioned in the aforesaid BP regarding seniority. It was a creation of the self-imagination of internal candidates. It may only affect the emoluments to which such a candidate may be entitled to.

24. Anything said either in the appointment letter or in any of the BPs which runs contrary to the plain language of Regulation 10(9) and 87 will not stand in the way for this Court to form an opinion that the seniority of a direct recruit is to be counted from the first date of their joining after which they were sent for training. The period therefor is irrelevant. It may change from time to time.

25. For the reasons mentioned above, the present appeals are allowed. The impugned judgment passed by the High Court is set aside. The opinion expressed by the Division Bench of the High Court to the extent that the seniority will commence from the date the candidate starts his probation is totally erroneous. Such a view is not supported by the plain language used in the Regulations.

26. Pending application(s), if any, shall stand disposed of.

.....J. (Rajesh Bindal)

.....J. (Vijay Bishnoi)

New Delhi;

March 11, 2026.

1 Dated 06.09.2024

2 High Court of Judicature at Madras

3 W.A. Nos.2093, 2094, 2095, 2685, 2686 of 2010 and 1443 & 1444 of 2018

4 Hereinafter 'AE'

5 For short, 'the Board'

6 For short, 'BP'

7 WP No. 19596 of 2002 & connected matters

8 Hereinafter referred to as, 'the Regulations'.

9 1997 INSC 213: (1997) 3 SCC 641

10 1997 INSC 736: (1998) 1 SCC 727

11 (2008) 11 SCC 687; 2008 INSC 267

IN THE SUPREME COURT OF INDIA

**Dablu Etc.
Vs.
State of Madhya Pradesh
[Criminal Appeal Nos. 1819-1821 of 2011]**

**Vinod @ Ajay
Vs.
State of Madhya Pradesh
[Criminal Appeal No. 1176 of 2012]**

Head Note – It is settled in law that in view of Section 149 IPC, every member of the unlawful assembly is vicariously liable for acts done by anyone of them to achieve a common object. Therefore, two things are essential to attract Section 149 IPC. The first is “unlawful assembly” and the second is “common object”.

The presence of the accused persons as part of the unlawful assembly is sufficient for conviction even if no overt act is imputed to each one of them individually.

JUDGMENT

Pankaj Mithal, J.

1. These appeals have been preferred by four accused/convicts sentenced to life imprisonment in a case concerning the murder of one Balkishan.
2. Criminal Appeals Nos. 1819-1821 of 2011 have been preferred by accused Dablu (A-1), accused Kamlesh (A-2) and accused Pratap @ Pratap Narayan (A-5), whereas Criminal Appeal No. 1176 of 2012 has been preferred by accused Vinod @Ajay (A-4).
3. Out of the six accused persons, one Govind Singh (A-3) had died earlier and the main accused Vikram remains absconding.
4. All the aforesaid appellants were convicted and sentenced to one year rigorous imprisonment and for life along with fine of Rs.500/- each under Sections 148 and 302/149 of the Indian Penal Code¹ respectively. They were acquitted of the charges under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The aforesaid conviction and sentence have been upheld by the High Court vide impugned judgment and order dated 09.11.2010 whereby the appeals preferred by the appellants were dismissed.

5. The incident is of 03.06.2000. On the said date, at about 8:15 am, the deceased Balkishan who was the Chairman of Watershed Committee was sitting at the Tihuli bus stand waiting to travel to attend the Watershed Committee meeting. At that time, all the six accused persons alighted from a bus armed with firearms. Vikram was alleged to be in possession of a mouser; Govind Singh (now deceased) with a double barrel 12- bore gun; Vinod @ Ajay with a single barrel 12-bore gun; and the other three with country made pistols (kattas).

It is alleged that Vikram fired the first shot from behind a standing tractortrolley, which hit the deceased on his left hand. On being hit, the deceased ran towards the village to save his life. He was chased by all the accused persons who kept on firing continuously. The deceased entered the house of one Rattan Lal (PW-6). The accused persons followed him inside the house, dragged him to the courtyard, and shot him at the temple at point-blank range. The deceased died instantly. The accused persons then ran away towards the jungle.

6. The First Information Report (Exh. P-3) was lodged on the same day i.e. 03.06.2000 at 9:30 am at Police Station Uteela by Budha Ram (PW-2), brother of the deceased against all the aforesaid six accused persons.

7. The crime so committed was investigated and two chargesheets (main and supplementary) were filed against the five accused persons except the main accused Vikram, who was absconding. Accordingly, two separate cases, Special Case No. 12 of 2001 and Special Case No. 1 of 2002 came to be registered, which were later merged for trial and the lead case happened to be Special Case No. 12 of 2001.

8. We have heard Shri S. Mahendran, learned counsel for the appellants in Criminal Appeal Nos. 1819-1821 of 2011 and Shri Prafulla Kumar Behera, learned counsel for the appellant in Criminal Appeal No. 1176 of 2012. Shri Shreeyash U. Lalit, learned counsel had appeared for the State of Madhya Pradesh and argued the matter in defence.

9. Learned counsel for the appellants argued that the alleged offence is said to have been committed in two parts. The first part relates to the incident of firing at the bus stand where the first shot was allegedly fired at the deceased and the second part relates to the incident of firing at the house of Rattan Lal (PW-6), where the deceased was chased and fired upon. It is contended that there is no reliable eye-witness to the second incident. The only independent witness, Rattan Lal (PW-6), did not see the accused appellants firing at the deceased and stated that he had not seen the accused persons, except the main accused

Vikram, inside his house or feeling from there and had only heard the firearm shots.

It is further argued that the prosecution witnesses are closely related to the deceased and are interested witnesses. Their testimonies contain material contradictions and improvements, hence their evidence cannot be said to be trustworthy. The presence of the witnesses at the spot is also doubtful. It is also submitted that no recovery of weapons or incriminating material was made from the present appellants and the medical and forensic evidence does not conclusively support the prosecution case.

Learned counsel further contended that the prosecution has failed to establish the participation of the appellants with any specific overt act so as to attract the application of Section 149 IPC. It is also argued that there are serious procedural lapses in the investigation including non-compliance with the mandatory requirements under Sections 157 and 174 CrPC and the possibility of the FIR being ante-timed cannot be ruled out. In these circumstances, it is submitted that the conviction of the appellants is unsustainable in law.

10. Shri Shreeyash U. Lalit, learned counsel for the State submitted that there was a long drawn political rivalry between the main accused Vikram and the deceased. Therefore, there was a clear motive on part of the accused persons who accompanied the main accused to kill the deceased. All the accused persons were part of the unlawful assembly as they had alighted from the same bus with firearms, which indicated that they had come with a common motive and as such were all vicariously liable for the offence of killing the deceased.

Further, the incident of firing at the bus stand which hit the elbow of the deceased is clearly proved and it is established that all the accused chased the deceased, who entered the house of one Rattan Lal (PW-6), where he was dragged and shot. The recovery of cartridges from the courtyard of the house of Rattan Lal (PW-6) and the medical report showing the number of entry and exit wounds on the deceased amply prove that all the accused were involved in firing. Accordingly, the courts below have not committed any illegality in convicting and sentencing them despite the fact that there may be some discrepancy in the ocular evidence of the witnesses and some unnatural behaviour on their part.

11. The ocular evidence of Budharam (PW-2), the brother of the deceased, who lodged the first information report proves that there was a long-standing political enmity between the families of the main accused Vikram and the deceased Balkishan. The wives of both of them had contested the panchayat election from two different political parties in the year 1994, wherein the wife of the deceased defeated the wife of the main accused Vikram. The said ocular

evidence stands supported by the other witnesses PW-5 and PW-7, one being the brother of the deceased and the other his nephew. In view of the above evidence, and nothing contrary to it, it is evident that the main accused Vikram had a long-standing rivalry with the deceased and, thus, had the motive to kill him.

12. It is also a fact established from the consistent evidence of the witnesses that on the fateful day, the main accused Vikram and the other accused persons arrived at the Tihuli bus stand in a bus. They were seen alighting from the bus with firearms. Vikram had a mouzer, Govind Singh (A-3), since deceased had a double-barrel 12-bore gun, Vinod (A-4) with a single-barrel 12-bore gun, and the remaining three had country-made pistols. The very fact that all of them came together armed with firearms clearly proves that they were part of the unlawful assembly and had a common motive.

Therefore, the provisions of Section 149 IPC are clearly attracted, and even if any one of them had not committed an overt act, they are vicariously liable for the death of the deceased Balkishan. It may also be noted that the evidence on record proves that after the first shot was fired at the deceased at the bus stand by the main accused Vikram, all of them chased the deceased to the house of Rattan Lal (PW-6) where a number of shots were fired which were heard by the independent witness Rattan Lal (PW-6). This in itself proves that all of them were involved in the incident.

13. It is settled in law that in view of Section 149 IPC, every member of the unlawful assembly is vicariously liable for acts done by anyone of them to achieve a common object. Therefore, two things are essential to attract Section 149 IPC. The first is "unlawful assembly" and the second is "common object". The presence of the accused persons as part of the unlawful assembly is sufficient for conviction even if no overt act is imputed to each one of them individually.

In the case at hand, all the accused persons had alighted from the bus together armed with firearms, thus, they were part of the unlawful assembly and had arrived at the bus stand with a common object. The movement of the accused persons in the above manner is sufficient enough to draw an inference that they had a common object. Therefore, the presence of the accused persons in the unlawful assembly to achieve a common object makes all of them vicariously liable for the acts of the unlawful assembly.

14. The oral evidence of most of the witnesses, i.e., Naval Kishore (PW-3)-son of the deceased, Mahesh (PW-5)-nephew of the deceased, Pritam (PW-7)-nephew of the deceased and Kashi Ram (PW-9)-the brother of the deceased, is virtually the same. They all have stated that they have witnessed the accused

persons alighting from the bus and that all of them after the first shot was fired at the bus stand, chased the deceased up to the house of Rattan Lal (PW-6) where a number of shots were fired, killing the deceased.

15. The fact that they admitted having seen the incident at the bus stand, and yet took no steps either to save the deceased or to take him to the hospital once he was injured or dead may be very unnatural behaviour on their part, but nothing much hinges upon that in the light of the other evidence on record which goes on to prove the commission of the offence by the accused persons.

16. There is no dispute to the fact that the main accused Vikram is still absconding, meaning thereby that he is trying to escape for the simple reason that in his subconscious mind he accepts himself to be guilty of the commission of the offence along with his accomplices. There is also no dispute that the other accused were accomplices of him and were part of the unlawful assembly who had arrived at the bus stand fully armed, thus, having a common intention.

17. The post-mortem report and the statement of Dr. V. K. Diwan (PW-1) who conducted the post-mortem, clinchingly prove that the deceased suffered multiple gunshot wounds with an entry wound near the right eye, on the chest and on the lower back. There were three exit wounds also. About 40 pellets (charras) were recovered from the body of the deceased. The doctor was of the clear opinion that all the injuries were caused by firearms and were sufficient to cause death. Simply for the reason that the doctor could not confirm if the injuries received by the deceased were from one weapon or multiple weapons does not make any difference so as to discard his evidence in entirety.

18. Besides the above, the recovery of the empty cartridges from the courtyard of Rattan Lal (PW-6) as well as the ballistic reports (Exh. P-11 and P-13) prove that they were fired from a 12-bore gun, though not from the gun which was seized from one of the accused Govind Singh (A-3). In a way, the evidence proves that the main accused Vikram fired at the deceased at the bus stand, which hit his elbow, and that the deceased suffered multiple gunshot wounds, which were opined to have been fired from a 12-bore gun. Thus, the involvement of not only the main accused Vikram but also the other accused who were carrying firearms, is duly established.

19. The mere fact that the independent witness PW-6 did not see any of the accused persons firing upon the deceased or fleeing away from his house except Vikram, does not make any difference, nor does it belie the prosecution story that all the accused had chased the deceased from the bus stand to his house and that multiple shots were fired resulting in the death of the deceased.

This in itself is sufficient to rope in all the accused by applying Section 149 IPC.

20. The argument of non-compliance with Section 157 CrPC in itself is not fatal to the prosecution or sufficient to hold that the accused persons are not guilty of the commission of the alleged offence. The High Court has properly dealt with the above aspect and has rightly ignored the same as admittedly the above alleged procedural lapse, if any, was not proved by summoning the record of the court of the magistrate.

21. In view of the aforesaid facts and circumstances, we are of the opinion that the judgments and orders passed by the two courts below, do not suffer from any illegality which may require to be disturbed by us in appeal. Accordingly, the appeals are dismissed confirming the conviction and the sentence imposed upon the appellants. The appeals are accordingly dismissed.

22. The appellants are on bail. They are directed to surrender forthwith to undergo the remaining part of the sentence.

23. Pending application(s), if any, stands disposed of.

.....J. [Pankaj Mithal]

.....J. [S.V.N. Bhatti]

New Delhi;

March 11, 2026.

1 Hereinafter referred to as "the IPC"

IN THE SUPREME COURT OF INDIA

Ravi Khokhar and Ors.

Vs.

Union of India and Ors

**[Civil Appeal No. _____ of 2026
arising out of SLP (C) 27366 of 2023]**

Head Note – Air Force Group Insurance Society to be a 'State' under Article 12 of the Constitution, amenable to Writ Jurisdiction.

Since the Air Force Group Insurance Society performs a public function closely linked to the State's obligations toward members of the Indian Air Force, it qualifies as a State.

JUDGMENT

Sanjay Karol, J.

1. Leave Granted.

THE CONTROVERSY IN A NUTSHELL

2. The Appellants are employees of the Air Force Group Insurance Society¹ established under the Societies Registration Act, 1860² in the year 1976, with sanction of the Hon'ble President of India, having been received in the same year on 6th October. The dispute germane to this is that while the Board of Trustees, had, vide special meeting dated 27th December 2016 decided that the pay scales of the workers would be revised in accordance with the Sixth Pay Commission of the Government of India, subsequently, by way of meeting dated 13th February 2017 resolved that pay structures would be revised in a way that any linkage/connection to and pay parity with the Central Government, by virtue of the Pay Commissions be done away with, and according thereto, asked all employees by way of notice dated 22nd May 2017 to sign their acceptance to the revised terms.

THE IMPUGNED JUDGMENT

3. The appellants, aggrieved thereby, filed Writ Petitions before the High Court of Delhi³ which were dismissed by a common judgment dated 1st February 2023. The findings of the Learned Division Bench can be summarised as follows:

3.1 The Court's central finding was that none of the respondent organisations, namely the Air Force Group Insurance Society, the Air HQs Non-Public Fund Organisation, or the CRPF Employees' Educational Society, could be treated as "State" or "other authority" within the meaning of Article 12 of the Constitution of India. This determination was foundational, because the Court held that unless the respondents satisfied the requirements of Article 12, the writ petitions under Article 226 were not maintainable and the Court cannot not adjudicate on claims relating to pay parity, service conditions, promotions, retirement age, or implementation of Pay Commission recommendations.

In examining the status of the Air Force Group Insurance Society, the Court found that it is a Society registered under the Societies Registration Act, 1860, established in 1976 as a self-contained and self-run welfare and insurance scheme meant exclusively for Air Force personnel and their families. While senior Air Force officers form part of the Board of Trustees and certain officers are posted with the Society on deputation, the Court held that this association does not translate into deep or pervasive governmental control. The day-to-day administration of the Society is carried out under its own internal governance framework, and its finances are sourced entirely from member contributions and the insurance fund rather than from any budgetary allocation or grant from the Central Government.

The Court placed particular reliance on the appointment letters of AFGIS employees, which expressly state that their service conditions are governed by the Rules of the Society as amended from time to time. The Court noted that there is no statutory or contractual guarantee of parity with Central Government employees and that allowances and pay structures are subject to approval by the Board of Trustees. The Court, therefore, concluded that even if historical parity with Central Government pay scales had existed in practice, it did not create any enforceable legal right nor did it convert AFGIS into an instrumentality of the State.

3.2 While addressing the legal tests applicable to Article 12, the Court reaffirmed the principles laid down by the Constitution Bench of the Court in *Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others*⁴, which emphasised that the decisive question is not how an entity is created but whether it functions as an instrumentality or agency of the Government.

The Court further relied on *Pradeep Kumar Biswas and Others v. Indian Institute of Chemical Biology and Others*⁵, where the Supreme Court clarified that the tests laid down in *Ajay Hasia* (supra) are not rigid and that the cumulative facts must demonstrate financial, functional, and administrative domination by the Government, with control that is deep and pervasive. The Court also drew support from *Chander Mohan Khanna v. National Council of*

Educational Research and Training⁶, which cautioned against an over-expansive interpretation of Article 12 merely on the basis of governmental association or assistance.

The Court specifically rejected the petitioners' reliance on *Sagarika Singh v. Union of India and Others*⁷, noting that the reasoning in that decision had subsequently been disapproved by a larger Bench of the Delhi High Court in *Ex. Sub. Rajender Singh v. Union of India and Others*⁸. The Court observed that the larger Bench had clarified that welfare or insurance schemes connected with the armed forces cannot automatically be treated as "State" in the absence of pervasive governmental control, and that the earlier view taken in *Sagarika Singh* (supra) no longer represents good law.

3.3 Applying these settled principles to the facts of the present cases, the Court concluded that all the respondent organisations are autonomous, self-funded societies established for the limited benefit of their members and not for the public at large. The Court found no evidence of financial dependence on the Central Government, nor any administrative or functional domination of the kind required to attract Article 12. Consequently, the writ petitions were held to be not maintainable. The interim protection granted in one of the petitions was vacated, and all petitions were dismissed with liberty granted to the petitioners to pursue their remedies before appropriate alternative forums such as civil courts or labour adjudicatory bodies.

3.4 It has to be noted that the status of certain other bodies as "State" within the meaning of Article 12 was also a question before the High Court, namely Air HQs Non- Public Fund Organisation and CRPF Employees' Educational Society, but since the determination in respect thereof is not under challenge before us, we need not enter into the particulars thereof.

THE CASE OF THE PARTIES

A. The Appellants

4. We have heard Mr. Shoeb Alam, learned senior counsel for the appellants. It is submitted that AFGIS has represented itself to be 'Government' in official correspondence. As an example, a letter dated 15th March 2016 was shown. The cumulative test is financial functional and administrative dominance of the Government and accordingly it is submitted that the day-to-day affairs are managed by serving senior officers of the Indian Air Force⁹. The very establishment was with the sanction of the Hon'ble President of India, and membership of this Organisation is compulsory for all Officers and Airmen.

Further, the land on which the office is situate has been granted by the Ministry of Defence, Government of India, and it also enjoys exemptions from various

taxes levied. Still further, it is also highlighted that the functions performed by AFGIS are of public importance and welfare oriented. Heavy reliance is placed on a recent judgment of this Court in *Rajkaran Singh v. Union of India*¹⁰, wherein this Court examined the issue concerning employees of a compulsory savings fund being entitled to benefits of the Central Pay Commission, which was answered in the affirmative given alignment of service conditions, pervasive government control and public function. As such, the appellants, being similarly placed would also be entitled to the benefits of the 7th Pay Commission in line with the past position where they have been granted the said benefits.

B. Respondent-AFGIS

5. Mr. Ankur Chibber, learned Counsel appeared for AFGIS and submitted that the body is not 'State' within the meaning of Article 12 for it is a self-financed, non-public fund society. The premiums paid by the members are deducted centrally by the Air Force Central Accounts Office and then remitted to the Organisation. This is the only source of funds, and it has no inflow or outflow from the Consolidated Fund of India. During the time when the officers of IAF come to the Organisation on deputation their salary and allowances are borne by the AFGIS itself.

It also employees 47 civilian staff members who are not government servant. The members of the Board of trustees are ex-officio and do not receive any remuneration in respect of these duties. The accounts are maintained by a privately hired Chartered Accountant and AFGIS does not submit any report to the Comptroller and Auditor General of India. It is as such submitted that the High Court's holding in the impugned judgment that a petition under Article 226 will not be maintainable, is the correct position in law.

C. Respondent-UNION OF INDIA

6. Mr. Vikramjeet Banerjee, learned ASG appeared for the Union of India and supported the stand of AFGIS.

CONSIDERATION ON MERITS

7. Since the advent of the Constitution, the question of whether a particular body can or cannot be recognised as 'State' within the meaning of Article 12¹¹ has arisen time and again. Initially, this Court adopted a narrow and formalistic approach focusing on whether the body concerned which was created under a statute was part of the traditional Government structure. Over the time however, as functions of the Government expanded multi-fold there was a shift in this approach. State instrumentalities, corporations and autonomous bodies

were recognised as covered under this Article, with the shift to a functional and purposive analysis.

The test to be satisfied pertained to the nature of functions, character of activity, degree of governmental control. This ensured that the breadth or scope of examination when this question arises is not limited to ownership/origin but is instead informed by accountability, the rule of law in furtherance of practical governance. It shall be useful to refer to certain cases to exemplify the requirements that need to be established for an organization be held to be "State".

7.1 P.N Bhagwati J. (as His Lordship then was) writing for the Court in *Ramana Dayaram Shetty v. International Airport Authority of India*¹², observed:

"14. A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters.

So also a corporation incorporated under law is managed by a board of directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial?

Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors

are appointed by Government, they may be completely free from governmental control in the discharge of their functions.

What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

7.2 A Constitution Bench in *Ajay Hasia* (supra) following the tests laid down in *R.D Shetty* (supra) held as under:

"9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority* case [(1979) 3 SCC 489]. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority* case [(1979) 3 SCC 489] as follows:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying

the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [(1979) 3 SCC 489] , be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

7.3 A bench of seven Judges in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology¹³ speaking through Ruma Pal J., referred to the previous decisions of the Court and held as under:

"38. "these are merely indicative indicia and are by no means conclusive or clinching in any case". In that case, the question arose whether the National Council of Educational Research (NCERT) was a "State" as defined under Article 12 of the Constitution. NCERT is a society registered under the Societies Registration Act. After considering the provisions of its memorandum of association as well as the rules of NCERT, this Court came to the conclusion that since NCERT was largely an autonomous body and the activities of NCERT were not wholly related to governmental functions and that the government control was confined only to the proper utilisation of the grant and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution.

39. Fresh off the judicial anvil is the decision in Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Assn. [(2002) 2 SCC 167 : 2002 SCC (L&S) 223 : JT (2002) 1 SC 61] which fairly represents what we have seen as a continuity of thought commencing from the decision in Rajasthan Electricity Board [AIR 1967 SC 1857 : (1967) 3 SCR 377] in 1967 up to the present time. It held that a company substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government is "an authority" within the meaning of Article 12.

40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the

meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

(emphasis supplied)

Recently in *Rajkaran Singh* (supra), on which great reliance has been placed by the appellant, this Court while dealing with the question whether the compulsory savings deposit fund of the Special Frontier Force, was 'State' or not whether the benefit of the 6th Central Pay Commission would be extended to the employees thereof or not. In para 26 of the abovesaid judgment the concluding paras of *Pradeep Kumar Biswas* (supra) were reproduced and thereafter applied to the instant facts.

The concluding paras of the latter judgment indicate the following - to be an authority within the meaning of Article 12 the entity should either be a creation of statute or be created under a statute functioning with liabilities and obligations to the public; Tests 1, 2 and 4 in *Ajay Hasia* (supra) are determinative of ownership and tests 3, 5 and 6 are functional test. It is thereafter observed that "Neither all the tests are required to be answered in the positive nor a positive answer to one or two tests would suffice. It will depend on a combination of one or more of the relevant factors depending on the essentiality and overwhelming nature of such factors in identifying the real source of governing power."

7.4 The discussion made by N. Santosh Hegde J, writing for the majority in *Zee Telefilms Ltd. v. Union of India*¹⁴, is important for the present purposes. It was held:

"31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scotfree merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under

the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] hence there is force in the contention of Mr Venugopal that this petition under Article 32 of the Constitution is not maintainable."

(emphasis supplied)

8. We now proceed to evaluate the rival contentions in the light of the judgments referred to supra. It is not in dispute that (a) membership of AFGIS is compulsory for all officers and Airmen; (b) the contribution of premiums are automatically deducted from the salaries; (c) the Board of Trustees comprises entirely of senior serving IAF officials; (d) service at AFGIS is considered to be proper deputation for officers and the sanction for this Body as also its deputation rules was granted by the Hon'ble President of India; (e) AFGIS periodically reports its financial transactions to a senior officer in the IAF; (f) in letter dated 15th March 2016 AFGIS itself accepts its position as 'Government'; (g) the President has accorded sanctions on separate occasions viz., introduction of substantive post in the Society, specific fixation of pay bands; and (h) the Society is exempt from various taxes given its compulsory nature as also automatic deduction from pay, AFGIS has a monopoly over insurance for IAF members. Let us unpack these points.

9. For points (a), (b), (f) and (g) the relevant portion of the letter dated 15th March, 2016 referred to supra are reproduced below:

"2. xxx xxx xxx

(e) Para 5: As regards the issue of submission of ITR along with form 26 as for the period from 2010- 11 to 2014-15, it is informed that this Society is established under the authority of Ministry of Defence, Govt of India to be run departmentally as a self-contained Society vide GOI, MoD letter No Air HQ/25657/17/D/Accts/1197 DOLA (Air-11)/76 dated 06 Oct 1976 and that this Society is registered under the Society Registration Act (XXI of 1860) and also that this Society has been established by the Armed Forces of the Union of

India (Air Force) for the welfare of the past and present members (air warrior / air veterans) and their dependents.

The principal objective of the Society is to collect the mandatory and compulsory deduction from the air warriors so as to provide the financial relief in case of contingencies of death/disability of the air warrior occurring while in service/post retirement. Further, the Society also provides welfare services to air warriors / air veterans and their dependents by payment of survival (saving element of the mandatory and compulsory deduction) on retirement/death. The income of the Society is exempted from Income Tax u/s 10(23)(C)(iv) of Income Tax Act 1961 as notified vide MoF letter No F.275/29/85-IT(B) dated 05 Jun 1985.

3. xxx xxx xxx

(c) Basis of the Working of the AFGIS: Consequent to the aforesaid sanction/approvals, the contributions by air warriors to AFGIS have been made mandatory and compulsory in terms of Air Force Instructions (AFI) 16/87 issued by the Govt of India (Ministry of Defence). The monthly mandatory contributions are compulsorily deducted from the salary of all air warriors (officers, airmen and NCs(E)) from the day they join IAF. Hence, membership to the group insurance has become an integral part of the Service Conditions. It is pertinent to mention here that the AFGIS, like Army Group Insurance and Naval Group Insurance, caters only to 'Men in Uniform' and is not open to civilians or the general public. AFGIS does not issue any insurance policies to the air-warriors for its insurance schemes.

(g) Relationship between AFGIS and its Air Warrior Members.

One of the primary factors for deciding the applicability of Service Tax is the relationship between a service provider and service receiver wherein there is a "flow of service". AFGIS is a selfcontained Society run departmentally under the authority of Govt of India (Ministry of Defence). The insurance schemes run by AFGIS are exclusively for the air warrior members hence the group is a "Closed Group". Membership and contribution to the schemes is compulsory and mandatory. Following examples regarding decisions given by the Courts could further clarify this matter.

(i) In the case of Saturday Club Ltd v/s Assistant Commissioner, Service Tax, 2006 (3) STR 305; the Hon'ble High Court of Calcutta observed that, "Principally there should be an existence of two sides/entities for having transaction as against consideration. In a members club there is no question of two sides. 'Members' and 'club' both are same entity. One may be called as 'Principal' while the other may be called as 'Agent' and therefore, such

transaction in between themselves cannot be recorded as income, sale or service as per applicability of the revenue tax of the country."

(ii) In the matter of New Delhi CESTAT in the case of Federation of Indian Chambers of Commerce & Industry (FICCI) v/s Commissioner of Service Tax, Delhi (2015) 38 S.T.R. 529 (New Delhi - CESTAT) wherein the Tribunal held that the service by FICCI to its members is not liable for payment of service tax owing to 'Principle of Mutuality'.

(h) AFGIS is controlled by the Govt. of India through the Ministry of Defence and Air HQ and hence is "Government" in terms of Finance Act, 1994. AFGIS acts as a wing of the Government and hence the collection received from its members is outside the purview of the service tax primarily on the basis of "Principle of Mutuality" and by virtue of Section 66 D of the Finance Act, 1994 wherein the service of 'Government' is outside the purview of the Service Tax."

Air Force instruction dated 1st October 1987 mandating membership of AFGIS is as under:-

COPY

AIR FORCE INSTRUCTION NO - 16

New Delhi, Thursday, October 1, 1987/Asavina 9, 1909

COMPULSORY MEMBERSHIP-GROUP INSURANCE SCHEME

1. The membership under Air Force Group Insurance Society for the Insurance Scheme in existence at the time of joining Indian Air Force will be compulsory for the following:-

(a)	Officers
(b)	Airmen
(c)	NCs(E)
(d)	Flight Cadets

2. All personnel who are members of Enhanced Group Insurance Scheme 1982 of Air Force Group Insurance Society shall automatically become members of any other Insurance Scheme floated in future by the Air Force Group Insurance Society. They will be liable to pay insurance premium for the new scheme as fixed by the Air Force Group Insurance Society from time to time.

3. All personnel who are not members of Enhanced Group Insurance Scheme 1982 but are members of Group Insurance Scheme 1975 or 1978 can become

members of any new insurance scheme floated by Air Force Group Insurance Society after becoming members of Enhanced Group Insurance Scheme 1982, for which they will be required to pay the insurance premium applicable for 1982 scheme from 01 Apr 82 till the date the new schemes come into force. Premium paid under 1975 and 1978 Schemes will be retained and paid at the time of retirement will applicable rates of interest.

4. These provisions take effect from the date of issue of this AFL.

Case No. Air HQ/24018/16/PP&R-1/D (Air-III)
Min of Def/(Fin) UO No. 1410/Pay/AF of 1987

Sd/-

(R.K.

Dhir)

Dy Secretary

10. For point (c), reference may be made to the Manual of Administration and Management, Air Force Group Insurance Society (Published under the Authority of Board of Trustees AFGIS) 2009

CHAPTER 2

ADMINISTRATION

Board of Trustees

1. The Society will be administered by a Board of Trustees and a Managing Committee as per the details given in succeeding paras.

2. The Board of Trustees constitute the following:-

AOA	-	Chairman
DG(IFS)	-	Member
DCAS	-	Member
AOM	-	Member
AOP	-	Member
ACAS (Accts)	-	Member
PD AFGIS - Member Secretary		

18. Secretary. The Secretary shall be an officer of the rank of Gp Capt of the Accounts Branch and will be on deputation to the Society as per the terms and conditions approved by the Government. His appointment will be approved by the Chairman, Board of Trustees. He will conduct day to day administration and be responsible to Principal Director, AFGIS on all matters of the Society. He shall perform the following functions:-

- (a) Carry out administrative duties as may be entrusted to him by Principal Director, AFGIS.
- (b) Give notice of the meeting to the members of Board of Trustees/Managing Committee and prepare briefs on all agenda points to be sent to the members.
- (c) Attend all meetings of the Board of Trustees and Managing Committee unless prevented by illness or excused from attending by the Chairman and record the Minutes of all meetings of the Board of Trustees.
- (d) Communicate decisions of the Board of Trustees/Managing Committee to concerned executives for implementation.
- (e) Be responsible for the efficient functioning of Claims, Advances, PRIC and Contribution Sections and correct maintenance of connected records.
- (f) Conduct correspondence on behalf of the Board of Trustees and Managing Committee
- (g) Finalise and settle all death, disability and survival benefit claims duly approved by the appropriate authority.
- (h) prepare the annual report of the Society for approval by the Board of Trustees.
- (j) Perform the duties of Principal Director and JD (Fin) in the absence of the permanent incumbent.
- (k) Approve expenditure as per the financial powers delegated within the overall budget limit approved by the Board of Trustees.
- (l) Put up proposals for investment of funds of the Society."

11. For points (d), the following letter is extracted:-

11(5)2000/DOI/DOI/D(Air-III)
Government of India
Ministry of Defence
New Delhi dated the 27th Mar 2002

To

The Chief of Air Staff
(with 15 Spare copies)

Subject: GENERAL TERMS & CONDITIONS FOR DEPUTATION OF OFFICERS TO AIR FORCE GROUP INSURANCE SOCIETY

Sir,

I am directed to convey the sanction of the President to the general Terms & Conditions for deputation of IAF officers to Air Force Group Insurance Society as laid down in Annexure 'A' of this letter.

3. This issues with the concurrence of Ministry of Defence (Finance) vide their u.o. No.543/P&W/AF dated 22 Mar 2002.

Yours faithfully,

(G. Srinivasan)
Desk Officer

12. For point (e) relevant portion of Manual of Administration and Management, AFGIS:- 35. Monitoring System On 25th of every month, PD AFGIS is to apprise ACAS (Accts) on the case flow of AFGIS, bringing out the details of all investment during the previous 30 days. He is also to make a structured presentation to AOA of investment status, the quotations received during the previous quarter along comparative statements, their forecast appreciation of the investment environment the next quarter and the case flow assessment of the next quarter. At the end of every quarter the performance analysis of the investment is to be put up to both for their perusal.

13. For point (g) reference is made to the following letters dated 25th February 1985 and 28th September 1981:-

"No.Air HQ/5.18172/22/3/PC-26/Plans/361/DOIIA/

D(Air-III)
Government of India,
Ministry of Defence,
New Delhi, the 25th February, 1985

To

The Chief of the Air Staff (with 35 spare copies)

SUBSTANTIVE CADRE OF GROUP CAPT AND ABOVE - DIRECTOR OF GROUP INSURANCE SOCIETY

Sir,

I am directed to refer to this Ministry's letter No. Air HQ/S.18172/22/3/Plans/3750/D(Air-III)/62 dated 15th May, 1974 as amended from time to time and to convey the sanction of the President to the inclusion of one post of Air Cmde (Accts) in the substantive cadre of Air Cmde (Accts) so long the post of director of Group Insurance Society is held by an Air Force Office and its deletion from the existing substantive cadre/of Group Cap-t (Accts).

2. This issues with the concurrence of Ministry of Defence/ (Finance/Division)vide their u.o. No. 351/Org/S/AF of 1985.

Yours faithfully,

(H.D. SHARMA)
DESK OFFICER

xxx

xxx

xxx

Appendix 'E'
(Refers to para 9 of Chapter 3)

No. Air HQ/24011/71 PP & R-1/2282/DOIIB/D (Air III)

Government of India/Bharat Sarkar
Ministry of Defence /Raksha Mantralaya
New Delhi, the 28 September, 1981
6th Asvina, 1903 Sako Era

To

The Chief of the Air Staff,

Subject: Enhancement of Flying Pay-Air Force Personnel

Sir,

1. I am directed to refer to para 9(b) of AFI 4/S/74 as amended and Serial No.12 of Appendix 'B' to AFI 2/S/74, as amended and to state that the president is pleased to decide that with effect from 01 Sep 1981, the rates of flying pay will be enhanced as under:-

(i) Wing Commander and below
Rs.750.00 pm

(ii) Group Captain and Air Cmde
Rs.666.00 pm

(iii) Air Vice Marshal and above
Rs.600.00 pm

(iv) Airmen including JWOs, WOs and MWOS
Rs.374.50 pm

2. The increased flying pay will be admissible subject to additional insurance cover as given below, taken through Air Force Group Insurance Society (AFGIS):-

(a) Officers of the flying branch are required to obtain additional life insurance cover against all risks, including flying for a minimum of Rs.2 Lakhs effective from 01 Oct 81, on payment of monthly contribution as given below:-

(i) Wing Commander and below
Rs.325.00 pm

(ii) Group Captain and Air Cmde
Rs.283.00 pm

(iii) Air Vice Marshal and above
Rs.250.00 pm

(b) Officers of the Ground duty Branches, entitled to flying pay will be required to obtain additional life insurance cover against all risks, including flying, for a minimum of Rs.2 Lakhs effective from 01 Oct 81, on payment of monthly contribution as applicable to equivalent ranks of the flying branch only during the period of entitlement of flying pay.

(c) Airmen aircrew, entitled to flying pay, will be required to obtain additional life insurance cover against all risks, including flying for a minimum of Rs. One Lakh effective from 01 Oct 81, on payment of monthly contribution of Rs.162.00 only during the period of entitlement to flying pay.

(d) The Air Force Group Insurance Society will pay Survival Benefit to persons covered under the above insurance scheme on retirement/release, the amount of which will be determined by the said Society from time to time.

3. (a) The amount payable to the Group Insurance Scheme is to be recovered from IRLAs of officers and airmen from the pay of Sep 81 onwards and paid by the Air Force Central accounts Office to Air Force Group Insurance Society

in respect of personnel for whom IRLAs are maintained, on the day pay for the month is disbursed.

(b) (i) Deputationists and other officers and airmen for whom no IRLAs are maintained at Air Force Central Accounts Office and who are entitled to enhance flying pay, are to obtain insurance cover for the amounts, as applicable by remitting the contributions to Air Force Group Insurance Society for the flying pay to be admitted.

(ii) In the case of the existing deputationist and other officers and airmen for whom no IRLAs are maintained by Air Force Central Accounts Office and who are entitled for enhanced flying pay contributions are to be remitted by them direct to the AFGIS latest by 01 Jun 82. However, the contributions will have to be made wef 01 Oct 81.

(iii) In the case of the officers mentioned above whom no IRLAs are maintained by AFCAO, the controlling officers will admit flying pay only on receiving a certificate/receipt from the Air Force Group Insurance Society to the effect that the individual has contributed for the month(s) for which flying pay is admitted.

(c) In view of the provisions made in sub paras (a) & (b) (iii) above, no certificate of payment of insurance premium will be required to be given by OC Unit and no POR is necessary, in respect of this additional insurance cover. However, the flying pay certificate prescribed in the Appendix 'G' to AFI 2/S/74 and Appendix 'C' to AFI 2/S/74 will continue to be furnished.

4. Other conditions governing flying pay including insurance cover required under the earlier orders remain unchanged. 5. AFI 4/S 74 and AFI 2/S/74 will be amended in due course.

6. This issues with the concurrence of Min of Fin (Def) vide their No.2622/Pay/ AA of 1981.

Yours faithfully,

Sd/-
(N.N. Mathur)
Desk Officers

xxx

xxx

Xxx"

14. For point (h) the Notification dated 31st October 1983 exempting the Society from estate duty is extracted below:-

"Appendix
(Refers to para 8 of Chapter 1)

'D'

**TO BE PUBLISHED IN PART II SECTION 3-SUB
SECTION (1) OF THE GAZETTE OF INDIA**

Government of India
Central Board of Direct Taxes New
Delhi, the 31st October, 1983

**NOTIFICATION
ESTATE DUTY**

GSR 841, Whereas the Central Government is of opinion that circumstances are such that some relief in addition to the relief provided in sub section (i) of Section 33 of the Estate Duty act, 1953 (34 of 1953) should be given in respect of the following class of property belonging to the deceased which passes on his death and in respect of which estate duty is liable to be levied and collected under the said Act, namely, the money payable under Army Group Insurance Scheme or the Naval Group Insurance Scheme or the Air Force Group Insurance Schemes as the case may be, in existence on the date of publication of this Notification in the Official Gazette.

Now, therefore, in exercise of the power conferred by sub section (2) of the section 33 of the Estate Duty Act, 1953 (34 of 1953), the Central Government hereby directs that no estate duty shall be payable in respect of the aforesaid class of property.

Sd/
(Arvind Pinto)
Under Secretary to the Government of India

(F.No.296/7/83-ED)

Notification dated 5th June 1985 exempting AFGIS from income tax, is as under:-

"Appendix 'B'
(Refers to para 7(c) of Chapter 1)

Copy

**TO BE PUBLISHED IN PART II SECTION 3 (II) OF THE GAZETTE
OF INDIA**

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NEW DELHI, TIME 5th JUNE, 1985

NOTIFICATION
INCOME TAX

S.O. In pursuance of sub clause (f) of clause (iii) of sub section (3) of section 194A of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Society known as Air Force Group Insurance Society, New Delhi, for the purpose of the said sub- clause.

(F. No. 275/29/85-IT (B)
Sd/-
(B.Nagarajan)
Deputy Secretary to
the Govt of India"

15. In our view, a perusal of the documents extracted supra make out a case for AFGIS to be considered 'State' within the meaning of Article 12. For the aspect of deep and pervasive control, we observe that the Hon'ble President of India granted sanction for AFGIS to be established and also specifically approved the deputation Rules; the Principal Director (AFGIS), every month is to apprise the Assistant Chief of Air Staff regarding the cash flow of AFGIS which ensures monitoring by a core member of the IAF on the activities of AFGIS; the membership and deductions arising therefrom are a compulsory aspect of serving in the IAF, meaning thereby that there is no choice of the individual officer in that matter and instead is a mandate from the employer.

When the aspect of administrative control is examined, it is seen that all the members of the Board of Trustees, so also the Managing Committee are serving members of the IAF and are deputed to AFGIS for a fixed period. In essence, therefore, the administration of the Body is entirely in the hands of Government servants even though the body itself is a purportedly private, a self-contained society. The appellant, in submitting that financial control also rests with the Government says that since the mandatory reduction of the premium is directly/automatically from the salary of the members of IAF and these salaries are charged to the Consolidated Fund of India- this shows financial control.

16. We are unable to accept this contention. It may be that in so far as financial aspects of AFGIS are concerned, the Government may not have a direct role however for a body to be held to be a 'State' it is the cumulative effect and

impact of deep and pervasive control, financial and administrative control along with other factors such as carrying out of public duty.

17. We are of the considered view that AFGIS does indeed perform a public duty. The protection and welfare of armed forces personnel is a core government function. The role of the armed forces is directly linked to the sovereignty and security of the nation and in protecting the same members of the forces are required to adhere to, abide by, and maintain a strict set of rules, unquestionable conduct, and at times in the most severe and adverse circumstances.

Thus, providing insurance coverage is a public function as it addresses a collective obligation the State has towards a defined public class whose service is indispensable. The body, in effect, becomes a conduit for the discharge of that obligation. The role of the State in protecting them does not end upon their superannuation from service for the life of a person from the forces is forever shaped by their time in service. Insurance to service members is a critical instrument for safeguarding their physical, mental well-being, dignity and economic security.

It operates as an assurance of protection and support in case contingencies such as disability or illness befall them or even untimely death which is a real possibility in these services. The fact that healthcare, rehabilitation, support to dependants is available readily, is undoubtedly an aspect that gives great peace of mind to the member of service enabling them to carry out their duties without worry, at least in this regard.

18. In addition to the discussion above, it is also seen that at one-point AFGIS itself claimed to be Government while claiming an exemption from service taxes, since it is under the control of Ministry of Defence. In effect, by opposing the challenge of the appellants, AFGIS has resiled from its own statement. We fail to understand an organisation can be 'Government' for one purpose and not be, for another purpose.

19. Consequent to the above discussion, AFGIS would be 'State' under Article 12. The writ petition before the High Court accordingly, maintainable. The said writ petition on the grievance of the appellants is restored. The High Court is requested to decide the same expeditiously keeping in view the fact that the same has been filed in the year 2017. Appeal is allowed. Pending application(s) if any shall stand disposed of.

.....J. (Sanjay Karol)

.....J. (Vipul M. Pancholi)

March 12, 2026

1 AFGIS

2 SRA

3 WP(C) No. 5024 of 2017; 3 WP(C) No. 16428 of 2022, CM APPL 51620 of 2022; 3 WP(C) No. 6759 of 2022; 3 WP(C) No. 13858 of 2018; 3 WP(C) No. 863 of 2019; 3 WP(C) No. 15835 of 2022 & CM APPL. 49280 of 2022.

4 (1981) 1 SCC 722

5 (2002) 5 SCC 111

6 (1991) 4 SCC 578

7 2011 SCC OnLine Del 3612

8 2013 SCC OnLine Del 1598

9 'IAF'

10 2024 SCC OnLine SC 2138

11 Article 12 of the Constitution of India reads thus:

"12. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

12 (1979) 3 SCC 489 , 'R.D Shetty'

13 (2002) 5 SCC 111

14 (2005) 4 SCC 649

IN THE SUPREME COURT OF INDIA

**Mohammad Kaleem
Vs.
State of Uttar Pradesh & Ors.**

**[Criminal Appeal No. _____ of 2026
arising out of SLP (Crl.) No 11085 of 2023]**

**[Criminal Appeal No. _____ of 2026
arising out of SLP (Crl.) No 11510 of 2023]**

Head Note – It is impermissible to conduct 'a mini trial' at the stage of summoning an additional accused under Section 319 Cr.P.C.

The lowest threshold, or prima facie standard, requires only a connection to proceed with formal charges. The middle threshold, which is often described as strong and cogent, applies when Courts consider summoning additional accused under Section 319 CrPC; the evidence must be reliable and reasonably persuasive, but proof beyond reasonable doubt is not required. The highest threshold demands proof beyond reasonable doubt, the standard necessary for conviction, where the Court must be fully satisfied of the guilt of the accused

JUDGMENT

Sanjay Karol, J.

1. Leave Granted.

2. The Appellant herein is the complainant in the First Information Report¹ dated 22nd August 2017 registered at Police Station - Kotwali Nagar, District Muzaffarnagar under Sections 307, 302 and 120-B, Indian Penal Code, 18602 and PW-1 in subsequent proceedings arising therefrom. He takes exception to the Trial Court³ and High Court⁴ both refusing to allow his application to summon additional accused preferred under Section 319 of the Code of Criminal Procedure.⁵

3. The case pertains to the alleged killing of one Ammar and the people who apparently, came together to make it happen. The FIR read thus:

"Sir, it is submitted that Gulshanawwar, Jamshed, Naushad, S/O Ishrat are top criminals of P.S Bhopa, who are lying in jail in connection with murder and other cases. Previously, they have shot at my brother Khalid @ Bhura and on the next day they have shot at my nephew Taslim have committed his murder.

Mohammad Ammar S/o. Nurulla of our village was pleading in this case. Today, hearing was to be conducted in the court of S.C.J.M-3 on the application of my nephew.

I was going to the court to plead in aforesaid case with Mohammad Ammar by scooter at around 10:30 A.M and after travelling some distance on reaching Aryapuri Galli from Ansari Road, Dilshad S/o Ishrat, Mumtaz S/o Azmat R/o Sikri, Abid S/o Nushrat R/o Rudkali accompanied by one more accomplice, who I will recognize by his face, came over there from behind by motorcycle and with an intention to kill, they have fired shots at Ammar. Ikbal S/o Sagir and I have witnessed this incident.

We have immediately taken Ammar by rickshaw to the government Hospital, where the doctors have declared him brought dead. Rajendra S/o Rajpal, Mausam S/o. Asghar R/o Sikri are involved in this conspiracy, who have plotted conspiracy on the behest of Gulshanawwar, Jamshed, Naushad and have committed murder of Ammar."

4. After completion of investigation, challan was presented against certain persons. In the list of witnesses presented by the two prosecution witnesses, who according to the complainant were necessary for the establishment of the case against the accused Dilshad and others, were not listed. An application was made to have the said people be examined as witnesses before the Trial Court which came to be rejected by Order dated 17th March 2021.

The same was set aside by the High Court⁶ and the said witnesses namely Khalil and Tazeem were examined as PW-6 and PW-7 respectively. It appears that on the basis on his own statement under Section 161 CrPC and the testimony of PW-6 and PW-7, the complainant wished to have two additional persons, namely Rajendra and Mausam summoned as accused persons under the power granted to the Court under Section 319, CrPC.

5. The Trial Court disposed of the application by order dated 30th November 2011, rejecting the same. A perusal thereof reveals that people already standing trial before the Court filed objections to having the two above named persons as coaccused. The Court considered the said objections along with the evidence as led by PW-1, PW-6 and PW-7. The Court first noted that the allegation of conspiracy was based primarily on the statements of the complainant (PW-1) and the witnesses PW- 6 Khalil and PW-7 Tazim. However, their accounts were materially inconsistent.

While the complainant stated that Rajendra and Mausam had met three accused persons in jail, namely Gulshanawwar, Naushad and Jamshed, PW-6 stated that the meeting was with Gulshanawwar and Naushad who mentioned about a

discussion with Jamshed. PW-7, on the other hand, stated that the meeting was only with Gulshanawwar. These inconsistencies created serious doubt regarding the alleged meeting and the existence of any conspiracy. The Court further observed that the witnesses did not specify any exact date or time of the alleged meeting and merely stated that it occurred about fifteen days before the incident. Ordinarily, the entry and exit of visitors in jail premises is recorded in official registers, yet the witnesses did not refer to any such record.

This omission weakened the credibility of the claim that the meeting had in fact taken place. The investigation record also undermined the prosecution version. The case diary indicated that the accused Jamshed had earlier been transferred from the local jail to Saharanpur Jail and thereafter to Mirzapur Jail, following a quarrel among inmates. As a result, he was not present in the local jail at the relevant time. This circumstance cast further doubt on the allegation that Rajendra and Mausam had met him there shortly before the incident. Still further, it was found the circumstances in which PW-6 and PW-7 allegedly overheard the conversation to be doubtful.

According to their own statements, they heard the discussion while passing near the meeting place while returning home. However, their houses were situated between Rajwaha and the alleged meeting place, and there was no settlement beyond that point. In such circumstances the Court found it unlikely that they would have taken that route. The Court also noted that despite allegedly hearing about a plan to murder Ammar, the witnesses did not inform the deceased but reported the matter only to the complainant, who admittedly had prior enmity with the accused persons. The Court then examined the testimony of the complainant and found significant contradictions between his FIR and his statement before the Court.

In the FIR he stated that four assailants arrived on two motorcycles and opened fire. During his testimony he introduced a new version stating that three additional persons had also arrived on another motorcycle. This fact had not been mentioned in the written report or in his earlier police statement. The allegation of a prior conspiracy was also absent from the FIR. Further inconsistencies were noted regarding the circumstances in which the injured Ammar was taken to the hospital. The complainant stated that he had taken the deceased to the hospital where he was declared dead.

However, the general diary entry recorded that Ammar was brought to the hospital in an injured condition and died later, and that he had been brought there by a rickshaw puller named Farid Ahmad. These contradictions raised doubts about the reliability of the complainant's account. The Court also considered the physical circumstances of the incident. The complainant claimed that he was seated behind the deceased on a scooter when the

assailants fired multiple shots. The post-mortem report showed that the deceased sustained five gunshot injuries.

Despite being in such close proximity during the attack, the complainant did not suffer any injury, even though he admitted that the accused persons had prior enmity with him. The Court regarded this circumstance as suspicious. The Court also found the alleged motive to be weak. The prosecution claimed that Ammar was targeted because he had been pleading strongly in another murder case involving the accused persons. However, the complainant admitted that Ammar was not a witness of fact in that case and had only been a witness for the seizure of blood-stained soil.

The deceased had never testified against the accused persons. In fact, it was the complainant who had deposed against them. In light of these factors, the Court held that the evidence of the complainant was inconsistent with the FIR and the documentary record, and that the statements of PW-6 and PW-7 were mutually contradictory and unreliable. The Court, therefore, concluded that the evidence did not reach the standard required for summoning additional accused under Section 319 CrPC and that no sufficient ground existed to summon Rajendra and Mausam to face trial.

6. We have heard the learned counsel for the parties and perused the case record. The central question is the propriety of the exercise of power by the Trial Court under Section 319 Cr.PC and the justifiability of the imprimatur granted thereto by the Court below. Before proceeding to the merits of the matter, it is important to understand the scales on which the question of propriety will be adjudged. Courts generally assess evidence at three distinct levels, depending on the stage of proceedings and the nature of the relief prayed for. The lowest threshold, or prima facie standard, requires only a connection to proceed with formal charges.

The middle threshold, which is often described as strong and cogent, applies when Courts consider summoning additional accused under Section 319 CrPC; the evidence must be reliable and reasonably persuasive, but proof beyond reasonable doubt is not required. The highest threshold demands proof beyond reasonable doubt, the standard necessary for conviction, where the Court must be fully satisfied of the guilt of the accused. It is best illustrated through a hypothetical situation- At night, a high-end jewelry store is robbed. Police investigation seizes CCTV footage showing a masked person fleeing on a motorcycle, statements from two eyewitnesses, and phone records linking certain suspects to the vicinity of the store at the time of the incident.

At the first stage, the investigating officer submits a charge-sheet against Person 'A'. The Magistrate reviews the evidence, including the CCTV footage,

witness statements, and other investigative material. Based on this, the Magistrate finds that there is sufficient ground to believe that 'A' may have committed the offence and frames charges. This stage requires evidence indicating involvement beyond mere suspicion, but it does not demand full proof or trial-level examination thereof. During the trial of 'A', evidence emerges suggesting that Persons 'B' and 'C' may also have been involved in planning or executing the robbery.

A witness reports seeing 'B' near the scene discussing the plan with 'A', while phone records and CCTV footage show interactions between 'A', 'B', and 'C'. The Court would examine whether this evidence is strong and cogent enough to summon 'B' and 'C' as additional accused under Section 319. Minor contradictions in witness accounts or timing are noted, but they do not automatically negate the overall reliability of the evidence. At this stage, the court is not determining guilt, only assessing whether a reasonable inference of involvement exists.

As the trial continues, forensic evidence reveals fingerprints of 'B' on the display case and DNA of 'C' on a glove left at the scene. Eyewitnesses place 'B' and 'C' at the time of the robbery, and phone messages show coordination among all the three. Cross-examination fails to provide credible alibis. Cumulative assessment of the evidence leaves no reasonable doubt regarding the participation of 'A', 'B', and 'C', and the Court can convict all three. This represents the highest threshold, where minor inconsistencies are immaterial because the totality of the evidence conclusively establishes guilt.

7. The standard of judicial review having been appreciated as above, we turn back to the instant facts. The discussion made by the Trial Court is reproduced below, since the emphasis is on contradictions, apparently minor or even major, it is imperative, at the cost of brevity, to appreciate the consideration given thereto:

"It is also pertinent to mention here that application in question was presented on the basis of sufficiency of evidence as to plotting of conspiracy by proposed accused persons namely Rajendra and Mausam on the behest of accused persons already detained in the Jail namely Gulshanawwar, Jamshedvand Naushad on the basis of statements of PW- 6Khalil and PW- 7 Tazim recorded before the Court.

In this case, this statement made by complainant Mohammad Kalim (PW- 1) before the Court during his examination-in-chief is important that, "15 days before this incident, Tazim and Khalil of my Village have told me that they have heard Rajendra and Mausam discussing with Dilshad, Mumtaz and Aabid that when they have gone to meet Gulshanawwar, Naushad, Jamshed in the Jail

at that time they have sent the name back saying that Mohammad Ammar is pleading much in the case, so remove him from the way and they have also said that while taking our names tell them to do this act and they have also said that this act is to be committed only at Muzaffar Nagar since they will not find witnesses over there".

In this way, as per the statement of PW- 1, above both witnesses PW- 6 and PW- 7 have stated about accused persons namely Dilshad, Mumtaz as named in F.I.R of Ex. A-1 making with 3: accused persons namely Gulshanawwar, Naushad and said in the Jail, who have given them message of committing murder of deceased Ammar and having discussion in this regard. It is evident that from among all 3 accused persons named in the F.I.R of Ex. A- 1 namely Dilshad, Mumtaz and Aabid, the Police has only found accused Dilshad to be involved in this incident, whereas, no evidence was found against other 2 accused persons.

In this situation, it is expedient to analyze the statements made by complainant (PW- 1) and PW- 6 and PW- 7 on aforesaid relevant point. In this regard, on the one hand complainant (PW- 1) has stated about above two proposed persons meeting above 3 accused persons in the Jail, whereas, PW- 6 Khalil Ahmad has stated in his examination -in -chief that Mausam and Rajendra were telling Mumtaz, Aabid, Dilshad that when we have gone to meet Gulshanawwar and Naushad in the Jail at that time they have said that they have had discussion with Jamshed that Ammar is pleading a lot.

Go and tell Dilshad, Mumtaz and Aabid that Ammar Pradhan is to be killed at Muzaffar Nagar and not in Village Sikri, so that they may not find any evidence in Muzaffar Nagar. On aforesaid point, witness PW- 7 Tazim has stated in his examination-in-chief that Rajendra and Mausam have told that today we have gone to meet Gulshanawwar in the Jail. Gulshanawwar told us that Ammar Pradhan is pleading a lot in this case, he needs to be removed from the way and he has had discussion in this regard with Jamshed, Dilshad, Naushad and it was also decided that he was not to be killed in the Village, rather, in the town.

In addition, above both witnesses PW- 6 and PW- 7 have also stated that after hearing aforesaid discussion they have come and narrated it over to their uncle Kalim on the same day. On the point of reaching at the so-called place of meeting, PW- 7 has stated that murder of Ammar Pradhan was committed on 22/8/2017. Nearly 15 days before this incident he has gone to know the wellbeing of mother-in-law of his uncle Bhura @ Khalid. She has sustained fractures in her hip bone. They were sitting over there and while he was sitting even Khalil has come.

They have departed for their houses from there at around 7-7:15 p.m. Meeting place of Gulshanawwar was situated on the way and when they reached near to the meeting place at that time they have heard the name of Ammar Pradhan, on which they have stood over there near the jungle and at that time they have heard the fact as to discussion (conspiracy). Similarly, PW- 6 has also stated that murder of deceased Ammar was committed on 22/8/17. 15 days before aforesaid incident he has gone to the house of his relative. The daughter of his sister-in law was married with Dilshad. Mother of Dilshad has sustained fractures. He has gone over there to know the well being of her.

He has reached at the house of Dilshad at around 6-X: 30 a.m., where he has met with Tajim and he has stayed over there for around one hour and he also has had tea etc. Thereafter, Tazim and he have departed from there. In this way, it is evident from the statements of above 3 witnesses that on the one hand complainant PW- 1 states about meeting between the proposed persons and 3 accused persons detained in the Jail persons meeting only with 2 accused persons detained in the Jail namely Gulshanawwar and Naushad, who have stated to have had discussion with Jamshed, whereas, PW- 7 states about meeting only with one accused detained in the Jail named Gulshanawwar, who has given message to aforesaid both proposed persons.

In addition, he also said that he has had discussion with all namely Jamshed, Dilshad and Naushad. It is pertinent to mention here that no exact date and time of so-called meeting by the proposed both persons with the persons detained in Jail is mentioned, rather, only this much was stated that aforesaid given to place nearly 15 days before the incident, whereas, entry and exit regarding any person in the Jail is maintained in the register, in respect of which, aforesaid witnesses are silent. It is evident that all 3 accused persons namely Gulshanawwar, Naushad and Jamshed concerning criminal conspiracy were detained in the Jail at the time of incident. Investigating Officer has arraigned while they were detained in the Jail and has recorded statements of above 3 accused persons U /s. 161 of Cr.P.C. with the prior permission of the Court and then only charges were invoked against them.

In this regard, it would be appropriate to perused the evidences gathered by the investigating Officer, in respect of which, CD number 17 of the case diary is important, which was prepared by the investigating Officer on 18 / 9 / 2017, which bears seeking aforesaid permission of the Court for recording statement is mentioned and it is also evident here that after receiving permission from the Court, the investigating Officer has has paid visit to District Jail, Muzaffar Nagar to record the statements of accused persons namely Dilshad, Gulshanawwar and Naushad under judicial custody detained in the Jail and while sitting in the Office of Dy. Jailer, he has separately recorded statements of above accused persons. According to aforesaid statements, this fact has

appeared in the statement of accused a mutual quarrel has broken out between the prisoners inside the Jail.

In view of aforesaid quarrel, accused Jamshed was firstly sent to Saharanpur Jail and thereafter he was sent to Mirzapur Jail, that is, on the date of his statement, that is, on 18/ 9 / 20 17, accused Jamshed not being detained in local Jail was rather detained in Mirzapur Jail, and in this regard, Investigating Officer has referred to the fact in CD that accused persons were firstly sent to Saharanpur Jail and then to Mirzapur Jail nearly 1 year before statement was recorded, whereas, it has been alleged that meeting took place in the jail nearly 15 days before the incident took place on 22.8.2017, of which no exact date or time is mentioned and even the statement of complainant and other two witnesses on aforesaid point of meeting is not alike.

PW -6 and PW- 7, both of them in their statements have stated about the meeting place of Gulshanawwar lying on the way while they were returning back to their houses, from where they were passing by naturally, but witness Gulshanawwar is slightly away from "Rajwahe". Their ancestral houses are situated in between Rajwahe and the place of meeting and after Rajwaha there is no settlement, i.e. when no settlement is present on that side then it is not natural for above both witnesses to go from that side.

Besides this, it is pertinent to mention here that according to PW-6 and PW-7, after above both witnesses (PW- and PW-7) have received the message in the jail from accused persons namely Gulshanawwar, Naushad and Jamshed, first of all, they were expected to inform the deceased, but they have told this fact only to the complainant Kalim, who is having enmity with the accused persons, whereas, PW-6 hailed from Seikh Community and brother of deceased named Haji Hafiz used to stay in Village Ummed, Sikri, but he has not informed him about it.

It is pertinent to mention here that complainant has claimed himself to be an eye-witness, on which basis he has named accused persons in the F.I.R, but evidences gathered during the course of investigation. In this situation, even the evidence of complainant (PW-1) is subject to scrutiny. In the F .I. R of Ex. P-1, complainant has stated about the deceased riding scooter and he himself was sitting as pillion and before reaching at the place of incident, three known and one unknown persons came over there by two motorcycles, who have fired shots at scooter rider Ammar.

Thereafter, injured Ammar was taken by the complainant and one more witness Iqbal to the District Hospital, where he was declared dead, but while appearing before the Court as PW- 1, he has admitted that, "it is true that besides the accused persons named in the F.I.R, I have not mentioned the names of 3

persons coming by another motorcycle to the place of incident in my written report. It is true that for the 1st time I have stated before the Court about 3 unknown persons coming by 1 more motorcycle to the place of incident. I have not told aforesaid fact over to the SHO in my Police statement. persons had enmity with him and there were for accused persons who have fired shots at the place of incident and there were a total of 7 accused persons present at the place of incident.

He has got recorded the names of a total of 4 accused persons in the report. He has not got mentioned the fact as to a total of 7 accused persons in the report. Above witness PW- 1 has further stated that at the time of murder of Ammar the accused persons namely Jamshed, Gulshanawwar and Naushad were detained in Jail. All 3 of them were detained in Jail in connection with murder case of Tasleem. In his report, he has not got this fact mentioned that, "15 days before this incident, Tazim and Khalil have told me that they have heard Rajendra, Mausam discussing with Dilshad, Mumtaz, Aabid that both of them have gone to meet Gulshanawwar, Naushad, Jamshed in the Jail, who have sent them while saying that Mohammad Ammar is pleading a lot in the cases, so remove him from the way and they have also said Nagar since he would not find witnesses over there".

PW- 1 has admitted this fact that accused Jamshed was in Mirzapur Jail on the date of incident and he does not know that for how long Jam shed has been in the Jail before this incident. Complainant has clearly mentioned in the F.I.R that they have brought Ammar by rickshaw to the Hospital, where the doctors have declared him as dead, that is, in the aforesaid report, complainant has mentioned that deceased was declared as dead as soon as they have reached Hospital, whereas, as PW- 1, though, he has denied from this fact that a rickshaw puller named Farid has taken the Ammar in dead condition to the Hospital and rickshaw puller has admitted him in dead condition in District Iqbal has not met with the Doctor in his presence and treatment of Ammar continued for around 30-45 minutes.

This fact is mentioned in G D number 37dated 22/08/2017 of P.S. Kotwali Nagar, Muzaffar Nagar available on record that ward boy Akash having appeared at Police Station from District Hospital Muzaffar Nagar has filed a memo that Mohammad Ammar was brought to the emergency ward in injured condition at 10:20 a.m. At 11:25 AM, he has died. Through Farid Ahmad son of Rashid Ahmad Laddawala Muzaffar Nagar, Mobile Phone No. 8869090310. In this way, on the point of time of death of deceased, there are clear and substantial Hospital, but he has definitely stated that Iqbal and he having lifted up Ammar have taken him to the doctors, but he did not meet with the Doctor, nor has Iqbal has not met with the Doctor in his presence and treatment of Ammar continued for around 30-45 minutes.

This fact is mentioned in G D number 37 dated 22/08/2017 of P.S. Kotwali Nagar, Muzaffar Nagar available on record that ward boy Akash having appeared at Police Station from District Hospital Muzaffar Nagar has filed a memo that Mohammad Ammar was brought to the emergency ward in injured condition at 10:20 a.m. At 11:25 AM, he has died. Through Farid Ahmad son of Rashid Ahmad Laddawala Muzaffar Nagar, Mobile Phone No. 8869090310. In this way, on the point of time of death of deceased, there are clear and substantial contradictions in the statement of complainant and facts mentioned in the report.

It is evident from the statement of complainant (PW- 1) that he has admitted his enmity with the accused persons of this case. Above witness PW- 1 has clearly stated that Jamshed, Gulshanawwar and Naushad, all 3 of them were detained in Jail in connection with murder case of Tasleem and even in the aforesaid case shot was fired at him with an intention to kill him, but he has escaped by whisker and in this case he is eyewitness and accused persons having come from behind have prevented his way by motorcycle and suddenly fired at him with an intention to kill him. He has not sustained any firearm injury in the aforesaid incident, nor has she sustained any other injury, rather, he has escaped by whisker.

He is eyewitness to the incident of half murder case (Section 307 of IPC) that has happened with his brother Bhura and he is also the informant. Shots were fired at him in the incident that has happened with Bhura with an intention to kill him, but he has escaped by whiskers and he has not sustained any injury. In all aforesaid 3 incidents, neither has he sustained any injury from truncheons-mistakes, nor has he sustained any firearm injury.

It is expedient to mention here that complainant has stated to be riding as they pillion behind the deceased on the during the course of his statement that assailants have overtaken his scooter from among whom 4 of the assailants have started firing, in which incident it was the deceased who has sustained all the gunshot injury and complainant was riding as a pillion has not sustained any kind of injury, whereas, in the post-mortem report of deceased, 3 gunshot injuries were shown on the back, whereas, two gunshot injuries were shown in the front, which is clearly in contradiction to the facts mentioned in the aforesaid written report of complainant and his statement recorded on oath.

In his F.I.R, the complainant has stated about 4 assailants coming to the place of incident by 2 Nos. of motorcycles, whereas, in his statements, he has also stated the presence of 3 other persons coming by one motorcycle and while aforesaid 4 assailants were firing shots and complainant has also stated Besides this, presence of another witness PW- 2 Iqbal was also stated and he was also stated to be an eyewitness, who along with the complainant has allegedly taken

the deceased to Hospital, whereas, no such kind of documentary evidences available on record.

Complainant has stated about above witness Iqbal to have reached at the site by motorcycle alongwith him, reason whereof as per the complainant is that complainant did not know how to ride motorcycle, for this reason he has brought him along and on this point, on page number 21 of his evidence, he has stated that he does not remember that whether he has got this fact mentioned in his report that Iqbal Sf o. Sagir Hasan was following him on motorcycle from behind or not. On seeing the report, this witness has stated that this fact is not mentioned in the report.

It is pertinent to mention here that complainant has stated that the main objective of accused persons, who have been detained in Jail, was the deceased pleading in the case in which PW- 1 has also admitted in his evidence that in the aforesaid murder case of Tasleem, deceased Ammar was the witness for seizure of blood stained soil from the place of incident and in an incident that has happened earlier in which his brother Bhura has sustained firearm injury, Ammar was not a witness and deceased Ammar was also not a witness in the abduction case of his brother Tazim. In addition, he has further stated that deceased Ammar has never deposed against accused persons, rather, he has deposed.

He does not know that whether Ammar has presented affidavit while pleading against accused persons or not. It is evident from aforesaid the statement of PW- 1 that deceased Ammar was not a witness of fact in the murder case of Tasleem in which accused persons were detained in Jail, rather, he was just a witness for seizure of blood stained soil and deceased has never deposed against them, rather, it was the complainant who has deposed.

It is the plaintiff who has admitted his enmity with the aforesaid 3 cases of attack, he has escaped by whisker and he has been eyewitnesses as well as informant in aforesaid entire cases. Even in the instant case, he has stated about riding on pillion behind deceased at the time of incident and 4 Nos. of assailants firing shots at the deceased, as a result of which 3 gunshot injuries were sustained on the back and 2 Nos. of gunshot injuries were sustained in front, but despite of it, complainant has not sustained any kind of injury, whereas, accused persons had enmity with the complainant.

Under these circumstances, statement of complainant itself lies within the periphery of reasonable suspicion. In this way, evidence of complainant is in clear contradiction on substantial points from his F.I.R and evidences of PW- 6 and PW- 7 are mutually contradictory and are in contradiction with the evidences of the plaintiff on substantial points."

8. The Trial Court's reasoning in rejecting the Section 319 application, prima facie appears to be largely aligned with the principles laid down by this Court, such as the requirement that evidence must be strong and cogent rather than mere suspicion. Both *Hardeep Singh v. State of Punjab*⁷ and *Neeraj Kumar v. State of UP*⁸ emphasize that the power under Section 319 CrPC is extraordinary and should be exercised sparingly. The Court must assess whether the evidence on record, if unrebutted, reasonably indicates the involvement of the proposed accused.

9. At the same time, the Court has highlighted certain limits to the Trial Court's discretion at Section 319 CrPC. stage. *Hardeep Singh*(supra) clarified that the Court need not establish guilt or conduct a detailed credibility assessment at this stage, while *Neeraj Kumar* (supra) held that pre-trial scrutiny should not resemble a mini trial. The Trial Court, in this regard appears to have misdirected itself. In evaluating minor contradictions between witness statements and plausibility issues such as whether the complainant could have avoided injury, effectively applied a stricter standard than necessary.

10. Another instance is that higher than necessary standard being applied is reflected where the Court relied on the absence of jail records or highlighted minor discrepancies in hospital admission or FIR details. While these points raise valid questions about reliability, they are not points that can be gone into threadbare at this stage. Further, we find the Trial Court to have erred in taking a fragmented approach while appreciating evidence. The Trial Court treated each inconsistency in isolation rather than assessing the cumulative weight of all testimonies and circumstances.

Similarly, reliance on documentary corroboration is not required; oral evidence alone, if credible, may suffice. The Court's emphasis on the lack of jail records and the physical plausibility of witness accounts could be seen as exceeding the threshold scrutiny expected at this stage. The Court overstepped the intended scope of pre-trial scrutiny, overemphasized minor inconsistencies, and did not fully consider the cumulative force of the evidence. The law consistently balances caution against undue summoning with the need to ensure that potentially implicated individuals are brought to trial when the record, taken as a whole, reasonably supports it.

11. Apart from the point of standard of review, it is also noticed that the proposed additional accused, namely Mumtaz and Aabid, have been named as persons involved in the case by way of a larger conspiracy or otherwise, by PW-1, as noticed by the trial court itself and also PWs 6 & 7. It is a separate matter that, as found by the Trial Court, there are inconsistencies in the overall testimonies of these witnesses but, that is a matter of trial and not within the Court's scope at the time of considering an application under section 319 CrPC.

The testimony, on oath, by 3 witnesses, including the complainant no less, in our view, is sufficient in the facts of this case to meet the strong and cogent evidence standard.

12. In view of the above discussion, the judgments of the Courts below with particulars as described in paragraph 1, stand set aside. The persons who sought to be produced as additional accused are ordered to be produced as such, and proceeded with, in accordance with law.

These appeals are accordingly allowed. Let a copy of this order be sent to the Trial Court for necessary action, through the Registrar General, High Court of Judicature at Allahabad. Pending applications, if any, shall stand closed.

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

.....**J. (Augustine George Masih)**

New Delhi

March 17, 2026

1 FIR

2 IPC

3 Additional Sessions Judge, Court No.1 ,Muzzaffarnagar in Sessions Trial 414 of 2018

4 High Court of Judicature at Allahabad in Criminal Revision No. 1687 of 2020

5 CrPC

6 Application U/S 482 No.- 9654 Of 2021

7 (2014) 3 SCC 92

8 2025 SCC OnLine SC 2639

IN THE SUPREME COURT OF INDIA

Hamsaanandini Nanduri

Vs.

Union of India & Ors.

[Writ Petition (C) No. 960 of 2021]

Head Note – The right of reproductive autonomy is not confined to the biological act of giving birth. Adoption is an equal exercise of the right to reproductive and decisional autonomy under Article 21 of the Constitution.

Urged the Union Government to bring a law recognising paternity leave as a social security benefit. The Court observed that the duration of the leave must be determined to suit the needs of both the parents and the child.

When family structures and modes of parenthood have evolved and diversified, parenthood is not confined to the biological act of giving birth. It includes a broader spectrum of choices through which individuals realize their aspiration to build a family. Thus, an atypical or unconventional familial setup does not strip away the rights guaranteed by the Constitution. In the aforesaid context, reproductive autonomy, therefore, cannot be narrowly understood as being limited to biological reproduction alone. Adoption, too, represents a conscious and meaningful exercise of the choice to create and nurture a family, and must be viewed as falling within the broader spectrum of reproductive decision-making.

The choice to bring a child into one's life may also manifest through non-biological means such as adoption, which equally reflects an individual's autonomy in matters of parenthood and family formation. A mother takes birth the day a child comes into her life. While the day of the entry of the child in the mother's life slightly varies in case of biological route of attainment of motherhood, what follows after the coming of the child in the mother's life is a universal feeling, shared by all mothers - whether adoptive, surrogate or biological.

It is not biology that constitutes a family of a mother, father, and children, rather, it is the shared meaning, responsibility, and emotional bonds that sustain such a relationship. We say so because biological factors, by themselves, do not determine family behaviour or familial identity.

An adopted child is no different from a so-called “natural” child, the only distinction is that the process of adoption is more visible and legally acknowledged. Thus, the act of adoption may carry an equally, if not more,

profound affirmation of parenthood. There is no doubt that sharing of meaning, affection, and responsibility lies at the heart of both family creation and the adoption process.

JUDGMENT

J.B. Pardiwala, J.

For the convenience of exposition, this judgment is divided into the following parts:-

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"Not flesh of my flesh, nor bone of my bone,
But still miraculously my own.
Never forget for a single minute,
You didn't grow under my heart, but in it."

1. We are tempted to preface our judgment with the words of poet Fleur Conkling Heyliger. The stanza captioned above resonates with an undiminishing force in the present petition as well. It communicates that transition into motherhood does not occur in the brief moment when legal formalities are completed, rather it is a gradual process that takes shape in the heart of the mother. It is within these unspoken moments of reassurance and bonding that the relationship between a mother and child is gradually formed and strengthened.

2. Before we address ourselves on the issues raised in the writ petition, we find it apposite to note that the petitioner filed the I.A. No. 33856/2026 to amend the writ petition to bring on record the amendment and consolidation of the impugned provision by way of the Code on Social Security, 2020. We allow the I.A. for the amendment of the writ petition. The amended writ petition is considered for the purposes of the following exposition.

I. THE CONTEXT

3. The petitioner, who is an adoptive mother of two children, has filed the present petition under Article 32 of the Constitution in public interest, seeking a declaration to the effect that Section 5(4) of the Maternity Benefit Act, 1961 (for short, "MB Act") as amended by the Maternity Benefit (Amendment) Act, 2017 (for short, "Amendment Act, 2017") is unconstitutional, being violative of Articles 14, 19(1)(g) and 21 of the Constitution, respectively. The prayer in the petition reads thus:-

"a) Issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus or any other writ or direction in the nature of the writ and declare Section 5(4) of the Maternity Benefit (Amendment) Act 2017) as ultra vires Articles 14, 19 and 21 of the Constitution of India, and declare the Section 5(4) of the Maternity Benefit (Amendment) Act 2017) as unconstitutional and invalid;

b) Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case, in the interest of justice and equity."

4. At the outset, we must mention that on 21.11.2025, the Code on Social Security, 2020, came into effect (for short, "the 2020 Code"), by which all laws relating to social security, including that of the MB Act were amended and consolidated. Insofar as Section 5(4) of the MB Act is concerned, Section 60(4) of the 2020 Code is the existing *pari materia* provision and holds the field on the issue at hand.

5. By order dated 12.12.2025, the Court granted the petitioner permission to take suitable steps to challenge the newly enacted provision, i.e., Section 60(4) of the 2020 Code. Pursuant to which, the petitioner filed I.A. No. 33856/2026 seeking amendment of the petition to challenge Section 60(4) of the 2020 Code on the same grounds which were applicable to Section 5(4) of the MB Act.

6. The impugned provision entitles only those mothers who legally adopt a child below the age of three months or a commissioning mother to seek maternity benefit for a period of twelve weeks from the date on which the child is handed over to the adoptive mother. However, the challenge before us is limited to the extent that it governs adoptive mothers.

III. SUBMISSIONS ON BEHALF OF THE PARTIES

i. Submissions on behalf of the Petitioner

7. Ms. Bani Dikshit, the learned counsel appearing for the petitioner would argue that Section 60(4) of the 2020 Code creates an unreasonable classification among adoptive mothers. She submitted that the distinction created by the legislature between a woman who adopts a child aged less than three months and a woman adopting a child aged three months or above is artificial and violative of Article 14. She fortified her submission by illustrating that if a woman adopts a child aged four months, she would not be entitled to maternity benefit as provided under the 2020 Code.

8. She added that such an exclusion bears no rational nexus with the object of the 2020 Code and unjustly deprives a mother adopting a child aged three months or above. She further submitted that the age limit of three months could not be said to fulfill the bright-line test, as there is no reasonable distinction between adoptive mothers falling on either side of three-month limit.

9. Ms. Dikshit further submitted that by prescribing the maximum age of the adopted child at three months, Section 60(4) deprives all children above the age of three months from receiving maternal care they need for their development and integration in their adoptive families. In other words, the provision overlooks the physical and emotional well-being of the adoptive child aged three months or above as well as the adoptive parent. Thus, the

provision is arbitrary, unreasonable and discriminatory not only towards the mother but also towards the child.

10. In the same breath, she submitted that the provision disregards the long-drawn procedure for the adoption of orphaned, abandoned, or surrendered children under the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "the JJ Act") and the Adoption Regulations, 2022 (for short, "the CARA Regulations"). She underscored that the process for an orphaned, abandoned, or surrendered child to be "legally free for adoption" would take, at the very least, two months. Furthermore, for the fulfillment of the residuary the statutory procedure under the CARA Regulations would require another month. Thus, in view of such prescribed timeline, the provision would be rendered completely otiose, as in no case can the legal process of adoption be completed before the child.

11. She further highlighted that Section 60(4) restricts a woman's right to carry on her trade, occupation, and business guaranteed under Article 19(1)(g) of the Constitution based on the child's age. She added that such a restriction dissuades women who are working professionals from adopting. Thus, the provision fails to ensure that more children are adopted and also discourages women working in the organized or unorganized sector from considering adoption.

12. She further submitted that the provision also violates the adoptive mothers' and adoptive children's right to life and dignity under Article 21 by denying the mother the right to a wholesome and holistic motherhood and the adoptive children the right to receive sufficient care to be rehabilitated and integrated into the new family.

13. In such circumstances referred to above, the learned counsel appearing for the petitioner would submit that Section 60(4) of the 2020 Code be declared unconstitutional, to the extent that it limits the benefits to women adopting children up to three months old, being violative of Articles 14, 19, and 21 of the Constitution, respectively.

ii. Submissions on behalf of the Respondents

14. Mr. K.M. Nataraj, the learned Additional Solicitor General appearing for the respondents submitted that Section 60(4) of the 2020 Code should to be read and interpreted along with the entire scheme of the maternity benefit.

15. The learned ASG submitted that the submission canvassed on behalf of the petitioner that the procedure of the adoption is time consuming is devoid of any merit. He submitted that with a view to expedite the adoption process, district

magistrates and additional district magistrates have been conferred with the power to issue adoption orders.

16. In the aforesaid context, he submitted that in case an adoptive mother adopts a child aged more than three months, she can avail the creche facilities available at her establishment as per Section 67 of the 2020 Code.

17. It was further submitted that the prescription of "a child below the age of three months" is reasonable as a child older than three months does not have the same intensive dependency on the caregiver in terms of continuous feedings, sleeping regulation assistance, and immediate parental imprinting to the same degree.

18. In the last, the learned ASG submitted that Section 60(4) of the 2020 Code strikes a balance between the rights of adoptive mothers and the concerns of employers. He added that the provision satisfies the proportionality principle, ensures harmonious construction with other laws, and is consistent with international standards.

IV. ISSUES FOR CONSIDERATION

19. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:-

- a. Whether the age limit of three months stipulated under subsection (4) of Section 60 of the Social Security Code, 2020, could be said to be in violation of the Article 14 of the Constitution being discriminatory towards women who adopt a child aged three months or above?
- b. Whether the age limit of three months stipulated under subsection (4) of Section 60 of the Social Security Code, 2020, could be said to be in violation of the right to reproductive autonomy of an adoptive mother and the right of the adopted child to holistic care and development under Article 21 of the Constitution?

V. ANALYSIS

A. Maternity protection as a basic human right

20. Women, as primary caregivers of children, play a crucial role in the early development of children, more particularly, in the formative years of the child when a mother provides stability, care, and consistent nurturing. During this period, mothers undertake extensive physical, emotional, and psychological responsibilities. It often requires them to prioritize childcare over professional

commitments. In such circumstances, institutional support becomes necessary to enable them to discharge responsibilities effectively without fear of financial insecurity, professional disadvantage, or the loss of livelihood.

21. The protection of maternity leave is a basic human right, as it recognizes conditions that are necessary for the full development of human personality and realization of equality. It embodies an essential component required to promote equality at workplace and safeguards maternal and child health. In other words, it dignifies motherhood.

22. Maternity benefit or the payment in lieu of such leave is intended to support women during the phase of early motherhood by providing economic security when they are most engaged in the care and nurture of a young child. This act of support recognizes that motherhood entails sustained physical, emotional, and social exertion which demands time, financial stability and resources.

23. The concept of maternity benefit acknowledges the ability of a woman to exercise her reproductive choices without fear of losing her employment, more particularly, the economic security. Thus, it ensures that motherhood does not become a factor for exclusion at workplace.

24. In the aforesaid context, the right of maternity protection recognizes the biological as well as caregiving realities associated with motherhood, and seeks to correct structural inequalities that women face in employment. It represents the State's commitment to uphold human dignity, equal treatment at work, and broader ideals of social justice.

25. Thus, legislating for maternity benefit and childcare, in the form of payment during periods of recovery and care, crèche facilities at the workplace, and parental leave for tending to young children, constitutes institutional support aimed at enabling women to seek and retain employment, participate meaningfully in public life, and progressively attain substantive equality.

26. It is important to highlight that motherhood is not merely a biological function but a deeply personal and emotional experience. It is a right rooted in the freedom to love, nurture, and raise a child with dignity and devotion. Parenthood is defined by care and responsibility rather than by physical act of giving birth alone, even more so for women who choose to embrace motherhood by adopting a child overcoming social, emotional, and institutional barriers to provide a child with security.

i. Recognition of maternity protection in the International Law framework

27. Article 25(2) of the United Declaration of Human Rights (UDHR) recognizes that motherhood and childhood are entitled to special care and assistance. It stipulates that all children enjoy the same social protection. Further, Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that mothers are entitled to special protection for a reasonable period before and after childbirth, including paid leave or leave supported by adequate social security benefits. In addition to this, Article 12 obligates the State Parties to take necessary steps for the healthy development of children.

28. The International Labour Organization (ILO) through Maternity Protection Conventions (Convention No. 3, Convention No. 103, and Convention No. 183) recommended for entitlements related to maternity protection at work having regard to the evolving status and recognition of women's right at workplace. Initially, Convention No. 3 provided 12 weeks maternity leave with cash benefits to ensure continuity of income, daily breaks for nursing, and protection against dismissal during leave. However, this was limited to women working in public or private industrial or commercial undertakings. Later, Convention No. 183 extended the period of leave to 14 weeks and the scope of protection to women employed in industrial undertakings and in nonindustrial and agricultural work.

29. Further, Article 11(1) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandates the State Parties to take appropriate steps to prevent discrimination against women on the grounds of maternity and ensure their right to work. It puts an obligation on the State Parties to prohibit dismissal on the grounds of maternity leave and introduce maternity leave with comparable social benefits without loss of former employment.

30. Simultaneously, Article 3 of the Convention on the Rights of the Child (CRC) mandates that all actions concerning children must be taken having regard to the best interests of the child. It urges the State Parties to ensure that all institutional facilities responsible for the care of children shall conform with the established standards.

31. What is discernable from the aforesaid discussion is that various international conventions recognize maternity leave as an essential human right. The objective of all the aforesaid guiding principles is to preserve the health of the mother and the child, to prevent unequal treatment at workplace due to their reproductive choices, and to promote equality of opportunity and equitable treatment between genders.

ii. Statutory recognition of maternity benefit in India

32. The earliest statutory recognition of maternity benefit for working women in India came through the Bombay Maternity Benefit Act, 1929, which regulated the employment of women in factories before and after childbirth and provided for the payment of maternity benefit. In 1931, the Royal Commission on Labour in India recommended that similar protective measures be taken across the country. Thus, such protection was being provided under various State and Central legislations.¹

33. With a view to bring uniformity in, inter alia, the qualifying conditions for maternity benefit, period of maternity leave, payment in lieu of maternity leave, and to reduce disparity and extend maternity benefit to all women employed in establishment, the MB Act was enacted. The Introduction and the Statement of Objects and Reasons of the Act respectively read thus:-

"Maternity protection was being provided under the different State Acts and the three Central Acts. There was considerable diversity in their provisions relating to qualifying conditions, period and rate of benefit, etc. To reduce the disparities and to provide the maternity protection to the women employed in all establishments, including mines, factories and plantations, except those to which the Employees' State Insurance Act, 1948 applied, it was proposed to enact a separate law. Accordingly the Maternity Benefit Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

Maternity protection is at present provided under the different State Acts on the subject and three Central Acts, viz., the Mines Maternity Benefit Act, 1941, the Employees' State Insurance Act, 1948 and the Plantations Labour Act, 1951. There is considerable diversity in their provisions relating to qualifying conditions, period and rate of benefit, etc. The proposed legislation seeks to reduce as far as possible the existing disparities in this respect. It will apply to all establishments, including mines, factories and plantations, except those to which the Employees' State Insurance Act, 1948 applies and its provisions approximate as nearly as possible to those of that Act."

(Emphasis is ours)

34. The MB Act was enacted with the object of regulating the employment of women in establishments for periods before and after child birth and providing for the payment in lieu of maternity leave. It aimed to ensure that a working woman does not have to compromise on her role as a caregiver to her child.

35. The concept of maternity benefit also operates as an instrument of "defamilisation", whereby it reduces the woman's reliance on family for care and protects economic independence. It represents a legislative commitment

towards the promotion of gender equality by creating an enabling environment that recognizes and accommodates balancing familial responsibilities with professional engagement. In doing so, the statute affirms dignity, equality, and social justice for working women.

36. Sometime between 2012 and 2015, the 44th, 45th, and 46th Indian Labour Conferences, respectively, recommended for enhancement of the period of maternity leave, the introduction of maternity benefit for adopting and commissioning mothers, facility of work from home, and provision of creche facility in establishments. Thus, with the aforesaid amendments were introduced to enhance participation of women in labour force and improve work-family balance.

37. The Amendment Act, 2017, inserted sub-section (4) of Section 5 of the MB Act which is in pari materia with Section 60(4) of the 2020 Code. The provision reads thus:-

"60. Right to payment of maternity benefit.-

(1) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

Explanation.-For the purposes of this sub-section, "the average daily wage" means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019 (29 of 2019).

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be."

(Emphasis is ours)

38. Section 60(4) of the 2020 Code provides that a woman who legally adopts a child below the age of three months is entitled to maternity benefit for a period of 12 weeks from the date the child is handed over to the adopting mother.

iii. Relevant precedents encapsulating judicial interpretation of maternity benefit

39. Before we delve into the discussion of judicial interpretation of scope, ambit, application of maternity benefit in varying circumstances that have come before courts, we may look at the definition of "maternity" in dictionary.

40. The Oxford English Dictionary, defines the word "maternity" as:-

"The state, condition, or fact of being a mother." Further, the Black's Law Dictionary (8th Ed) defines "maternity" as:- "The character, relation, state, or condition of a mother."

41. The aforesaid definition reflects a broader understanding of maternity in relation to motherhood and does not restrict it to the period before and after childbirth or to the age of the child.

42. We may look into the decision of B. Shah v. Presiding Officer, Labour Court, reported in (1977) 4 SCC 384, wherein this Court held that the interpretation of beneficial legislation must be guided by its underlying objective of advancing social justice. The Court emphasized that the period of maternity leave serves multiple purposes, including enabling the mother's physical recovery, facilitating the nurturing and care of the child, and ensuring the level of her previous efficiency and output.

43. In Municipal Corpn. of Delhi v. Female Workers (Muster Roll), reported in (2000) 3 SCC 224, the claim of the female workers engaged on muster roll for maternity benefit was examined on the anvil of Articles 39, 42, and 43 of the Constitution respectively. The Court, highlighting the critical phase of motherhood, observed that the MB Act seeks to ensure that women are treated with dignity at the workplace and protected from apprehension of victimization on account of forced absence during maternity. In such circumstances, the Court underscored that employers are expected to adopt a humane and empathetic approach towards women employees. The relevant observations read thus:-

"13. Parliament has already made the Maternity Benefit Act, 1961. It is not disputed that the benefits available under this Act have been made available to a class of employees of the petitioner Corporation. But the benefit is not being made available to the women employees engaged on muster roll, on the ground that they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily-wage basis.

33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman.

Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period."

(Emphasis supplied)

44. This Court had the occasion to consider the interpretation of Rule 43 of the Central Civil Services (Leave) Rules, 1972 (for short, "CCS (Leave) Rules"), in *Deepika Singh v. Pgimer, Chandigarh*, reported in (2023) 13 SCC 681. The maternity leave sought by the appellant upon the birth of her first biological child was rejected on the ground that her spouse had two children from his previous marriage. The Court underscored that judicial interpretation must bridge the gap between law and social realities through a purposive approach.

It noted that the MB Act was enacted to secure a woman's rights both as a mother and as a worker, and the object of maternity leave is to facilitate the continued participation of women at workplace. What has been conveyed by this Court, in so many words, is that the birth of a child is a natural incident of life and that the provisions of the MB Act must be construed keeping this in mind. An atypical familial structure must not be weighed less than traditionally conforming families. The relevant observations read thus:-

"26. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under the 1972 Rules is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive childbirth as detracting from the purpose of employment. Childbirth has to be construed in the context of

employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.

27. The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one's familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce.

Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination."

(Emphasis supplied)

45. In yet another case, a woman's request for maternity leave was rejected on the grounds that there was no provision for the grant of maternity leave in respect of a third child from her second marriage. In *K. Umadevi v. State of T.N.*, reported in (2025) 8 SCC 263, the Court interpreted the expression "two surviving children" in the relevant rules to mean children in lawful custody of the mother. While considering Section 5 of the MB Act, the Court observed that the grant of maternity benefit is not per se denied to a woman employee having more than two children. In order to effectively achieve broader social welfare goals, the Court sought to harmonize population control measures with the objective of extending maternity benefit.

46. It would be apposite to refer to the observations of the Delhi High Court in *Rama Pandey v. Union of India*, reported in 2015 SCC OnLine Del 10484, wherein it was noted that except the physiological changes, all other challenges faced in rearing of a child are common for all mothers. The Court rejected the submission made by the respondent that maternity leave is granted only to deal with biological changes which accompany pregnancy. It was further

highlighted that the concept of maternity leave shall rest upon motherhood and welfare of the child. The relevant observations read thus:-

"17. The argument of the respondents that the underlying rationale, for according maternity leave (which is to secure the health and safety of pregnant female employee), would be rendered nugatory - to my mind, loses sight of the following:

(i) First, that entitlement to leave is an aspect different from the right to avail leave.

(ii) Second, the argument centres, substantially, around, the interest of the carrier, and in a sense, gives, in relative terms, lesser weight to the best interest of the child."

(Emphasis supplied)

47. In *Dev Shree Bandhe v. C.G. State Power Holding Co. Ltd.*, reported in 2017 SCC OnLine Chh 1763, the petitioner, employed on probation, sought maternity leave which was declined by the respondent. The Court recognized the right to motherhood and the right of every child to full development as part of Article 21. Similarly, the Rajasthan High Court in *Chanda Keswani v. State of Rajasthan*, reported in 2023 SCC OnLine Raj 3274, held that the right to life includes the right to motherhood and the right of every child to full development. Thus, it was held that denial of maternity leave cannot be on the ground that the woman seeking it has given birth biologically, or has begotten a child through surrogacy or adoption.

48. In *Pratiba Himral v. State of H.P.*, reported in 2021 SCC OnLine HP 9295, the petitioner had adopted a child and sought the benefit of maternity leave as per the CCS (Leave) Rules. While allowing the petition, the Himachal Pradesh High Court noted that one of the purposes of the leave is bonding between the child and parents. It was observed that an adopted child is not different from a biological child, thus, the way the child has come into the life of the mother is no ground to refuse maternity benefit. The relevant observations read thus:-

"11. Not only are the health issues of the mother and the child considered while providing for maternity leave, but the leave is provided for creating a bond of affection between the two. To distinguish between a mother who begets a child through adoption and a natural mother, who gives birth to a child, would result in insulting womanhood and the intention of a woman to bring up a child begotten through adoption. Motherhood never ends on the birth of the child and a commissioning mother cannot be refused paid maternity leave.

A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through adoption. A newly born child cannot be left at the mercy of others as it needs rearing and that is the most crucial period during which the child requires care and attention of his mother. The tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. A bond of affection has also to be developed."

(Emphasis supplied)

49. Again, the Delhi High Court in *State v. Ravina Yadav*, reported in 2024 SCC OnLine Del 4987, dealt with the question of whether maternity leave could be granted to a woman having two surviving children. The Court adverted to the constitutional principles flowing from Articles 39, 41, 42, and 43 of the Constitution respectively, and observed that maternity leave constitutes an important facet of the constitutional guarantee available to women. It noted that the scope of maternity leave under the CCS (Leave) Rules has gradually evolved - initially confined to biological childbirth, and subsequently extended to include paternity leave, adoption leave, and childcare leave.

What is noteworthy in the observations of the Court that the concept of maternity benefit is intended to achieve social justice for women and children, and the period of leave plays a crucial role in fostering emotional bonding between the mother and the child. In this context, the Court also took note of studies indicating that stress hormone levels in children raised in orphanages are higher than those in children brought up in a familial environment. The relevant observations read thus:-

"8. The concept of maternity leave, flowing from above quoted constitutional pronouncements is a matter of not just fair play and social justice, but also a constitutional guarantee to women of this country towards fulfillment whereof, the State is duty bound to act. It is in this direction that Parliament enacted the Maternity Benefit Act, 1961 (hereinafter referred to as "the Act"), thereby consolidating the maternity protection which was earlier being provided under different State and Central enactments, embodying considerable diversity relating to the qualifying conditions, period and rate of benefits etc., to reduce which, a separate central legislation was required.

15.2. The early infancy environment and changes have lasting effect on the development of brain in the child. Researchers across the world have observed that infants begin to bond with their mother from the moment of birth, and this social bond continues to provide regulatory emotional functions throughout adulthood.

It is part of well documented research that children from deprived surroundings like orphanages have vastly different hormone levels as compared to their parent-raised peers. For instance, in Romania during 1980s, in target group aged 6 to 12 years, levels of the stress hormone Cortisol were found much higher in children who lived in orphanages for more than eight months as compared to those who were adopted at or before the age of four months.

15.3. Other researches show that children who experienced early deprivation of maternal touch had different levels of Oxytocin and Vasopressin (hormones that have been linked to emotion and social bonding), despite having spent an average of three years in a family home and this environmental change into a home does not seem to have completely overridden the effects of earlier neglect, according to medical researches published in the year 2005 in the proceedings of the National Academy of Sciences, University of Wisconsin. The Vasopressin and Oxytocin neuropeptide systems, which are critical in the establishment of social bonds and regulation of emotional behaviors are affected by early social experience.

15.4. The results of various experiments suggest a potential mechanism whose atypical function may explain the pervasive social and emotional difficulties observed in many children who have experienced aberrant care giving. The social attachments formed between human infant and her caregiver begin very early in postnatal life and play a critical role in child's survival and healthy adaptation. Typically, adults provide infants with a social environment that is fairly consistent.

Caregivers learn how to recognize and respond to the infants' needs, thereby creating predictable contingencies in the environment; these regularities, in turn, make the infants' environment secure and conducive to further social learning. Multiple perceptual, sensory, cognitive, and effective systems must become synchronized so that a social bond can develop between an infant and caregiver; this bond is then reflected in the child's adaptive behavioral responses to the environment. (Reference : Paper published by the team of Department of Psychology, University of Wisconsin, led by Alison B Wismer Fries (www.pnas.org/cgi/doi/10.1073/pnas.0504767102)).

(Emphasis supplied)

50. Motherhood does not end with the birth of a child. This was observed, or rather emphasized by the Chhattisgarh High Court in *Lata Goyal v. Union of India*, reported in 2025 SCC OnLine Chh 5572, wherein the petitioner, an employee of IIM, sought directions that adoption leave and child care leave as per the CCS (Leave) Rules be made applicable to her. The views expressed by

the Court merit commendation. It observed that a woman's right to practice a profession is a constitutional entitlement flowing from Articles 14, 15, and 21 of the Constitution respectively.

It emphasized that State cannot remain oblivious to the needs and concerns of women in workforce. The Court categorically held that discrimination on the ground of the mode of bringing a child is impermissible, for the object of such leave is to dignify motherhood and ensure the healthy growth and development of the child. It refrained from distinguishing between a biological, adoptive or surrogate mother. The relevant observations read thus:-

"12. Adoptive mothers, like all mothers, are capable of experiencing deep love and affection for their children, regardless of whether they are biological or adopted. The love and affection they offer can be just as strong and profound as that of a birth mother. Adoptive mothers, like birth mothers, can form strong bonds of love and attachment with their children. These bonds can be crucial for a child's emotional and psychological well-being.

13. The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1)(g). The "State" as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of child care leave to women sub-serves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. Otherwise, in the absence of a provision for the grant of Child Care Leave, a mother may well be constrained to leave the work force. This consideration applies a fortiori in the case of a mother who has a child with special needs. Such a case is exemplified in the case of the petitioner herself.

15. There ought not to be any discrimination of a woman as far as the maternity benefits are concerned only on the ground that she has obtained the baby through adoption. The object of the leave is to protect the dignity of motherhood by providing for full and healthy maintenance to the child. Child care/child adoption leave is intended to achieve the object of ensuring social justice to women. Childhood both require special attention.

16. Not only are the health issues of the child considered while providing leave, but the leave is provided for creating a bond of affection between the two. Motherhood never ends on the birth of the child and a commissioning/adoption mother cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy/adoption. A newly born child cannot be left at the mercy of others as it needs rearing and

that is the most crucial period during which the child requires care and attention of mother. The tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. A bond of affection has also to be developed.

17. There is no distinction between the natural, biological, surrogate or commissioning/adoption mothers and all of them have fundamental right to life and motherhood, contained under Article 21 of the Constitution of India and children born from the process of surrogacy/adoption have the right to life, care, protection, love, affection and development through their mother, then certainly such mothers have right to get maternity leave for above purpose."

(Emphasis supplied)

51. Recently, the Kerala High Court in *Susan K. John v. National Board of Examinations in Medical Sciences*, reported in 2026 SCC OnLine Ker 1333, held that maternity leave is a right and not a leave subject to discretion of the authorities.

52. The commonly drawn distinction between a mother who begets a child through surrogacy or adoption and a mother who naturally gives birth to a child perceives motherhood through the narrow lens of biology and fails to take into account the bond that develops between a mother and her child outside the womb, which is as crucial and intimate, as the bond that is formed inside the womb. Further, the said distinction makes motherhood contingent upon biological requirements and is a direct affront to the desire and intention of a woman to experience motherhood and bring up a child. We have no hesitation in saying that an adoptive mother like the petitioner would have the same rights and obligations towards the child as the natural mother.

53. We do not say for a moment that biological mothers and adoptive mothers form the same category. We acknowledge the distinction created by the legislature. However, the constitutional validity of the impugned provision must be tested by examining the purpose and components of maternity leave and the extent to which such purpose is served in each situation.

54. The components of maternity leave broadly consist of three elements.

i. First, the time necessary for physical recovery following the birth of a child, which concerns both the well-being of the mother and the child. As the immediate focus remains on the mother that she should not be required to resume employment until she has adequately recovered from the physical tribulations associated with childbirth.

ii. Secondly, the time required to nurture and develop the emotional bond between the mother and the child.

iii. Thirdly, the time necessary to attend to the physical and emotional needs of the child and to facilitate the process by which the child gradually integrates into the family, with the mother often acting as the primary medium through which the child is introduced to the familial environment.

55. In case of biological birth, the aforementioned three components are largely subsumed within one another and are not clearly distinguishable. The period of physical recovery often overlaps with the period during which the mother and child establish emotional attachment and the child begins to adapt to the familial setting. Whereas, in case of adoption or surrogacy, while the first component is absent, the second and third component are present and significant. The legislative recognition of maternity leave for adoptive and commissioning mothers under sub-section (4) of Section 60 is itself an acknowledgment of the importance of these components.

56. It is limpid that in the case of a biological mother, the aforesaid components, more particularly, the development of the emotional bond between the mother and the child, are often supported by physiological mechanisms which are evolutionary in nature. In the case of adoption, however, the same bond must be consciously nurtured through time, presence, and sustained caregiving.

57. It is in this context that the argument of the petitioner assumes importance that the impugned provision by introducing an arbitrary three-month time limit, deprives adoptive mothers of children older than three months, the opportunity required for the effective fulfilment of the above-mentioned second and the third components, more particularly, when the need for the same could not be said to be solely dependent on the age of the adopted child. We shall now proceed with testing the constitutional validity of the impugned provision on the anvil of the right to equality.

B. The constitutional guarantee of equality under Article 14 of the Constitution

58. Before testing the constitutional validity of a provision, more particularly, where it is alleged that it violates fundamental rights, it is necessary to ascertain the true nature, character and impact of the provision on the object and intention of the legislation. Thus, the courts have to look behind the form and appearance of the provision. In other words, the purport and intent of the legislation has to be determined.

a. Purpose of social security benefits

59. The discussions in the foregoing paragraphs establishes that the purport and intent of the MB Act, now forming part of the 2020 Code, is to dignify motherhood, safeguard maternal well-being, while ensuring continued participation of women in the workforce. The said Act is a legislative recognition of the physical, emotional, and social dimensions of motherhood, and accommodates the pivotal role it plays in a woman's life. By providing institutional support, the MB Act endeavours to harmonize professional obligations with familial responsibilities in order to promote an environment in which both the mother and the child would thrive.

60. In 2020, the MB Act, along with other laws relating to social security, were consolidated in order to extend social security coverage to all persons working in both the organized and unorganized sectors uniformly. Social security benefits guarantee labour and economic protection against loss of work due to illness, disability, death of family members, old age, unemployment, and maternity.

61. In the case at hand, we are concerned with maternity benefit. With the increasing participation of women in the workforce, there emerged a growing recognition of economic contribution by women, and of the substantial loss of income when their employment was interrupted. Thus, social security is intended to provide protection against contingencies that impair a person's capacity to actively participate in work.

62. In the aforesaid context, maternity is one such contingency, as it involves temporary physical, emotional, and economic vulnerability. In other words, maternity benefit form an integral component of the social security framework, aimed at ensuring economic security, safeguarding maternal health, and promoting welfare of the child.

63. In this backdrop, we shall now address the first submission canvassed on behalf of the petitioner with regard to the violation of Article 14 of the Constitution. It was submitted that Section 60(4) of the 2020 Code creates an unreasonable classification among adoptive mothers. In other words, the petitioner argued that the classification between a woman adopting a child aged less than three months and a woman adopting a child aged three months or more is artificial and violative of Article 14.

i. Examining validity of the impugned provision through the test of permissible classification

64. The law on classification is well settled and does not require restatement in extenso. While Article 14 of the Constitution permits classification, such classification must rest upon a real and substantial distinction. In other words,

the differential treatment accorded to one group vis-à-vis another must bear a rational relation to the object sought to be achieved by the legislature. Any classification lacking a substantial and intelligible basis is arbitrary and violative of the equality guarantee under the Constitution. Thus, Article 14 mandates that the law must operate equally on all persons under like circumstances.

65. Although classification by its very nature is discriminatory, yet equality, in cases involving classification, is treatment afforded after due regard to the nature, attainment or circumstances of the group concerned, so as to cater to its specific needs. It could be said that classification is an expression of substantive equality. We say so because individuals form a group, and a group is classified on the basis of some qualities or characteristics found in all persons and not in others, and such classification must have relation to the object of the legislation. In this context, this Court in *State of W.B. v. Anwar Ali Sarkar*, reported in (1952) 1 SCC 1, observed thus:-

"85. It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation.

This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation.

In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

In short, while the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained. The doctrine, as expounded by this Court in the two cases I have mentioned, leaves a considerable latitude to the Court in the matter of the application of Article 14 and consequently has the merit of flexibility."

(Emphasis supplied)

66. We may refer to and rely upon the decision of this Court in *State of Gujarat v. Shri Ambica Mills Ltd.*, reported in (1974) 4 SCC 656, wherein a Constitution Bench explained the characteristics of "reasonable classification". It stated that a classification would be termed reasonable when it includes all those who are similarly situated with regards to the purpose of such classification and none who are not. In other words, a classification must not either be under inclusive or over inclusive. The relevant observations read thus:-

"53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. And the very idea of classification is that of inequality. In tackling this paradox the Court has neither abandoned the demand for equality nor denied the legislative right to classify. It has taken a middle course. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. [See Joseph Tussman and Jacobus Brook *The Equal Protection of the Law*, 37 California Rev 341]

54. A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.

55. A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated.

A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification.

64. Laws regulating economic activity would be viewed differently from laws which touch and concern freedom of speech and religion, voting, procreation, rights with respect to criminal procedure, etc. The prominence given to the equal protection clause in many modern opinions and decisions in America all show that the Court feels less constrained to give judicial deference to legislative judgment in the field of human and civil rights than in that of economic regulation and that it is making a vigorous use of the equal protection clause to strike down legislative action in the area of fundamental human rights. [See "Developments Equal Protection", 32 Harv. Law Rev 1065, 1127] Equal protection clause rests upon two largely subjective judgments: one as to the relative invidiousness of particular differentiation and the other as to the relative importance of the subject with respect to which equality is sought. [See Cox, "The Supreme Court Foreword", 1965 Term, 80 Harv. Law Rev. 91-95]

65. The question whether, under Article 14, a classification is reasonable or unreasonable must, in the ultimate analysis depend upon the judicial approach to the problem. The great divide in this area lies in the difference between emphasising the actualities or the abstractions of legislation. The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities. Statutes are directed to less than universal situations.

Law reflects distinctions that exist in fact or at least appear to exist in the judgment of legislators - those whose have the responsibility for making law fit fact. Legislation is essentially empiric. It addresses itself to the more or less crude outside world and not to the neat, logical models of the mind. Classification is inherent in legislation. To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic. [See the observations of Justice Frankfurter in *Morey v. Doud*, 354 US 457, 472 (1957)]"

(Emphasis supplied)

67. What flows from the aforesaid decision is that under-inclusiveness in classification refers to a situation when classification confers benefits on

certain persons in furtherance of a legitimate purpose but fails to extend the same benefits to others who are similarly situated, without a justification. Such a manner of classification renders it unreasonable and volatile when examined through the test of permissible classification under Article 14.

68. In this regard, it would be apposite to refer to the decision in *Pravinsinh Indrasinh Mahida v. State of Gujarat*, reported in 2021 SCC OnLine Guj 1293, wherein the Gujarat High Court while dealing with the challenge to the legality and constitutional validity of the Gujarat Cooperative Societies (Amendment) Act, 2019, emphasized on the principle of "similarly situated" expounded by this Court in *Shri Ambica Mills Ltd. (supra)*. The State attempted to exclude sugar factories from the purview of Section 74C of the said Act.

The Court found the classification of sugar factories arbitrary, looking at the intention of the Section 74C and the object sought to be achieved through the classification, i.e., administrative exigency or saving money. In this context, the Court noted that a reasonable classification is one which includes all individuals who are similarly situated with regards to the purpose of the law. It was observed that the government cannot create a classification by excluding one category when both categories belong to the same genus. The relevant observations read thus:-

"75. Thus, the ratio discernible from the above referred judgment of the Supreme Court and the same can be made applicable to the case on hand is that the Government cannot create sub-classification thereby excluding one sub-category, even when both the subcategories are of the same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution.

The Supreme Court proceeded to observe that the judicial review of such notifications is permissible in order to undertake the scrutiny as to whether the notification results in invidious discrimination between two persons though they belong to the same class. of course, in the case on hand, the State has tried very hard to persuade this Court to take the view that the Sugar societies are not of the same genus and have tried to distinguish between the federal and primary societies.

This issue we shall deal with a little later. The Supreme Court, ultimately, held that the notification should be applied to the entire class. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.

80. Article 14 has two clear facets which are invalid. One is over classification and the other is under classification, which is otherwise, over inclusiveness or under inclusiveness. The judicial review of over classification should be done very strictly. In the cases of under classification when the complaint is either by those who are left out or those who are in i.e. that the statute has roped him in, but a similarly situated person has been left out, it would be under inclusion. It is to say that you ought to have brought him in to make the classification reasonable.

It is in such cases that the Courts have said that who should be brought in, should be left to the wisdom of the legislature because it is essentially a stage where there should be an element of practicality. Therefore, the cases of under inclusion can be reviewed in a little liberal manner. The under inclusion argument should not very readily be accepted by the Court because the stage could be experimental. For instance, if the argument is in context with Section 74C that some other category of society has been left out, the Court would say that it is under inclusion. The legislature does not have to bring in everybody to make it reasonable.

The case on hand is one of active exclusion. Had the Sugar societies been left out or the voters been excluded in Section 74C at the first instance and they came in to say that the State ought to have included us, the test would have been very strict, not that it would be impervious to review. The Court would be justified in not entertaining such complaint saying that the State should be given some freedom whom to include or whom not to include.

The Sugar societies have come at the stage where they are excluded. They are saying that having treated us as one, you cannot exclude us now in an arbitrary manner. This is not exclusion or inclusion at the threshold or the first stage. This is active positive leaving out - single legislation - single category legislation - constantly eliminating where the principles do not apply of that of under inclusion."

(Emphasis supplied)

69. At this stage, it would be apposite to state that, in order to pass the test of permissible classification, the distinction drawn by the impugned provision or legislation must not only bear a rational nexus with the object sought to be achieved by the Act, but the classification must also be inclusive of all similarly situated individuals.

70. We may look at the decision in Citizenship Act, 1955, Section 6-A, In re, reported in (2024) 16 SCC 105, wherein this Court held that the factors for determining a class are decisive in assessing whether a provision is under-

inclusive or overinclusive. Such factors must bear a rational nexus with the object and intent of the statute and must be in consonance with constitutional principles.

It was further held that it is incumbent on the State to include all persons within the classification who satisfy the prescribed criteria for classification. Any exclusion of similarly situated individual must be justified, and the degree of justification required to be discharged by the State is substantially higher in a matter affecting individual rights than that applicable in matters of economic policy. The relevant observations read thus:-

"472.3. The determination of the yardstick for classification will help in the assessment of whether a provision is underinclusive or overinclusive. The yardstick must have a nexus with the object and must be in consonance with constitutional principles. If the yardstick satisfies the test, then the State must determine if all persons/situations similarly situated based on the yardstick have been included. The State must on the submission of cogent reason justify if those who are similarly situated have not been included (underinclusiveness) or those who are not similarly situated have been included (overinclusiveness).

The degree of justification that the State is required to discharge depends on the subject-matter of the law, that is whether the matter deals with economic policy or fiscal matters, whether it is a beneficial provision such as a labour provision or whether it deals with the core or innate traits of individuals. The degree of justification is the least for economic policy, higher for a beneficial provision and the highest if it infringes upon the core or innate trait of individuals."

(Emphasis supplied)

71. In the aforesaid context, the observations in *Pravinsinh Indrasinh Mahida* (supra), succinctly explain the distinction between the intent of the legislation and legislative intention. It underscored that while the legislation intends to remedy a malady, the legislative intention related to the meaning or exposition of the remedy. Insofar as the test for permissible classification is concerned, the rational nexus of the classification is juxtaposed against the intention of the legislation. The relevant observations read thus:-

"84. In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of *Hiral P. Harsora v. Kusum Narottamdas Harsora* reported in (2016) 10 SCC 165. *Hiral Harsora* was a case which decided an important question as to the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005.

The appeal before the Supreme Court raised an important question concerning the area of protection of the female sex generally. The Supreme Court first tried to ascertain the object which was sought to be achieved by the 2005 Act. In doing so, the Court looked into the Statement of objects and reasons, the preamble and the provisions of the 2005 Act as a whole. In doing so, the Supreme Court followed the law as discussed in paras 13 and 14. It reads thus:

"13. In *Shashikant Laxman Kale v. Union of India*, (1990) 2 SCR 441, this Court was faced with the constitutional validity of an exemption section contained in the Indian Income Tax Act, 1961. After referring in detail to *Re: Special Courts Bill*, (1979) 1 SCC 380 : (1979) 2 SCR 476 and the propositions laid down therein on Article 14 generally and a few other judgments, this Court held:-

"15. It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In *Francis Bennion's Statutory Interpretation*, (1984 edn.), the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:

"The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."

16. There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise.

86. The constitutional principle of equality is inherent in the rule of law. The rule of law is satisfied when laws are applied or enforced equally, that is, even handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification requires each case to be decided on a case-to case basis.

In Subramanian Swamy's case (supra), one set of bureaucrats of the level of Joint Secretary and above working with the Central Government were offered the protection under Section 6-A while the same level of officers who were working in the States were not afforded with the same protection though both the classes of those officers were accused of an offence under the Act, 1988 and inquiry/investigation into such allegations were to be carried out.

The issue before the Supreme Court was whether the classification was based on intelligible differentia. The Supreme Court took the view that the classification could not be said to be based on intelligible differentia because the provisions in Section 6-A of the Act, 1988 impeded tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI could not have even conducted a preliminary inquiry much less an investigation into the allegations. The Supreme Court took notice of the fact that the protection in Section 6-A had the propensity of shielding the corrupt.

The Supreme Court held that the object of Section 6-A itself was discriminatory and such discrimination could not have been justified on the ground that there was a reasonable classification because it had rational relation to the object sought to be achieved. Ultimately, the Supreme Court held that although every differentiation may not be a discrimination, yet the differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. In the case on hand, we have explained how the differentiation amounts to discrimination and why the differentiation could be said to be irrelevant and artificial."

(Emphasis supplied)

72. With a view to dispel any doubt and lend clarity, we deem it appropriate to observe that the legislature is within its right to create a classification and decide the basis thereof. However, the scope and limits of judicial scrutiny in examining such classification must be borne in mind. The degree of deference, or rather restraint exercised by courts in case of classification by the State is elucidated by this Court in *State of T.N. v. National South Indian River Interlinking Agriculturist Assn.*, reported in (2021) 15 SCC 534.

There is no doubt that courts ordinarily accord a high degree of deference to legislative decisions with regards to economic matters. However, when classification affects substantive rights and operates in an under-inclusive manner, judicial deference stands correspondingly diminished. The relevant observations read thus:-

"11. However, it is settled law that the Court cannot interfere with the soundness and wisdom of a policy. A policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. [Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364 : 1 SCEC 358; Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223; Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304; Balco Employees' Union v. Union of India, (2002) 2 SCC 333; State of Orissa v. Gopinath Dash, (2005) 13 SCC 495 : 2006 SCC (L&S) 1225] It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights.

In R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , this Court decided on the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981. The challenge to the statute was on the principal ground that it was violative of Article 14 of the Constitution. Rejecting the challenge, the Constitution Bench observed that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech : (SCC pp. 690-91, para 8)

"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. [Ed. : The reference appears to be to Bain Peanut Co. of Texas v. Pinson, 1931 SCC OnLine US SC 34 : 7 L Ed 482 : 282 US 499 (1931).

See also Missouri, Kansas & Texas Railway Co. of Texas v. Clay May, 1904 SCC OnLine US SC 118 : 48 L Ed 971 : 194 US 267, 269 (1904).], that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature.

The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [Morey v. Doud, 1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:

'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events - selflimitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'

32. While non-classification arbitrariness is tested based on the proportionality test, where the means are required to be proportional to the object, classification arbitrariness is tested on the rational nexus test, where it is sufficient if the means share a "nexus" with the object. The degree of proof under the test would impact the judgment of this Court on whether the law is underinclusive or over-inclusive. A statute is "underinclusive" if it fails to regulate all actors who are part of the problem. It is "over-inclusive" if it regulates actors who are not a part of the problem that the statute seeks to address. The determination of under-inclusiveness and over-inclusiveness, and degree of deference to it is dependent on the relationship prong ("rational nexus" or "proportional") of the test.

33. The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a "rational nexus" to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision. The Indian courts do not apply the proportionality standard to classificatory provisions.

Though the two-Judge Bench in *Anuj Garg* [*Anuj Garg v. Hotel Assn. of India*, (2008) 3 SCC 1] articulated the proportionality standard for protective discrimination on the grounds in Article 15; and Malhotra, J. in *Navtej Singh Johar* [*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] held that less deference must be allowed when the classification is based on the "innate and core trait" of an individual, this is not the case to delve into it. Since the classification in the impugned scheme is based neither on the grounds in Article 15 nor on the "innate and core trait" of an individual, it cannot be struck down on the alleged grounds of underinclusiveness and over-inclusiveness."

(Emphasis supplied)

73. What is discernable from the aforesaid discussion is that the distinction created by Section 60(4) of the 2020 Code between a woman legally adopting a child below the age of three months and those who adopt a child aged three months or above must have a rational nexus with the intention and object of the 2020 Code.

74. The learned ASG on behalf of the respondents submitted that the impugned provision has been framed with an objective to strike a balance between the rights of adoptive mothers and the concerns of the employers. He further submitted that the classification under the impugned provision is reasonable as a child older than three months does not have the same intensive dependency on the caregiver.

75. Undoubtedly, the fundamental objective of the 2020 Code is to recognize human dignity by guaranteeing labour and economic protection to persons who are temporarily deprived of their capacity to fully participate in the workforce. There is no gainsaying that the protection granted earlier under the MB Act, and now subsumed within the 2020 Code, has been conceived with due regard to the multifaceted role of a woman as a mother.

76. The legislation acknowledges the indispensable contribution of a woman in familial stability, her responsibility in nurturing and caring for a child, and the physical and emotional demands attached to motherhood. By providing income security and institutional support during this critical phase, the legislation seeks to ensure that motherhood does not operate as a source of disadvantage at a work place, but is instead accommodated as a socially valuable function warranting protection and respect.

77. The purpose of maternity leave neither varies with the nature of employment nor with the manner in which the child is brought into the life of the mother. When we look closely, the natural effect of maternity benefit is to facilitate the physical and emotional adjustment of a mother, ensure the welfare and holistic development of a child, and promote bonding between parents and children during the crucial initial phase of family integration.

78. Thus, taking into consideration the aforementioned object and intention of the 2020 Code, could it be said that women adopting a child aged three months or above do not require the same protection as is afforded to women adopting a child below the age of three months? The answer is an emphatic 'No'. We say so because the object of maternity benefit is not associated with the biological process of childbirth alone but also takes into account a holistic understanding of attainment of motherhood and consequent fulfillment of the role.

79. What flows from the aforesaid is that the need for economic security, institutional support, and protection of dignity does not diminish merely on account of the age of the child at the time of adoption. The necessity of nurturing, care, and family integration remains equally relevant and pressing irrespective of whether the adopted child is below or above the age of three months.

80. In light of the object of the 2020 Code, women who adopt a child aged three months or above are similarly situated to women who adopt a child below the age of three months, insofar as their roles, responsibilities, and caregiving obligations are concerned. The essential attributes, capacities, and commitments of adoptive mothers do not undergo any material change merely on account of the age of the child at the time of adoption and the immediate period following the adoption.

81. We are of the considered view that the distinction drawn by Section 60(4) of the 2020 Code, does not have a rational nexus with the underlying beneficial object of the statute. The submission canvassed on behalf of the respondents proceeds on a narrow and restrictive understanding of adoption by limiting it to "caregiving responsibilities" towards an infant. Such a view disregards the bilateral process of adjustment and integration of the adopted child with the adoptive family. This disparity not only marginalizes the role that adoptive parents play in the life of the child but also reduces the recognition of their responsibilities.

82. While adoption may not involve the physical tribulations associated with the biological process of giving birth, or intensified caregiving responsibilities for an infant, the psychological and emotional factors assume significant importance, thereby requiring the mother to devote time to forge the bond of motherhood with the adopted child. A general approach which fails to consider the nuances associated with modern parenting would denigrate the understanding of motherhood, which flows from the status of being a mother and not merely from the manner of its attainment. Such an approach would also inevitably disregard the welfare of the child.

83. The process of adoption itself entails significant emotional, psychological, and practical adjustments for both the child and the adoptive mother. Children adopted at any age require sustained care, reassurance, and stable parental presence to overcome past vulnerabilities and integrate into a new familial environment. This is even more imperative to allow such mothers to avail themselves of the leave. In such circumstances, denying maternity benefit solely on the basis of an arbitrary age threshold disregards these essential aspects of adoption and undermines the very purpose of social welfare legislation.

84. The absence of an age limit assumes greater importance when we consider the position of children with disabilities. It is a matter of common knowledge that children with disabilities often wait considerably longer to be adopted as compared to other children. The process of identifying adoptive parents, ensuring that they are capable of providing the required care, and completing the necessary formalities would ordinarily take longer.

85. In such circumstances referred to above, confining the benefit of maternity leave where a child is adopted at a prescribed age would operate to the detriment of children with disabilities. It would also discourage the prospective parents from adopting children who require their presence during the initial period of adjustment. The need for parental presence, patience, and emotional support is often more pronounced in the case of children with disabilities. Thus, in such circumstances, in absence of any parental leave, maternity benefit leave enables the adoptive mothers to devote adequate time towards nurturing, rehabilitation, and emotional bonding with the child.

86. This issue also assumes a distinct dimension in the case of single adoptive mothers. Unlike in a traditional family setup where caregiving responsibilities may be shared between two parents, a single adoptive mother bears the entire responsibility of integrating the child into the family environment while simultaneously discharging her professional obligations.

87. In the absence of adequate maternity benefit, a single adoptive mother may be compelled to choose between her employment and the immediate needs of the adopted child. Such a predicament undermines the very purpose of social welfare legislation designed to support working women. The law cannot overlook the practical realities. In such circumstances, extending the benefit of maternity leave is not merely a matter of convenience but a necessary support that enables the woman to discharge her parental responsibilities while securing her economic independence.

88. In such a view of the matter, an age limit fails to account for the diverse realities of adoption. The needs of children and adoptive families are neither uniform nor reducible to an understanding of adoption in a typical familial structure. A provision that fails to accommodate these realities undermines the objective of the legislation and is prone to constitutional attacks.

89. Another aspect which deserves to be mentioned is the absence of any graded entitlement to maternity benefit in the impugned provision. In other words, while women adopting children younger than three months are entitled to maternity benefit for a period of 12 weeks, women adopting children even a day older than three months are not entitled to maternity benefit to any extent.

This approach adopted by the legislature while enacting the impugned provision does not reflect the real-world requirement of care and nurturing, which does not come to a sudden halt upon the attainment of a certain mathematical number, but gradually tapers with the proper integration of the child with the new environment, especially the parents. While it could be argued that the legislature could have provided for a graded entitlement to maternity benefits dependent upon the age of the child, however, such a situation does not arise for consideration in lieu of the either-or approach adopted by the legislature in the impugned provision.

90. The impugned provision also fails in including all those who are similarly placed, i.e., adoptive mothers. Thus, although the classification expressed in the words, "a woman who legally adopts a child shall be entitled to maternity benefit for a period of twelve weeks", seeks to give a benefit in recognition of gender equity, and in that sense, it bears a rational relation to the intention and object of the statute, yet it nonetheless fails to conform to constitutional principles of equality because it qualifies such benefit to "a woman who legally adopts a child below the age of three months". Thus, it leaves all the similarly situated women who legally adopt a child aged three months or above.

91. We are of the view that the impugned provision, i.e., Section 60(4) of the 2020 Code, to the extent that it prescribes an age limit of three months, is discriminatory because first, it does not disclose a reasonable distinction between women who adopt a child below the age of three months and those who adopt a child aged three months or above. Secondly, the particular differentiation, which is sought to be made, has no nexus with the object sought to be achieved. Thirdly, the classification suffers from under-inclusiveness.

92. Section 60(4) of the 2020 Code, in effect, operates unequally upon adoptive mothers who are similarly situated, resulting in discrimination without reasonable justification. As a necessary consequence, Section 60(4) of the 2020 Code violates the mandate of equality enshrined under Article 14 of the Constitution. The classification under the Act is palpably unreasonable and arbitrary.

93. When the Amendment Act, 2017, was introduced by the then Minister for Labour and Employment, this very issue was raised during the debates. Although a query was posed regarding the yardstick adopted for capping the age of a child at three months for an adoptive mother to avail maternity benefit, yet it was left unanswered. The question reads thus:-

"Apart from that, there is a criterion for the commissioning mother and for a mother adopting legally, if I understand it correctly that the child must be less

than three months. Now, what I do not understand is that what is the reason for that criteria. Today, if I have four month old child which I have got through surrogacy or which I have got through adoption, why should this law discriminate against a child which is four or five months? If there is any justification for it, then I hope that the Hon. Minister will clarify what that justification is."

94. Another submission was canvassed by the respondents that in case an adoptive mother adopts a child aged more than three months, she can avail benefit of the crèche facilities available at her establishment. The submission although seemingly appears to be lucrative yet the same in our considered opinion is flawed for the following reasons.

95. The limitation of Section 67 of the 2020 Code, in the particular circumstances, lies in the fact that the statutory obligation of an establishment to provide crèche facility arises only when there are fifty employees. A large number of establishments, more particularly, smaller establishments, therefore fall outside the ambit of this requirement, leaving a significant section of working women without access to such facilities.

96. Further, there is no gainsaying that the provision of a crèche facilities within an establishment is not a substitute for maternity leave. The realization of the right of maternity benefit must not be contingent on the number of employees. Maternity leave serves a distinct purpose, as elucidated in the foregoing paragraphs of this judgment. A crèche facility, on the other hand, merely provides a place for the child to remain during working hours and cannot replace the indispensable presence and care of the mother during this period.

97. When the benefit of maternity leave is not granted to all mothers, in some situations, she may be compelled either to leave the child at home, rely on the assistance of an older sibling, or take the child with them to the workplace, thereby compromising the child's health and safety. Where the older sibling is a girl child, such arrangements often result in her being withdrawn from school, which reinforces the vicious cycle of gender inequality.

98. In light of the aforesaid discussion, we may look into the decision of *Werner Van Wyk & Ors. v. Minister of Employment and Labour*, reported in [2025] ZACC 20. The challenge before the Constitutional Court of South Africa was with regards to the constitutional validity of Sections 25, 25A, 25B and 25C of the Basic Conditions of Employment Act ("BCEA") respectively. The provisions largely dealt with maternity and parental leave.

The challenge to the provision was on account of the differentiation between categories of the parents and children, i.e., a child born by their birth mother, a child born by surrogacy, and an adopted child. The challenge to Section 25B is of some relevance to us. Section 25B of the BCEA was challenged as it capped the age of a child being adopted at 2 years in order for the adoptive parent to avail parental leave. The provision read thus:-

"Section 25B deals with adoptive parents. It provides:

"(1) An employee, who is an adoptive parent of a child who is below the age of two, is subject to subsection (6), entitled to-

(a) adoption leave of at least ten weeks consecutively; or

(b) the parental leave referred to in section 25A."

(Emphasis is ours)

99. In *Werner Van Wyk* (supra), the respondent conceded that the provision is violative of the right to human dignity of persons, more particularly, of women who are not biological mothers. The Court was of the view that the human dignity of such persons is violated because they are not afforded the same protection as biological mothers. It indicated how the absence of provision of parental leave assumes that women are primary caregivers of children. We shall discuss the importance of paternity leave in some detail in the latter part of this judgment.

100. The Court applied the principle of permissible classification to assess whether the differentiation between parents on the basis of the child's age was constitutionally and statutorily valid. It observed that, on account of such differentiation, a child above the age of two years is denied any opportunity to adjust or integrate into the adopted family. It was further highlighted, and rightly so, that imposing an age limit on the child discourages the prospective parents and reduces the likelihood of such children being adopted. The relevant observations read thus:-

"55. It is trite that if section 9 is invoked to attack a legislative provision or executive conduct on the ground that it differentiates between people or categories of people in a manner that amounts to unequal treatment or unfair discrimination, the first enquiry must be directed to the question of whether the impugned provision does, in fact, differentiate between people or categories of people. Here, the answer must be in the affirmative. That the provisions differentiate between categories of adoptive parents and their children on the basis of age cannot be disputed. Indeed, adoptive parents of children who are

older than two years, and their children, are treated differently from parents and children younger than two years.

56. The next enquiry is if the provision does so differentiate, then in order not to fall foul of section 9(1) of the Constitution, there must be a rational connection between the differentiation in question and the legitimate governmental purpose it is designed to further or achieve. If it is justified in that way, then it does not amount to a breach of section 9(1).

58. The Minister's arguments in this regard do not hold water. The age cap set is in respect of children under the age of two years and the maternity leave has such an effect that birth parents leave their children who are much younger than two years. Birth mothers return to work whilst their children are three to four months old, unless they make special arrangements with their employer. If the Minister is concerned about equalising the two scenarios, it has not been argued why a four, six or 12-month age cap would be inappropriate. There is no explanation as to how two years was set as an appropriate age cap and why it should be regarded as a reasonable cap. I fail to see the creation of the "equivalence" alleged by the Minister.

59. I also reject the argument that the differentiation does not occur in respect of children. Of course, there is a financial benefit resulting from the UIF claim, but the adopted children older than two years are treated differently because they are not afforded time to be with their employed parents when they join their new families and there is no opportunity afforded for them to adjust to the new family at all. It also cannot be gainsaid, as the Commission has argued, that the lack of parental leave benefits for parents of adopted children who are two years and older further decreases the likelihood of such children being adopted because there is absolutely no leave after such children join their new family."

(Emphasis supplied)

101. The Court further observed that the need for adjustment to a new environment cannot be negated. It rejected the submission on behalf of the respondent that the provision attempts to place adoptive parents on the same pedestal as biological parents. This meant that the age limit affords similar benefits to different categories of parents. However, the Court held that the maternity benefit policy could not be framed in ignorance of the welfare of the child. In this context, the Court observed thus:-

"65. This argument by the Minister is flawed, as already stated. It does not address the differentiation between adopted children below the age of two years and those above it. It focuses on the parents. However, the focus cannot

be on the parents alone to the exclusion of the children, because the whole regime around maternity, paternity and adoption leave centres around both the parents and the children, with the parents being the givers of nurturing, and the children being the recipients or beneficiaries."

(Emphasis supplied)

102. Most importantly, while equating the leave available to adoptive parents with that granted to biological parents, the Court emphasized the difference in the underlying purpose of leave in the case of adoptive parents as opposed to biological parents and surrogate parents. The Court declared the age limit of two years as unconstitutional, and left it to the legislature to determine a reasonable age limit, if any, in accordance with constitutional principles. The relevant observations read thus:-

"71. Furthermore, when analysing whether adoptive leave should mirror the leave provided to other categories of parents, it is evident that the two are fundamentally different. Whilst leave for new-borns is focused on supporting the immediate and intensive needs of infancy, adoptive leave also addresses a broader spectrum of challenges. Adoptive parents, particularly those caring for children over the age of two, face the added complexities of facilitating the child's integration into a new family and navigating cultural and environmental shifts. This multifaceted responsibility, which extends beyond mere physical care, calls for a tailored leave framework that recognises the unique demands of adoption, rather than a one-size-fits-all approach.

72. Therefore, parental leave, irrespective of the child's age, is not solely about meeting the needs of the child, such as nurturing, but also to allow children of different ages a period to integrate and adapt in the new family unit. It cannot be disputed that in certain instances adopted children may require additional care and support depending on the circumstances they come from."

(Emphasis supplied)

103. It would also be apposite to refer to the decision by the European Court of Human Rights in *Topčić-Rosenberg v. Croatia*, Application no. 1939/11. The applicant therein, an adoptive mother of a three year-old child, was aggrieved by the non-grant of maternity leave, which was contrary to Article 14 read with Article 8 of the European Convention on Adoption of Children ("Convention"). Although, the benefit of maternity and parental leave is governed by the Maternity and Parental Benefits Act, 2009, yet the Court viewed the issue largely through the prism of Convention. The provisions read thus:-

"Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

104. The Court held that Article 14 read with Article 8 of the Convention squarely applied to the case. It did not see a reasonable justification behind difference in treatment between an adoptive mother and a biological mother insofar as maternity leave and related allowances of an adoptive mother were concerned. Such distinction without a justification was held to be discriminatory. The purpose of such leave in case of an adoptive child was identified to be care-giving responsibilities, nurturing, and bonding for integration of the child in the adoptive family. The relevant observations read thus:-

"42. The Court considers that when assessing the domestic practice in the present case, in which the authorities refused to grant maternity leave to an adoptive mother, it must take into account two considerations. First, for an adoptive mother the purpose of parental or maternity leave is to enable her to stay at home to look after her child. In this respect she is in a similar situation to a biological parent (see, *mutatis mutandis*, Petrovic, cited above, § 36, and Konstantin Markin, cited above, § 132). Secondly, the State should refrain from taking any actions which could prevent the development of ties between the adoptive parents and their child and the integration of the child into the adoptive family (see, *mutatis mutandis*, Wagner and J.M.W.L. v. Luxembourg, no. 76240/01, §§ 119 and 121, 28 June 2007).

47. Accordingly, being unable to discern any objective and reasonable justification for the difference in treatment of the applicant as an adoptive mother, in granting her the right to maternity leave after the adoption of her child, and a biological mother, who had such a right from the time of the birth,

the Court considers that such a difference in treatment amounted to discrimination."

(Emphasis supplied)

105. The net effect of the aforesaid discussion is that the absence of a biological connection does not diminish the depth of their bond. We cannot emphasize more on the fact that motherhood is ultimately shaped through affection, selfless care, and not through blood alone. This is one of those instances where law is confronted by a question which cannot be answered by statute alone.

C. The right to a dignified life for adoptive parents and adopted child under Article 21 of the Constitution

i. Adoption as an expression of reproductive autonomy

106. The second submission canvassed on behalf of the petitioner is that the impugned provision violates the adoptive mothers' and adoptive children's right to live life with dignity as enshrined under Article 21 by denying the mother the right to motherhood and the adoptive children the right to receive sufficient care to be rehabilitated and integrated into his/her new family.

107. Although biology has traditionally been the predominant lens through which kinship and family relationships are understood, yet non-biological modes of building a family are no less legitimate or meaningful. The decision to adopt may be motivated by a variety of personal, social, or humanitarian reasons. Thus, adoption is an equally valid pathway for the creation of a family. It is not biology that constitutes a family of a mother, father, and children, rather, it is the shared meaning, responsibility, and emotional bonds that sustain such a relationship. We say so because biological factors, by themselves, do not determine family behaviour or familial identity.

108. In such circumstances referred to above, an adopted child is no different from a so-called "natural" child, the only distinction is that the process of adoption is more visible and legally acknowledged. Thus, the act of adoption may carry an equally, if not more, profound affirmation of parenthood. There is no doubt that sharing of meaning, affection, and responsibility lies at the heart of both family creation and the adoption process.

109. A three Judge Bench of this Court in *Suchita Srivastava v. Chandigarh Admn.*, reported in (2009) 9 SCC 1, affirmed the reproductive rights of the appellant-victim, who was allegedly raped while staying in a Government-run welfare institution, when she expressed her willingness to carry the pregnancy till its full term despite being diagnosed with mild mental retardation. The

Court declined to discount her decision on the ground that it was "questionable" and instead looked beyond prevailing social prejudices to accord primacy to her right to make reproductive choices under Article 21.

The Court held that the Medical Termination of Pregnancy Act, 1971, recognizes and respects the personal autonomy of a woman in matters relating to reproduction. The Court further directed the respondents to ensure that adequate medical facilities were provided so as to safeguard her health and well-being during the course of the pregnancy. The relevant observations read thus:-

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods.

Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.

59. Lastly, we have urged the need to look beyond social prejudices in order to objectively decide whether a person who is in a condition of mild mental retardation can perform parental responsibilities.

60. The findings recorded by the expert body which had examined the victim indicate that the continuation of the pregnancy does not pose any grave risk to the physical or mental health of the victim and that there is no indication that the prospective child is likely to suffer from a congenital disorder. However, concerns have been expressed about the victim's mental capacity to cope with the demands of carrying the pregnancy to its full term, the act of delivering a child and subsequent childcare. In this regard, we direct that the best medical

facilities be made available so as to ensure proper care and supervision during the period of pregnancy as well as for post-natal care."

(Emphasis supplied)

110. We may look into the decision of K.S. Puttaswamy (Privacy- 9J.) v. Union of India, reported in (2017) 10 SCC 1, wherein this Court recognized the multifaceted nature of the right to privacy, which encompasses, inter alia, decisional autonomy in matters relating to intimate personal choices. Such autonomy includes decisions governing reproduction and family life, thereby affirming the individual's freedom to make choices concerning procreation and parenthood without unwarranted State interference. The relevant observations read thus:-

"248. Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. [Bhairav Acharya, "The Four Parts of Privacy in India", Economic & Political Weekly (2015), Vol. 50 Issue 22, at p. 32.] Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress. Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person."

(Emphasis supplied)

111. In X2 v. State (NCT of Delhi), reported in (2023) 9 SCC 433, wherein one of us, J.

B. Pardiwala, J., was a part of the Bench, observed that the bouquet of reproductive rights encompasses at the very least the right of women to have or not have children. The Court emphasized that reproductive autonomy forms an integral part of personal liberty and decisional autonomy under Article 21 of the Constitution. 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.

102. Zakiya Luna has, in a 2020 publication, argued that reproduction is both biological and political. [Zakiya Luna, Reproductive Rights as Human Rights : Women of Color and Fight for Reproductive Justice (NYU Press, 2020).] According to Luna, it is biological since physical bodies reproduce, and it is political since the decision on whether to reproduce or not is not solely a private matter. This decision is intimately linked to wider political, social, and economic structures. A woman's role and status in family, and society generally, is often tied to childbearing and ensuring the continuation of successive generations."

(Emphasis supplied)

112. What can be discerned from the above discussion is that when family structures and modes of parenthood have evolved and diversified, parenthood is not confined to the biological act of giving birth. It includes a broader spectrum of choices through which individuals realize their aspiration to build a family. Thus, an atypical or unconventional familial setup does not strip away the rights guaranteed by the Constitution.

113. In the aforesaid context, reproductive autonomy, therefore, cannot be narrowly understood as being limited to biological reproduction alone. Adoption, too, represents a conscious and meaningful exercise of the choice to create and nurture a family, and must be viewed as falling within the broader spectrum of reproductive decision-making.

114. The protection of maternity benefit cannot be confined keeping in mind the age of the child. More so, when this benefit seeks to support motherhood and the welfare of the child, it must extend to adoptive mothers who undertake the equally significant responsibilities of nurturing and raising a child.

115. We are at one with the learned counsel appearing on behalf of the petitioner that the impugned provision, by stipulating an age limit, fails to recognize the right of reproductive autonomy of those adoptive mothers who adopt a child aged three months or more. It denudes such adoptive mothers of the ability to meaningfully exercise and enjoy their right to decisional autonomy, dignity, and bodily integrity under Article 21.

116. What flows from the aforesaid discussion and need not be elaborated more is that the decision to have children is not confined to the biological birth. The choice to bring a child into one's life may also manifest through non-biological means such as adoption, which equally reflects an individual's autonomy in matters of parenthood and family formation. A mother takes birth the day a child comes into her life. While the day of the entry of the child in the mother's life slightly varies in case of biological route of attainment of

motherhood, what follows after the coming of the child in the mother's life is a universal feeling, shared by all mothers - whether adoptive, surrogate or biological.

117. Recently, in K. Umadevi (supra), Ujjal Bhuyan, J., succinctly highlighted the constitutional support to social security benefits through the Directive Principles of State Policy. The relevant observations read thus:-

"30. Article 42 of the Constitution of India which is one of the directive principles of State policy mandates that the State shall make provisions for securing just and humane conditions of work and for maternity relief. Article 42 is as follows:

"42. Provision for just and humane conditions of work and maternity relief.- The State shall make provision for securing just and humane conditions of work and for maternity relief."

31. Another directive principle is contained in Article 51 of the Constitution of India. Amongst others, it says through Article 51(c) that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another."

(Emphasis supplied)

ii. Scope and application of the principle of "best interest of the child"

118. For this particular discussion, it would be worthwhile to refer to the observations made by this Court in Lakshmi Kant Pandey v. Union of India, reported in (1984) 2 SCC 244, wherein this Court prior to enactment of the JJ Act took note of the guiding principles contained in the Declaration of the Rights of the Child adopted by the United Nations General.

The Declaration states that every child must be provided with opportunities and facilities to enable their development by all possible means, and best interest of the child shall be the paramount consideration in all laws and policies concerning children. This Court categorically observed that in situations where it is not possible for the biological parents to care for the child, an adoptive family would be the most appropriate alternative to provide a loving and nurturing environment. It emphasized that every child has the right to grow up in a loving and caring family. The relevant extract reads thus:-

"7. There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1959. The Declaration in its Preamble points out that "the child, by reason of

his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", and that "mankind owes to the child the best it has to give" and proceeds to formulate several Principles of which the following are material for our present purpose:

"Principle 2.-The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.

Principle 3.-The child shall be entitled from his birth to a name and a nationality.

Principle 6.-The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 9.-The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

Principle 10.-The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men."

Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents.

The adoptive parents would be the next best substitute for the biological parents. Such adoption would be quite consistent with our National Policy on Children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth".

(Emphasis supplied)

119. We must now advert to the definition of "best interest of child" as given under the JJ Act. Section 2(9) of the Act reads thus:-

"(9) "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development"

(Emphasis is ours)

120. Further, Section 3 of the JJ Act states that all the authorities while implementing the provisions of JJ Act shall be guided by the principle of best interest of child. The relevant part of the provision reads thus:-

"(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential."

121. We may also look into the relevant regulations of the CARA Regulations guided by the principle of the best interest of the child. Regulation 3 of the said regulation stipulates one of the fundamental principles governing adoption, within which the child's best interest is considered of paramount importance. The said regulation reads thus:-

"3. Fundamental principles governing adoption.- The following fundamental principles shall govern adoptions of children from India, namely:-

(a) the child's best interests shall be of paramount consideration, while processing any adoption placement;"

122. Thus, the common thread flowing across the aforesaid provision is that the principle of the best interests of the child constitutes the core of all laws and policies concerning children. It reflects the recognition that children, by reason of their age and vulnerability, they require special care, protection, and opportunities for development. The concept of best interest is not confined to a narrow or immediate understanding of welfare but rather, it comprises the

overall well-being of the child. The principle of best interest seeks to ensure that every child is provided with conditions that promote their healthy development.

123. On a plain reading of the aforesaid provisions, it is limpid that the guiding premise underlying this principle is that every child must be given the opportunity to grow in an environment that nurtures their potential, emotional, and intellectual development. The family, as a primary unit of care and protection, plays an indispensable role in fulfilling these objectives. A stable and harmonious home environment provides the foundation which enables a child to realize their fullest potential.

124. In *Dasari Anil Kumar v. Child Welfare Project Director*, reported in 2025 SCC OnLine SC 1689, the appellants who were adoptive parents, were aggrieved by the action of police in taking away the custody of minor children from them without the authority of law. This Court, having regard to the best interest of the children, the bonding between the parents and the child, the principle of family responsibility, and the principle of safety, directed that the custody of the children be restored to the adoptive parents. The relevant observations read thus:-

"11. This is in the interest of the children owing to the bonding between the "adoptive parents" and the respective children. This is by following the principle of the best interest of the child; principle of family responsibility; principle of safety, positive measures, principle of Institutionalization as a measure of last resort, principle of repatriation and restoration, which are also enunciated as general principles in Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

14. However, as a safeguard and in the best interest of the children, we direct that the Member Secretary of the State Legal Services Authority and/or the Member Secretary of the District Legal Services Committee, within whose jurisdiction the "adoptive parents" reside to seek reports on the welfare and progress of the child from the respective "adoptive parents" on a quarterly basis starting from November, 2025 onwards. The Member Secretary of the State Legal Services Authority and/or the Member Secretary of the District Legal Services Committee will also be at liberty to depute a Child Welfare Expert to inspect the home where the child and the "adoptive parents" reside. This is to ensure the welfare and progress of the children who have been returned to the "adoptive parents".

15. We again clarify that we have passed the aforesaid order in the best interest of the children concerned in the instant case as they have been with their adoptive parents for a few months upto three years in these cases."

125. In the aforesaid context, we may also refer to a decision by Labour Court of South Africa, Durban in *MIA v. State Information Technology Agency (Pty) Ltd.*, [2015] ZALCD 20, which dealt with the denial of "maternity" leave to a male employee. The respondent therein refused to grant leave on the basis that its policies and the Basic Conditions of Employment Act covered only "female" employees. In the case before the Court, the surrogacy agreement provided that the applicant would play the role of usually performed by the birthmother.

In such circumstances, the Court held that maternity leave is associated to the welfare and health of the child's mother as well as best interests of the child. While keeping in mind the best interest of the child, the Court further held that the policy of the respondent unfairly discriminates against the applicant and he should be entitled to "maternity leave". The relevant observations read thus:-

"[13] This approach ignores the fact that the right to maternity leave as created in the Basic Conditions of Employment Act in the current circumstances is an entitlement not linked solely to the welfare and health of the child's mother but must of necessity be interpreted to and take into account the best interests of the child. Not to do so would be to ignore the Bill of Rights in the Constitution of the Republic of South Africa⁶ and the Children's Act. Section 28 of the Constitution provides:

28 Children

(1) every child has a right

a.

b. To family care or parental care.

[14] The Children's Act specifically records not only that the act is an extension of the rights contained in Section 28 but specifically provides: Best interests of child paramount. In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance must be applied.

[16] The surrogacy agreement specifically provides that the newly born child is immediately handed to the commissioning parents. During his evidence the applicant explained that for various reasons that he and his spouse had decided that he, the applicant, would perform the role usually performed by the birthmother by taking immediate responsibility for the child and accordingly he would apply for maternity leave. The applicant explained that the child was

taken straight from the surrogate and given to him and that the surrogate did not even have sight of the child. Only one commissioning parent was permitted to be present at the birth and he had accepted this role.

[17] Given these circumstances there is no reason why an employee in the position of the applicant should not be entitled to "maternity leave" and equally no reason why such maternity leave should not be for the same duration as the maternity leave to which a natural mother is entitled."

(Emphasis supplied)

126. We may also look into the decision by the House of Lords in *In re P & Ors.*, [2008] UKHL 38, wherein the Court dealt with the issue of whether an unmarried couple could be excluded from being considered as adoptive parents of a child. In that case, the male applicant, who was not the child's biological father, sought to be recognized as the father, while the female applicant was the biological mother of the child. However, article 14 of the Adoption (Northern Ireland) Order, 1987, states that an adoption order could be made on the application of more than one person only if the applicants were a married couple.

The Court held that such a rule which excluded unmarried couples from maintaining an application as a potential adoptive parent was discriminatory and violative of the fundamental principle of adoption law, i.e., the best interest of child. It was held that status of an individual with regards to his marital life cannot be said to be determinative of the fact of child's best interest. Thus, the applicants were held to be entitled to apply to adopt the child. The following observations of Lord Hoffman and Lord Mance respectively are worthy of reproduction:-

Lord Hoffman

"16. The question therefore is whether in this case there is a rational basis for having any bright line rule. In my opinion, such a rule is quite irrational. In fact, it contradicts one of the fundamental principles stated in article 9, that the court is obliged to consider whether adoption "by particular...persons" will be in the best interest of the child. A bright line rule cannot be justified on the basis of the needs of administrative convenience or legal certainty, because the law requires the interests of each child to be examined on a case-by-case basis.

Gillen J said that "the interests of these two individual applicants must be balanced against the interests of the community as a whole." In this formulation the interests of the particular child, which article 9 declares to be the most important consideration, have disappeared from sight, sacrificed to a vague and distant utilitarian calculation. That seems to me to be wrong. If, as

may turn out to be the case, it would be in the interests of the welfare of this child to be adopted by this couple, I can see no basis for denying the child this advantage in "the interests of the community as a whole".

18. It is one thing to say that, in general terms, married couples are more likely to be suitable adoptive parents than unmarried ones. It is altogether another to say that one may rationally assume that no unmarried couple can be suitable adoptive parents. Such an irrebuttable presumption defies everyday experience. The Crown suggested that, as they could easily marry if they chose, the very fact that they declined to do so showed that they could not be suitable adoptive parents. I would agree that the fact that a couple do not wish to undertake the obligations of marriage is a factor to be considered by the court in assessing the likely stability of their relationship and its impact upon the long term welfare of the child. Once again, however, I do not see how this can be rationally elevated to an irrebuttable presumption of unsuitability."

Lord Mance

"134. The present case concerns the strengthening and deepening of private and family relationships that can arise on all sides from adoption. Adoption cements a family unit. It gives the child maintenance rights against the adoptor(s). It makes the child a member of the adoptor(s)' wider family, and confers inheritance rights in that connection. It is a process in relation to which the child's well-being ought to be paramount. The fact that proposed adoptors are a married couple is on any view a material factor. Society is entitled to place weight on the existence of such a bond. But that does not mean that every married couple are suitable or every unmarried couple unsuitable as adoptors.

A close scrutiny of all the circumstances is required in the particular child's interests before any adoption can be sanctioned. A couple's decision to remain unmarried cannot determine what is in the child's best interests. In today's world, failure to tie the knot is not to be equated with lack of actual commitment; and one would have thought that a joint wish to adopt was itself, at least to some extent, a counterbalancing factor. The threshold criterion of marriage which exists under the Northern Irish legislation looks at the matter in terms of the couple's decision whether or not to marry, rather than from the viewpoint of the child or the potential benefits of joint adoption for the child.

It excludes all possibility of adoption by all unmarried couples, however longstanding and stable their relationship. It precludes any second stage: any scrutiny at all of the circumstances, the needs or the interests of the particular child. The legislation distinguishes between a married and an unmarried couple, both equally suitable as adoptors, purely on the basis of marital status. The line drawn does not avoid the need for a second stage scrutiny where

adoption is possible. It simply makes adoption and the security and benefits which it would bring for the child impossible in the case of this child unless the couple marry."

(Emphasis supplied)

127. Similarly, the South African Constitutional Court in *Suzanne Du Toit and Vos v. Minister for Welfare and Population Development*, (2002) 13 BHRC 187, dealt with the issue of whether the applicants (same-sex unmarried couple) were eligible to adopt children as the existing legislation restricted the right to adopt only to married couples.

The Court referred to Section 28(2) of the Constitution, which states that a child's best interest is of paramount importance in every matter concerning the child. In such circumstances, the Court held that the exclusion of the applicants defeats the essence and purpose of adoption which is to provide stability, commitment, affection and support for child's development. The impugned provision was held to be violative of the principle of best interest of the child as it deprived them of a stable and loving family. The relevant observations read thus:-

"[19] The institutions of marriage and family are important social pillars that provide for security, support and companionship between members of our society and play a pivotal role in the rearing of children. However, we must approach the issues in the present matter on the basis that family life as contemplated by the Constitution can be provided in different ways and that legal conceptions of the family and what constitutes family life should change as social practices and traditions change.¹⁶ I turn now to consider the constitutionality of the impugned provisions.

[21] In their current form the impugned provisions exclude from their ambit potential joint adoptive parents who are unmarried, but who are partners in permanent same-sex life partnerships and who would otherwise meet the criteria set out in section 18 of the Child Care Act.²⁰ Their exclusion surely defeats the very essence and social purpose of adoption which is to provide the stability, commitment, affection and support important to a child's development, which can be offered by suitably qualified persons.

[22]. The impugned provisions of the Child Care Act thus deprive children of the possibility of a loving and stable family life as required by section 28(1)(b) of the Constitution. This is a matter of particular concern given the social reality of the vast number of parentless children in our country. The provisions of the Child Care Act thus fail to accord paramountcy to the best interests of

the children and I conclude that, in this regard, sections 17(a) and (c) of the Act are in conflict with section 28(2) of the Constitution."

(Emphasis supplied)

128. The overarching theme emerging from these judgments is that the law across the globe recognizes that the best interest of the child must remain the paramount consideration in all decisions affecting a child. It needs no elaboration that children must be raised in an atmosphere of affection, understanding, and moral security.

129. In the aforesaid context, the principle of the best interests of the child does not conclude with the completion of the formalities of adoption or the handing over of custody of the child to the adoptive parents. It is a continuing obligation that persists throughout the period a child remains a child, more particularly, in this context, during which the child integrates into the adoptive family. The true fulfilment of the child's welfare lies in enabling the child to meaningfully adjust, bond, and flourish within the family environment. The period immediately following adoption is often the most critical phase in this process, as the child must acclimatize to unfamiliar surroundings and develop a sense of belonging within the new family.

130. The net effect of the aforesaid discussion is that the welfare of the child in adoption extends far beyond the moment of placement. It entails the child's health, emotional security, and other needs, all of which require constant care, and support from the parent. When Section 60(4) of the 2020 Code imposes an age limit of three months for the availment of maternity benefit by an adoptive mother, it fails to adequately account for these continuing dimensions of the child's welfare.

D. Examining validity of the impugned provision through its workability

131. We may look at the matter from one another angle. The learned counsel appearing for the petitioner vehemently submitted that Section 60(4) of the 2020 Code fails to take into consideration the time required for completing the procedure for adoption of orphaned, abandoned, or surrendered children under the JJ Act and the CARA Regulations, respectively. She would submit that the adoption process ordinarily takes 2 months or more to be completed. Consequently, by the time the child is legally placed with the adoptive mother, the statutory age limit would, in most cases, stand exhausted, thereby, rendering the provision largely otiose in its practical application.

132. The following table indicates the timeline of the time required for a child to be declared legally free for adoption and referred to prospective adoptive parents (PAPs). It reads thus:-

SURRENDERED CHILD		ORPHAN OR ABANDONED CHILD	
IDENTIFICATION			
T	Execution of Surrender Deed by the parent or guardian. [S. 35 of the JJ Act]	T	A child who appears or claims to be an orphan, abandoned or lost shall be brought before the CWC. [S. 32(1) of the JJ Act]
T+60 days (60 days)	The parents or guardian who surrendered the child, have two months' time to reconsider their decision. [S. 35(3) of the JJ Act] In the meanwhile, the SAA2, DCPU3, CWC shall take steps to explore the possibility of parents retaining the child. [Reg 7(11) of CARA Regulations] The SAA shall intimate the CWC in case surrendering parents have not claimed back the child during the reconsideration period. [Reg 7(15) of CARA Regulations]	T+60 days If the child is less than 2 years old. (2 months) T+120 If the child is more than 2 years old. (4 months)	The CWC shall take efforts to trace the biological parents or legal guardian of the child. [S. 37(1)(c) of the JJ Act; Rule 19(24)-(27) of the JJ Rules] If the local police report on the non traceability of biological parents or guardians is not received within the stipulated time, they shall be deemed to be nontraceable. [Reg 6(9)-(11) of the CARA Regulations]
DECLARATION OF LEGALLY FREE FOR ADOPTION			
T+61 days (No time period stipulated)	The institution where the child has been placed by the CWC shall bring the case before the CWC on completion of two months. CWC may declare the child legally free for adoption. [S. 38(2) of the JJ Act; Rule 19(23) of the JJ Rules]	T+63 days (3 days) T+123 days (3 days)	The CWC shall declare the child as being legally free for adoption. [First Proviso to S. 38 of the JJ Act; Reg 6(13) of the CARA Regulations]

	[Reg 7(17) of Adoption Regulation]		
UPLOAD OF CHILD STUDY REPORT & MEDICAL EXAMINATION REPORT			
T+71 days (10 days)	The CSR4 and MER5 shall be prepared and posted on the Designated Portal. [Reg 7(18) of CARA Regulations]	T+73 days (10 days) T+133 days (10 days)	The CSR and MER shall be prepared and posted on the Designated Portal. [Reg 6(15) of the CARA Regulations]
REFERRAL			
T+71 days (No time period stipulated)	The child, subject to availability, may be referred to PAPs on the basis of seniority on the Designated Portal. [Reg 11(2) of CARA Regulations]	T+73 days (No time period stipulated) T+133 days (No time period stipulated)	The child, subject to availability, may be referred to PAPs on the basis of seniority on the Designated Portal. [Reg 11(2) of CARA Regulations]

133. The substantial amount of time in the aforesaid timeline, in the case of a surrendered child, is devoted to allowing the parents or guardian to reconsider their decision to surrender the child. Whereas, in the case of an orphaned or abandoned child, owing to the age of the child, time has been devoted to making sincere efforts to trace the biological parents or legal guardian of the child.

134. We lay much emphasis on the fact that this timeline cannot be compromised, having regard to the sensitive nature and the serious legal consequences that follow once a child is declared legally free for adoption. The time afforded to biological parents to reconsider the decision of surrender, as well as the efforts undertaken to trace the biological parents or legal guardians of an orphaned or abandoned child, are indispensable safeguards. These processes are bound to require time and must necessarily be allowed to unfold with due care.

135. In this regard, the respondents have submitted that in order to expedite the adoption process, district magistrates and additional district magistrates have been conferred with the power to issue adoption orders. We discourage this understanding of the adoption process. The expedition cannot be pursued at the cost of the essential safeguards that ensure no child is separated from their parent or legal guardian without consent or due process.

136. The conferment of such powers is intended to streamline procedural bottlenecks and ensure timely administrative action. This does not warrant the curtailment of the safeguards embedded in the statutory scheme. The adoption framework is designed not merely to facilitate placement of children but to ensure that every stage of the process accords primacy to the best interests of the child. Any attempt to compress or abbreviate these procedures in the name of expedition would undermine the safeguards that protect the rights of the child as well as those of the biological and adoptive parents. Therefore, the time taken in the process of declaring a child legally free for adoption is not a procedural "formality" but a necessary component of a careful and responsible adoption structure.

137. We shall now turn to the legal discussion concerning this issue. In adjudging the validity of a provision, the existing conditions in which the law is to be applied cannot be ignored. We say so because such conditions bear a direct nexus with the object sought to be achieved by the legislation. A statutory provision cannot be examined in isolation or in the abstract, divorced from the practical realities within which it is expected to operate.

138. In the aforesaid context, it is apposite to understand that law is not unidimensional or myopic in its application. If a provision is framed without due regard to the administrative conditions in which it is to operate, the intention of the legislation would stand frustrated. The law must be understood not merely through its terminology, but also in terms of its ability to meaningfully address the conditions for which it has been enacted.

139. It is well settled that the law cannot be merely symbolic or rather illusory. A legislative provision, more particularly, one which is beneficial in nature, must be capable of meaningful implementation so that the class for whose benefit it has been enacted is able to effectively avail the protection intended by the legislature. If the structure of the provision or the circumstances surrounding its operation make the benefit practically unattainable, the law risks becoming a mere formality on paper rather than an instrument of social welfare.

140. It would be worthwhile to refer to the observations made by this Court in *State of Kerala v. Unni*, reported in (2007) 2 SCC 365. The challenge to Rule (2) of the Kerala Abkari Shops (Disposal in Auction) Rules, 2002, was on the ground of its unworkability. In the factual scenario, the sample obtained from the business of the respondent was found to contain ethyl alcohol in excess of 9.5%. The respondents therein contended that no mechanical equipment was available to accurately measure the ethyl alcohol content in toddy. This Court, accepting the respondent's argument, held the provision to be unworkable when

put to application, and struck down the impugned rule. The relevant observations read thus:-

"39. Workability of a statute vis-à-vis the question as to whether it is vague or otherwise must also be considered having regard to the question as to whether it is at all practical.

40. We must state that where two interpretations are possible, having regard to the workability or unworkability of a statute, the one which leads to the workability of the statute must be preferred to the other, keeping in view the principle *ut res magis valeat quam pereat*. (See *State of T.N. v. M.K. Kandaswami* [(1975) 4 SCC 745 : 1975 SCC (Tax) 402].)

45. Here, no two interpretations are possible for upholding the validity of statute. Applying the principle of law as enunciated by this Court in the decisions noticed hereinbefore, no interpretation would make the statute workable or definite and thereafter, valid in law.

50. A person may be held to be guilty even if the contents of ethyl alcohol exceed 8.1% marginally. He must, therefore, be in a position to know as to what extent he can go and to what extent he cannot. The matter cannot, thus, be left to an act of nature. A penal provision must be definite. Unless the statutory intention otherwise provides, existence of *mens rea* must be read into a penal statute. It must be a deliberate act and not an unintentional one, unless the statute says so explicitly or by necessary implication. The Act or the Rules do not say either. It is in that sense vague or unreasonable.

51. Once, thus, it is found to be *ex facie* unreasonable and unworkable, the Court would not hesitate to strike down the said rule. We do so."

(Emphasis supplied)

141. In this context, by the time a child is declared legally free for adoption, the child is unlikely to remain within the narrow age threshold (three months) contemplated by the provision. The inevitable consequence is that although the statute ostensibly confers maternity benefit upon adoptive mothers, yet the benefit remains largely inaccessible in practice.

142. This issue was highlighted in *Temple of Healing v. Union of India*, W.P.(C) No. 1003/2021, wherein the petitioner called attention to the deficiencies in the process for adoption in the country. The report submitted by the Central Adoption and Research Agency indicated that PAPs wait between three to four years in order to get a healthy and young child. The reason was attributable to the mismatch in the number of registered PAPs and children available for adoption. The Court observed that the process of defining the

legal status of the child is delayed on part of the CWCs. We may again bring the observations of this Court to the notice of the respondents. It reads thus:-

"(b) Compilation of data on registration of all OAS children of the district on CARINGS and monitoring of CWCs for timely determination of legal status of children. It is imperative for the States to ensure registration of all OAS children in the district on the CARINGS portal. States are required to nominate an officer of a sufficiently senior level to monitor this exercise. It has been observed while examining the data on CARINGS as well as visits conducted from time to time by CARA that the process of defining the legal status of children is delayed on the part of CWCs.

The pending cases with CWCs beyond stipulated time limit for declaring a child legally free for adoption (LFA) is also one of the major concerns. There are a total number of 761 cases in all States/UTs which are pending with CWCs for more than four months for declaring LFA children. CWCs are required to expedite the legal status of all orphans, abandoned and surrendered children irrespective of their age. Older children can be benefited by the foster care adoption module being operationalized by CARA. The necessary data on pending applications for LFA children also needs to be compiled."

143. This Court should not remain oblivious to such ground realities. When a law, more particularly a beneficial legislation, is framed in a manner that prevents the intended beneficiaries from actually receiving its benefits, it ceases to serve its social purpose. A beneficial legislation must be interpreted and structured in a manner that enables its benefits to reach the masses for whom it is intended.

144. Thus, a provision which, owing to its design or surrounding conditions, cannot be effectively applied may result in the law becoming illusory in operation. The constitutional promise of equality and social justice demands that beneficial measures are not merely enacted, but are also capable of meaningful realization in the lives of those whom they seek to protect.

145. At this stage, we deem it appropriate to observe that the legislature, while enacting a statute, bears the responsibility of ensuring that the law it enacts is capable of being implemented. The duty of the law maker does not end with the mere articulation of a right or benefit. The enforceability of that right is equally important. Accessibility of law does not mean formal existence, but the ability of individuals to avail the benefits.

E. Institutional invisibility of household and care work

146. This provides us with the segue to address yet another aspect of rationale behind conferring maternity benefit upon adoptive mothers irrespective of the age of the adopted child.

147. It is not an unknown phenomenon that women often sacrifice earnings and career progression for childbirth and child care. Care work for children includes attending to their daily needs, bathing and feeding them, accompanying them for medical visits, etc., and undertaking the preparation that these responsibilities entail. There is no doubt that every member of a household benefits from the care work within households, and ordinarily, it is undertaken by women.

148. Such work of indispensable nature for the functioning of the family is performed without any explicit remuneration. The care provided within the home enables other members of the household to participate productively at their workplace. The economic significance of this care work, though frequently overlooked, is considerable. Only when time is spent on domestic and care responsibilities, the receivers are able to sustain productive employment. Thus, the contribution of women's unpaid labour at home, is not merely a private or domestic matter but forms an integral part of the broader economy.

149. In this regard, we may refer to what is called the Wollstonecraft Dilemma. It refers to the tension between recognizing women's role as caregivers and ensuring their equal participation in the workforce. This dilemma reflects the challenge of reconciling two competing expectations placed upon women. First, that they perform the role of a caregiver. Secondly, that they participate on equal terms with men.

150. This communicates that it would be unreasonable to treat women identically to men without acknowledging the social realities of the responsibilities to be undertaken at home. As a result, it will perpetuate structural disadvantage. At the same time, it would be unjust, if the law recognizes differences without ensuring equality in opportunity. Thus, conferring maternity benefit is a manner of acknowledging the realities of caregiving while enabling women to remain integrated within the workforce.

151. A study by the ILO indicate that employed women tend, on average, to work for longer hours than employed men when both paid employment and unpaid domestic work are taken into account.⁶ This disparity in working hours highlights the gendered nature of household responsibilities and clearly reflects societal norms regarding domestic labour and care work. Further, in the study, Valuation of Unpaid Household Activities in India⁷, the authors highlight the economic significance of unpaid domestic and care work performed within

households. There is no doubt that such unpaid house and care work contributes to the overall growth of the economy.

152. The aforesaid study reflects that this care work, though often unaccounted for, is far from insignificant, rather, it represents a foundational contribution to economic productivity. These caregiving responsibilities do not change when a woman adopts a child aged three months or above. On the contrary, they are heightened, in order to make the child comfortable and integrate within the family.

153. As discussed in the foregoing paragraphs of this judgment that the initial months following the arrival of a child, whether by birth or adoption, require time, attention, and rearing responsibilities to ensure the well-being of the child and the establishment of a stable environment.

154. In such circumstances, the absence of adequate economic protection or institutional support places an unreasonable burden upon women. There is no gainsaying that it would be unreasonable to expect a woman who has just welcomed a child into her life and simultaneously discharges the demanding responsibilities of caregiving at home to maintain the same level of presence and efficiency at the workplace. The maternity benefits are nothing but an expression of treatment grounded in equity and substantive approach to equality.

F. Highlighting the importance and need for paternity leave

155. There exists a kind of injustice, although not deliberate, yet based on assumptions so deeply rooted that they have ceased to appear as injustice at all, and have come to be accepted as the natural order of things in society. Society has historically attributed caregiving and nurturing responsibilities almost exclusively to mothers. While the role of a mother is undeniably central to a child's emotional, physical, and psychological development, it would be incomplete and unjust to overlook the equally significant role of a father.

156. Parenthood is not a solitary function performed by one parent but rather a shared responsibility in which each parent contributes to the child's holistic development. Although the father is present at the periphery of infancy, yet he is not present in the intimate and irreplaceable way that society has always presumed the mother must be. This acceptance of absence has seldom been examined with the seriousness it deserves. As a result, the cost is borne silently by children who grow up never realizing what they lacked, by fathers who were constrained by circumstances to remain distant. At the same time, by mothers who were denied the companionship and support of their partners in the early phase of caregiving.

157. The early months and years of a child's life constitute a formative period during which emotional bonds, attachment, and a sense of security begin to take shape. During this stage, the presence of a father contributes significantly to the child's emotional and psychological well-being. The essence of the matter is simple, the presence of both parents during the early development of a child is indispensable. What a father offers to a child in those nascent days cannot be scheduled for a convenient time or compensated for later.

158. In the aforesaid context, the absence of a father is rationalized by the hope of making up for lost time through devoted weekends. For the child, who needed to hear the voice and feel the warmth of a father in those early moments, the absence is not merely a matter of memory. It affects the foundation upon which the child begins to build emotional security and attachment. The absence of a father during the formative years of a child's life, particularly due to employment constraints, deprives both the child and the parent of the opportunity to form these early bonds.

159. We must note that proximity is not identical to presence. A father who remains physically near yet is compelled by professional obligations to remain disengaged from early caregiving roles cannot truly participate in the formative experiences of a child's infancy. It is not unknown that fathers have traditionally been perceived as providers, with their responsibilities revolving around financial stability. Consequently, as financial care does not resemble the visible, everyday nurturing, it has often been undervalued as a basis for recognizing the need for leave.

160. The other side of the same coin is the historical absence of a father's participation in everyday caregiving and shared responsibility. In this context, the absence of paternity leave produces two consequences. First, it reinforces gendered roles in parenting. Secondly, even where a father is willing and desirous of contributing, he is left without a meaningful opportunity to do so. When fathers are afforded the opportunity to take leave following the arrival of the child, they are able to support mother and share family responsibilities. This support extends to participating in the upbringing and caregiving of the child, assisting with household responsibilities, and remaining emotionally present during this demanding phase.

161. In such circumstances referred to above, a provision for paternity leave serves an important purpose by enabling fathers to participate meaningfully in the early stages of a child's life and development. It helps in dismantling gendered roles, encourages fathers to take an active role in child care, fosters a balanced understanding of parenting, and promotes gender equality within family and workplace.

162. It also advances the best interests and welfare of the child, which are most effectively served when both parents are enabled to play meaningful and complementary roles in the child's growth and development. The reasons highlighted in the foregoing paragraphs of this judgment for maternity leave remain similar for paternity leave.

163. At present, Sections 43A and 43AA of the CCS (Leave) Rules, respectively, grant a male government servant 15 days of paternity leave for the birth of the child or for adoption. The provisions read thus:-

"43-A. Paternity leave

(DOPT Notification No. 13026/1/99-Estt. (L), dated 18.04.2002)

(1) A male Government servant (including an apprentice) with less than two surviving children, may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days, during the confinement of his wife for childbirth, i.e., up to 15 days before, or up to six months from the date of delivery of the child.

(2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) The paternity Leave may be combined with leave of any other kind.

(4) The paternity leave shall not be debited against the leave account.

(5) If Paternity Leave is not availed of within the period specified insubrule (1), such leave shall be treated as lapsed. NOTE:- the Paternity Leave shall not normally be refused under any circumstances.

43-AA. Paternity Leave for Child Adoption

(DOPT Notification No. 110 I2/1/2009-Estt. (L), dated 01.12.2009)

(1) A male Government servant (including an apprentice) with less than two surviving children, on valid adoption of a child below the age of one year, may be granted Paternity Leave for a period of 15 days within a period of six months from the date of valid adoption.

(2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) The Paternity Leave may be combined with leave of any other kind.

(4) The Paternity Leave shall not be debited against the leave account.

(5) If Paternity Leave is not availed of within the period specified in sub-rule (1), such leave shall be treated as lapsed.

NOTE 1.- The Paternity Leave shall not normally be refused under any circumstances.

NOTE 2.- "Child" for the purpose of this rule will include a child taken as ward by the Government servant, under the Guardians and Wards Act, 1890 or the personal law applicable to that Government servant, provided such a ward lives with the Government servant and is treated as a member of the family and provided such Government servant has, through a special will, conferred upon that ward the same status as that of a natural born child.

(DOPT Notification No. 13026/5/2011-Estt. (L), dated 04.04.2012)"

164. The aforesaid provision reflects that the concept of paternity leave is not alien, but less recognized. We are observant that certain efforts are being made towards recognizing the need for such a provision. Recently, a private member Bill titled The Paternity and Parental Benefit Bill, 2025 (Bill No. 82 of 2025), was introduced, which seeks to grant eight weeks of paternity leave. The Bill, inter alia, seeks to extend paternity leave to adopting fathers.

165. Before we part, we would like to pen that a child who is born or adopted does not know what the law has decided about presence of the father, nor does the child understand how the law values paternity leave. The child, in all likelihood, experiences the presence or absence of closeness, and the depth or shallowness of the bond, simply as the natural state of things between them. It does not know that the slightest distance it feels is not reflective of the care or affection that exists. The realization that one of its parents arrived a little late to the story because the law required him to be present at work is something the child may never consciously know, yet the quiet cost of that absence is later reflected in their relationship.

V. CONCLUSION

166. A conspectus of our discussion in the aforesaid section is as follows:-

a. The distinction drawn by sub-section (4) of Section 60 does not have a rational nexus with the object of the 2020 Code. The object of maternity benefit is not associated with the process of childbirth but with the process of motherhood. The purpose of maternity protection does not vary with the manner in which the child is brought into the life of the beneficiary mother. Insofar as the roles, responsibilities, and caregiving obligations are concerned, women who adopt a child aged three months or above are similarly situated to women who adopt a child below the age of three months.

b. The process of adjustment and integration within the adoptive family, both for the parents as well as the child, remains substantially the same irrespective of the age of the child. The impugned classification overlooks the significant emotional, psychological, and practical adjustments required, of the adoptive parents and the adopted child, more particularly, in cases involving children with disabilities or single adoptive mothers.

c. The right of reproductive autonomy is not confined to the biological act of giving birth. Adoption is an equal exercise of the right to reproductive and decisional autonomy under Article 21 of the Constitution.

d. In matters affecting a child, paramount consideration must be given to best interests of the child. This consideration does not conclude with the completion of the formalities of adoption or the handing over of the custody, rather it continues throughout the period the child remains a child, more particularly, the period during which the child integrates into the adoptive family. The true fulfilment of the child's welfare lies in enabling the child to meaningfully adjust, bond, and flourish within the family environment.

e. When sub-section (4) of Section 60 of the 2020 Code is examined through one another angle, the provision turns out to be incapable of practical implementation, as it cannot fully achieve the purpose for which it has been enacted. With regard to the time required to declare a child legally free for adoption, by the time such declaration is made, the child is unlikely to be of less than three months old. Thus, the age limit renders the provision illusory and devoid of practical application.

167. For all the foregoing reasons, we have reached the conclusion that Section 60(4) of the 2020 Code insofar it puts an age limit of three months on the age of the adoptive child, for the adoptive mothers to avail maternity benefit under the 2020 Code is violative of Articles 14, and 21 of the Constitution respectively.

168. Therefore, the sub-section (4) of Section 60 of the 2020 Code should now be meaningfully read as:-

"(4) A woman who legally adopts a child or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be."

169. In light of the aforesaid discussion on the need of paternity leave, we urge the Union to come up with a provision recognizing paternity leave as a social security benefit. We emphasize that the duration of such leave must be

determined in a manner that is responsive to the needs of both the parent and the child.

170. In the result, the petition stands allowed in the aforesaid terms.

Pending application(s), if any, also stand disposed of.

.....J. (J.B. Pardiwala)

.....J. (R. Mahadevan)

New Delhi.

March, 2026;

1 Madras Maternity Benefit Act, 1934 (Act 6 of 1934), Bengal Maternity Benefit Act, 1939 (Act 4 of 1939), Punjab Maternity Benefit Act, 1943 (Act 6 of 1943), The Assam Maternity Benefit Act, 1944 (Act 1 of 1944), Bihar Maternity Benefit Act, 1945 (Act 24 of 1947).

2 Specialized Adoption Agency.

3 District Child Protection Unit.

4 Child Study Report.

5 Medical Examination Report.

6 International Labour Organization, "Women at Work: Trends 2016" (2016).

7 Satyananda Sahoo, Kaustav K. Sarkar & Amit Kumar, "Valuation of Unpaid Household Activities in India" 59(39) EPW 190 (2024).

IN THE SUPREME COURT OF INDIA

**Sharla Bazliel
Vs.
Baldev Thakur and Ors.**

**[Criminal Appeal No(s)._____ of 2026
arising out of SLP (Crl.) No(s). 3533 of 2024]**

**[Criminal Appeal No(s)._____ of 2026
arising out of SLP (Crl.) No(s). 2498 of 2025]**

Head Note – Where allegations of forgery are set out in the FIR and Investigating Agency has undertaken the exercise of getting the disputed documents examined through the handwriting expert, an order quashing the FIR without awaiting the outcome of the handwriting expert's report would be totally unjustified.

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. The appellant, Sharla Bazliel¹, being the original complainant and the State of Himachal Pradesh are before us for assailing the judgment and final order dated 8th January, 2024 passed by the High Court of Himachal Pradesh at Shimla² in Cr. MMO No. 50 of 2023 whereby the learned Single Judge of the High Court allowed the petition filed by the respondents-accused under Section 482 of Code of Criminal Procedure, 1973 and quashed the proceedings of FIR No. 8/22 dated 26th August, 2022 lodged by the appellant-complainant at Police Station State CID, Shimla for the offences punishable under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 18604.

4. It was inter alia alleged in the FIR that the respondents-accused herein, namely, Baldev Thakur, Daljit Singh and Jienpuri Kamsuon, entered into a criminal conspiracy to grab the property and other articles of the appellant-complainant's father, Dr. G.B. Bazliel, by way of extortion, cheating, forging documents, fabricating false evidence, fraud and committing theft. The appellant-complainant alleged in the FIR that she is the adopted daughter and legal heir of Dr. G.R. Bazliel.

Her family owned ancestral property admeasuring 51.2 bighas in Village Katli, Patwar Circle Dhagog, Mashobra, District Shimla, H.P. The said agricultural land belonged to her grandfather, Dr. I.R. Bazliel, and passed on to her father after the death of her grandfather in the year 1986. She has been in possession of the property since 1980. Her mother passed away in the year 2013, pursuant to which her father developed severe depression associated with other health issues. The appellant-complainant stated that she had been taking care of her father until the year 2016.

5. Around that period, respondent No. 2-Daljit Singh (who had a criminal background), introduced her father to a woman named Jienpuri Kamsuon (respondent No. 3). The appellant-complainant strongly objected to her father's relationship with respondent No. 3 Jienpuri Kamsuon considering his age and health condition.

However, the respondents-accused did not desist and, taking advantage of her father's weak mental and physical disposition, influenced him to sever all ties with the family, thereby rendering him completely isolated and vulnerable. By practising such fraudulent inducement, her father was persuaded to appoint respondent No. 2-Daljit Singh as a nominee in his bank accounts and, in this manner, the entire family property was transferred to respondent No. 1- Baldev Thakur.

6. The appellant-complainant was residing at Delhi in connection with her employment. Upon coming to know about the illegal design of the respondents-accused to grab the ancestral properties, she called her father on phone and objected to the transfers. She told her father that if he was insisting upon the sale of the properties, at least her own share and the share of her aunts should first be set apart, and only thereafter should the property be sold by following the due legal process. She alleged that on 9th March, 2017, a sum of Rs. 93 lakhs was transferred from her father's UCO Bank account to the bank account of respondent No. 2-Daljit Singh.

The major part of this amount, i.e., nearly Rs. 65 lakhs, comprised the savings of the appellant-complainant's late mother (Dr. Yvonne Bazliel), which had been credited to her father's bank account on 21st March, 2013 soon after her mother's death by encashing a fixed deposit. Another transfer of Rs. 25 lakhs was made on 9th March, 2017, from her father's UCO Bank account to the account of respondent No. 2-Daljit Singh. In this manner, a total sum of Rs. 1.18 crores was transferred from her father's bank accounts to respondent No. 2-Daljit Singh without being supported by any lawful transaction or dealing between him and the appellant-complainant's father so as to justify such huge money transfers.

7. It was further alleged that the respondents-accused conspired together to manage the sale of the family land admeasuring 49 bighas and 17 biswas in favour of respondent No. 1-Baldev Thakur by way of a registered Sale Deed No. 366/2017 for a purported sale consideration of Rs. 3.90 crores.

For effecting this sale, the property was shown to be the selfacquired property of her father, contrary to the factual position as reflected in the revenue records. The sale was made at a throwaway price, far below the basic land rate, and by recording a totally false recital that her father had obtained NOC from all family members and legal heirs. It was specifically alleged that NOC had never been given by any family member consenting to the sale of the family land.

8. She came to know about the death of her father through social media. It was alleged by the appellant-complainant that her father died under mysterious circumstances in Hotel Twin Towers at Kufri, Shimla owned by respondent No. 1-Baldev Thakur. She tried to contact respondent No. 3-Jienpuri Kamsuon to find out the details but to no avail. After the death of her father, respondent No. 1-Baldev Thakur took possession of the family land and the house. She could not even retrieve her personal belongings, important documents and jewellery.

On 4th March, 2022, respondent No. 2-Daljit Singh approached UCO Bank claiming to be the nominee of her father and closed his savings account and got transferred an amount of Rs 5,74,526/- (Rupees five lakh seventy-four thousand five hundred and twenty-six) into his own account. She checked her father's bank accounts and was shocked to find that not a single Rupee towards consideration for the two sale deeds of 2017 and 2019 had been credited to any of the bank accounts operated by her father.

She suspected that these transfers had been fraudulently staged by the accused persons acting in conspiracy with the intention to grab the entire property, both movable as well as immovable, of her father and those owned by the family. Respondent No. 2 - Daljit Singh fraudulently managed to transfer the money amounting to Rs.1,23,74,526/-, to which the appellant-complainant's family was entitled, into his account at UCO Bank, Vidhan Sabha. Her father's two firearms also went missing after his death.

9. Based on the aforesaid allegations, FIR No. 8 of 2022 dated 26th August, 2022 came to be registered at Police Station State CID, Shimla for offences punishable under Sections 420, 465, 467, 468, 471 and 120-B IPC and investigation was commenced.

10. The respondents-accused nominated in the FIR filed the subject petition under Section 482 of CrPC seeking quashing of the aforesaid FIR. In the course of hearing of the quashing petition, the Investigating Officer filed a status report dated 3rd July, 2023 specifically mentioning that there was a grave discrepancy between the rates at which the lands were purchased and the circle rates prevailing at the relevant time.

The rates portrayed in the sale deeds were far lower than the prevailing circle rates for the area in question. The said discrepancy was flagged to highlight the element of fraud practiced by respondent No. 1-Baldev Thakur and others in preparing the sale documents, particularly, the documents relating to circle rates of the land. The Investigating Officer forwarded the questioned documents to the State Forensic Science Laboratory⁵, Junga, Himachal Pradesh for forensic document examination on 27th February, 2023.

11. The SFSL reports dated 27th June, 2024 and 31st August, 2024 have been placed on record along with the reply filed by the State in Criminal Appeal @ SLP(Crl.) No. 3533 of 2024, as per which the documents nominating respondent No. 2-Daljit Singh as the nominee of the appellant-complainant's father and the document relating to the closure of the bank account of the appellant-complainant's mother were found to be bearing forged signatures. The report specifically states that the admitted specimen/signatures of the appellant-complainant's father do not match the questioned signatures.

The investigation further disclosed a marked discrepancy between the land rates mentioned in the sale deeds and the circle rates notified by the Government, thereby establishing fraud in the circle-rate documents used for registration of the sale deeds. It was consequently found that respondent No. 1-Baldev Thakur, by undervaluing the property on the basis of false circle-rate documents, paid only Rs. 32,04,000 towards stamp duty and registration charges instead of the legally payable stamp duty @ Rs. 67,91,241, thereby causing a loss of Rs. 35,87,242 to the Government exchequer.

In view of the SFSL reports dated 26th June, 2024 and 31st August, 2024 and the material collected during investigation in FIR No. 8/2022, the investigating agency concluded that respondent Nos. 1 to 3 (Baldev Thakur, Daljit Singh and Jienpuri Kamsuon) had committed offences of forgery and cheating by forging the signatures of the appellant-complainant's father and fraudulently projecting themselves as his nominees.

In this manner, they misappropriated the monies from the bank accounts of the appellant-complainant's father. As stated above, the criminal petitions filed by the respondents-accused under Section 482 CrPC stand allowed by the order

dated 8th January,2024 passed by the High court in Cr.MMO No. 50 of 2023 whereby the FIR was quashed.

12. Being aggrieved, the appellant-complainant as well as the State of Himachal Pradesh are before us by way of these appeals with special leave.

13. We have heard and considered the submissions advanced by learned counsel for the parties and have carefully gone through the impugned order as well as the reply filed by the State.

14. On a perusal of the impugned order, we find that the High Court interfered in exercise of its inherent powers and quashed the FIR at the very threshold when investigation was in full swing and vital material was yet to be collected.

15. The High Court recorded that the necessary ingredients of fraud, misrepresentation or forgery were not made out from the allegations set out in the FIR. The High Court also held that the FIR had been lodged on the basis of speculations and that such allegations were not sufficient to constitute cognizable offences. With these findings, the High Court proceeded to quash the entire proceedings of the FIR.

16. We may observe that where allegations of forgery are set out in the FIR and Investigating Agency has undertaken the exercise of getting the disputed documents examined through the handwriting expert, an order quashing the FIR without awaiting the outcome of the handwriting expert's report would be totally unjustified.

17. While deciding the quashing petitions, the learned Single Judge took note of the fact that the relevant documents had been taken into possession and had been sent to the SFSL for analysis. However, this vital aspect of the matter was completely glossed over by the learned Single Judge while quashing the FIR. Once the Court was apprised that investigation into the genuineness of the signatures on the disputed/questioned documents was being undertaken and the signatures were in the process of being analysed by the SFSL, there was no reason whatsoever for the High Court to have proceeded to quash the FIR by exercising jurisdiction under Section 482 CrPC.

18. Resultantly, we are of the firm opinion that the High Court prematurely quashed and terminated the proceedings arising out of the FIR filed by the appellant-complainant despite clear allegations establishing the offences of fraud, falsification of documents, forgery and criminal breach of trust. So far as the observation made by the High Court that the appellant had earlier filed FIR against her own father is concerned, it may be noted that the said FIR was in relation to an entirely different allegation, namely that her father had attempted to usurp the property of her grandfather by fabricating his signatures.

19. The High Court relied on this Court's decision in *Mir Nagvi Askari v. CBI*,⁶ and observed that the prosecution is required to prove that the accused had forged the document by creating a false document.

20. We feel that the reliance placed by the High Court on the aforesaid judgment to quash the FIR, despite taking note of the fact that the Investigating Agency had sought the report of the handwriting expert, was wholly unjustified. The questioned documents having already been forwarded for examination, the proof of forgery would evidently depend upon the outcome of the comparison to be conducted by the handwriting expert. Thus, the aspects relating to the creation of false documents and the commission of forgery were still under investigation when the High Court prematurely proceeded to quash the FIR.

21. As a matter of fact, as per the specific averments made in the Criminal Appeal @ SLP (Crl.) No. 2498 of 2025, filed on behalf of the State of Himachal Pradesh, the SFSL report has been received which concludes that the signatures on the questioned documents are facsimile stamps i.e., not the handwritten signatures of the father of respondent No. 4 (appellant-complainant). Apparently, thus the investigation has resulted into credible evidence establishing that the documents on the strength whereof the properties were transferred in favour of the accused bore forged signatures of the appellant-complainant's father, namely, Dr. G.B. Bazliel.

22. We further find that the judgment in *Mir Nagvi Askari* (supra), relied upon by the High Court, was neither relevant nor applicable to the facts of the present case. Since the report of the handwriting expert had not yet been received, it was premature to record any finding on falsification of documents and forgery. In such circumstances, the prosecution of the accused persons could not have been stifled at the threshold by the exercise of powers under Sections 482 CrPC or Article 226 of the Constitution of India.

23. A specific allegation was made by the appellant-complainant that deposits of her father's and mother's bank accounts were usurped by the accused by fraudulently posing as nominees. These allegations, prima facie, constitute the offence of fraud and criminal misappropriation. Hence, we are of the firm opinion that the allegations as set out in the FIR and the material collected by the Investigating Officer is amply sufficient to proceed against the accused, and it was not a case warranting the exercise of inherent powers of the High Court to quash the FIR.

24. As a consequence, we find it difficult to sustain the impugned judgment and final order dated 8th January, 2024, which is accordingly set aside.

25. The Investigating Officer is directed to conclude the investigation and file the result thereof (if already not filed) before the Court concerned at the earliest. In case the report under Section 173(2) CrPC (corresponding to Section 193(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023) has already been filed, then the trial Court shall proceed with the matter as per law.

26. However, we make it clear that the observations made hereinabove are restricted only to the decision of the present appeal(s) and shall have no bearing on the rights and defences available to the parties at the appropriate stage of the case.

27. The appeals are allowed in these terms.

28. Pending application(s), if any, shall stand disposed of.

.....**J. (Vikram Nath)**

.....**J. (Sandeep Mehta)**

New Delhi;

March 17, 2026.

1 Hereinafter referred to as appellant-complainant.

2 Hereinafter referred to as 'High Court'

3 For short 'CrPC'.

4 For short 'IPC'

5 Hereinafter, referred to as the 'SFSL'.

6 (2009) 15 SCC 643.

IN THE SUPREME COURT OF INDIA

Virinder Pal Singh
Vs.
Punjab and Sind Bank & Ors.

Civil Appeal No. 3571 of 2026
(Arising out of SLP (C) No. 10742/2026)
(Arising out of Diary No. 603/2024)

Head Note – If the extant service Rules/Regulations permit continuance of the disciplinary proceedings, initiated against an officer/ employee before he had attained the age of superannuation, those can be continued and brought to its logical conclusion even after he had attained the age of superannuation.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. This appeal impugns judgment and order of the High Court of Punjab and Haryana at Chandigarh¹ dated 23.02.2023 in LPA No. 370 of 2018 which arose out of CWP No. 12865 of 2014.

FACTS

3. In brief, facts relevant for deciding this appeal are as follows:

(i) The appellant while in service of Punjab & Sind Bank² i.e., the first respondent was served a charge sheet on 30.09.2011, inter alia, on allegation of irregularities in disbursement of loans.

(ii) On 30.09.2011 itself, the appellant superannuated from service. However, the disciplinary proceedings continued and one of the charges, namely, Charge No. 2, that is the appellant had failed to ensure the end use of the loan, was found partly proved. Consequently, vide order dated 15.06.2013, punishment of reduction by three stages in the time scale of pay, on permanent basis, was imposed upon the appellant.

(iii) Aggrieved therewith, the appellant preferred an appeal before the Appellate Authority which was dismissed by order dated 19.04.2014. Thereafter, the appellant preferred a writ petition i.e., CWP No. 12865/2014 before the High Court, which was heard by a Single Judge Bench of the High Court.

(iv) Before the learned Single Judge, the appellant, inter alia, urged that the penalty imposed upon him was not permissible as he had superannuated. Post retirement, penalties specified in the Punjab and Sind Bank Employees' Pension Regulations, 1953 alone could be imposed.

(v) The aforesaid argument was accepted by the learned Single Judge. In consequence, the punishment order was set aside while reserving the right of the Bank to issue a fresh show cause notice for action under the Pension Regulations.

(vi) Aggrieved therewith, the Bank preferred an intra court appeal before the Division Bench of the High Court.

(vii) The Division Bench by relying upon a three-Judge Bench decision of this Court in *Chairman-Cum-Managing Director, Mahanadi Coalfields Limited v. Rabindranath Choubey*⁴ and Regulation 20(3)(iii) of the Punjab and Sind Bank Officers' Service Regulations, 1925 held that the extant Service Regulations permitted continuance of disciplinary proceedings post attainment of the age of superannuation, therefore the disciplinary proceedings could continue and brought to its logical conclusion as per those Regulations. As a result, the order of the learned Single Judge was set aside, and the writ petition of the appellant was dismissed.

(viii) Aggrieved by the order of the Division Bench, the appellant is before us.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. On behalf of the appellant, it was submitted that once the appellant had attained the age of superannuation, the master-servant relationship between the Bank and the appellant ceased to exist, therefore, the punishment of reduction of pay could not have been imposed. Though the Bank could have either reduced the pension, otherwise payable, or recover the loss, if any, caused to the Bank, under the Pension Regulations.

5. Reliance was placed on a decision of this Court in *Ramesh Chandra Sharma v. Punjab National Bank* and another⁶ to contend that for the purposes of proceeding with disciplinary action post-retirement, punishment of dismissal from service stands on a different footing than reduction of pay, as by dismissal the liability to pay pension also ceases. Reliance was also placed on *UCO Bank and others vs. Prabhakar Sadashiv Karvade*⁷ to contend that Service Regulations apply to serving employees only.

6. It was next contended that the appellant had taken multiple other grounds (i.e., (a) the concerned charge was not proved; (b) the concerned charge was not relatable to any specified misconduct; and (c) the punishment as well as the

appellate order was a non-speaking one), which the High Court failed to address. To buttress the submission that disciplinary /Appellate Authority's order must carry reasons, reliance was placed on decisions of this Court in *A.L. Kalra v. Project and Equipment Corporation of India Limited*⁸ and *Allahabad Bank and others v. Krishna Narayan Tewari*⁹.

7. It was also contended that even if the merits of the finding(s) returned by the Inquiry Officer, Disciplinary Authority and Appellate Authority was not specifically questioned before the High Court, it being a pure question of law can be raised at any stage. In this regard, reliance was placed on decisions of this Court in *Securities and Exchange Board of India through its Chairman v. Roofit Industries Limited*¹⁰ and *Chittoori Subbanna v. Kudappa Subbanna and others*¹¹.

SUBMISSIONS ON BEHALF OF THE BANK

8. Per contra, the learned counsel for the Bank submitted that the general principle that there could be no disciplinary action post termination of master-servant relationship, consequent to attaining the age of superannuation, has an exception, which is, that if the extant Service Rules/Regulations permit continuance of disciplinary proceedings post attainment of the age of superannuation, the proceedings can continue and brought to its logical conclusion.

Regulation 20(3)(iii) of the Service Regulations permits continuance of disciplinary proceedings against the charged-officer even post-superannuation, if those were initiated prior to incumbent's superannuation, as is the case here. It was contended that in *Ramesh Chandra Sharma (supra)*, this Court held that in view of the provisions of Regulation 20(3)(iii) it is permissible to continue with the disciplinary proceedings post-retirement. Same view has been taken by a three-Judge Bench of this Court in *Canara Bank v. D.R.P. Sundharam*¹². On the other hand, Pension Regulations become applicable when proceedings are initiated under the Pension Regulations.

9. It was next contended that the decision in *Prabhakar Sadashiv Karvade (supra)* relied by the appellant is distinguishable on facts inasmuch as in that case the charged-officer had retired before service of charge-sheet. In that context, it was held that extant Regulations would apply to only serving employees.

10. On merits of the charge and the orders passed by the Disciplinary/Appellate Authority, it was submitted that the Inquiry Officer in his report dated 20.12.2012 found Charge No. 2 partly proved because the borrower had made cash withdrawals of several lacs of rupees without supporting bills. In that

context, the Inquiry Officer concluded that the charged officer had failed to ensure end-use of the loan amount.

The said conclusion is logical and cannot be held perverse. More so, when the loan account had turned Non-Performing Asset (for short, NPA). It was submitted that diversion of loan is best prevented by ensuring that it is used for the purpose intended. Withdrawal by cash, without supporting bills, is a clear indication of misuse of loan amount. Moreover, the appellant had never questioned the finding qua cash withdrawals without supporting bills.

11. Besides, the punishment imposed on the appellant had resulted in reduction of pension by a meagre sum of Rs. 302 per month. Thus, the punishment is not shockingly disproportionate to the gravity of the proven misconduct. Further, as to what punishment is to be imposed, the discretion vests with the disciplinary authority. In this regard decision of this Court in *Union of India And Others v. Ram Karan*¹³ was relied upon. Based on the aforesaid submissions, it was prayed on behalf of the Bank that the appeal be dismissed.

ANALYSIS

12. We have heard the learned counsel for the parties and have perused the materials on record.

13. On consideration of the rival submissions, in our view, following issues arise for our determination:

(i) Whether post-retirement of the appellant, punishment of reduction of three stages in the scale of pay, as imposed by the respondent, was permissible under the extant Service Regulations, or action under the Pension Regulations was the only way forward?

(ii) Whether there is any perversity/infirmity in the enquiry report and the order(s) passed by the Disciplinary/Appellate Authority? If yes, whether it could be raised as a ground when it was not pressed before the High Court?

14. Before proceeding to address Issue No. (i), we would address Issue No. (ii) as it turns on facts. Issue No. (ii) relates to the merits of the Inquiry Report and the order(s) of the Disciplinary/Appellate Authority. It also relates to the consequence of High Court not addressing the same. In this regard, it be noted that the charge which stood proved was in respect of appellant's failure to ensure end use of the loan disbursed by the Bank. The Inquiry Officer held the charge as partly proved because Bills in respect of cash payments of up to Rs. 27.25 lacs were not on record, and it was reported that the account had turned NPA.

15. The enquiry report¹⁴ takes note of the evidence produced and the submissions made by both sides. After analyzing the same, it holds Charge No. 2 partly proved. The enquiry report is in respect of two charges. Charge No. 1 is held not proved whereas Charge No. 2 is held partly proved because there existed no Bills on record to demonstrate as to how the cash was spent. Based on that, the Inquiry Officer concluded that there was failure on part of the appellant to ensure end-use of the loan amount.

16. The appellant was given opportunity to submit his comments on the Inquiry Report. In his comments to the Inquiry Report, the appellant did not claim that he was not given due opportunity of hearing or that a faulty procedure was adopted by the Inquiry Officer. In fact, he did not even challenge the finding of the Inquiry Officer that no Bills were there on record. Rather his stand was that his predecessor-in-office had also not taken Bills, but no objection was taken to his predecessor's conduct. In that backdrop, the disciplinary authority, while accepting the finding of the Inquiry Officer, imposed the punishment in question.

17. Ensuring end-use of loan disbursements serves multiple purposes. First, it ensures that loan is not diverted for purposes other than the one for which it is sanctioned/ disbursed. Often loans are prioritized for a particular purpose. Ensuring end use safeguards that purpose. Second, it secures recovery. For example, if loan is for purchase of a machine to run a business, if the machine is purchased, possibility of business yielding profits is greater than where the loan is diverted for purposes other than to serve the business.

Besides, it is a matter of common knowledge that loan is sanctioned after appraisal of the project or the business in respect of which the loan is sought. Appraisal is often to ascertain the feasibility and viability of the project / business for which the loan is sought. Failure to ensure end use would render the appraisal meaningless. In such circumstances, if end use of the loan is not ensured, the Bank would be exposed to financial risk.

18. In the instant case, as there was no challenge to the indictment that huge amount of cash withdrawals was allowed without taking supporting bills/receipts, the charge that the appellant had failed to ensure end use of the loan stood proved. It was in this context, probably, the learned counsel for appellant while assailing the disciplinary action pressed only one ground i.e., that the extant Discipline and Appeal Regulations/Service Regulations under which the punishment was imposed, applied to serving employees only. Even before the Division Bench of the High Court, it appears, no argument was raised on the merit of the finding that Charge No. 2 was partly proved.

19. Besides, a bank officer holds a position of trust as he deals with public funds. Sanction of loan beyond one's power, or not ensuring end-use of the loan, amounts to financial irregularity which exposes the Bank to financial risk. Therefore, penal action on proof of such a charge cannot be questioned merely because no loss is suffered by the Bank¹⁵.

20. Moreover, where an employee of a Bank handles money of depositors /customers/investors, it is most essential for him to be cautious and not reckless in discharge of his duties because he deals with the money for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interests of his employer.

He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Although good conduct and discipline is expected from every employee/officer of an institution, but it is required more when the institution deals with money of customers/ depositors/investors. Any dereliction in discharge of duties by such an employee or officer, whether by way of negligence/casualness, or with deliberate intention, constitutes misconduct¹⁶.

21. In that backdrop, we find neither any perversity in the finding(s) returned by the Inquiry Officer nor do we deem it appropriate to permit the appellant to question the merit of the finding(s) that Charge No. 2 was partly proved, particularly when no such plea was pressed before the High Court.

22. For the aforesaid reasons, we decline to accept appellant's submissions that the Writ Court and the Division Bench of the High Court failed in their obligation to examine the merits of the disciplinary action. Moreover, upon consideration of the enquiry report and the comments of the appellant to the same, we do not find any good ground to hold that Charge No. 2, as discussed above, was not partly proved, or that the punishment awarded was shockingly disproportionate to the gravity of proven misconduct. Issue No. (ii) is decided in the above terms.

23. Now, we shall address Issue No. (i) i.e., whether, post-retirement, the punishment as imposed upon the appellant is permissible in law.

24. In support of his contention on the issue, the learned counsel for the appellant had placed reliance on Regulation 2 of the Service Regulations which reads as under:

"2. OFFICERS TO WHOM THE REGULATIONS APPLY 2.

(1) These Regulations shall apply to all officers of the Bank and to such other employees of the Bank to whom they may be made applicable by the Competent Authority to the extent and subject to such conditions as such authority may decide.

(2) They shall also apply to officers transferred/ posted/deputed outside India except to such extent as may be specifically or generally prescribed by the Competent Authority.

(3) They shall, however, not apply to employees appointed/engaged in any country outside India and permanently serving there."

25. On the other hand, the learned counsel for the Bank relied on Regulation 20 (3), more particularly Clause (iii) of Sub-regulation (3) of Regulation 20, of the Service Regulations. Sub-regulation (3) of Regulation 20 reads as under:

"20. TERMINATION OF SERVICE (3)

(i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of Competent Authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.

(iii) The officers against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation, but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."

26. The contention on behalf of the appellant is that the Service Regulations, of which Regulation 20 (3) (iii) is a part, would apply to all officers of the Bank. However, once an officer superannuates, he is no longer an officer of the Bank therefore, Regulation 20 (3) (iii) cannot rescue disciplinary proceedings post-retirement. Thus, it is contended, postretirement, action can be taken only under the Pension Regulations.

27. At this stage, it would be useful to refer to two decisions placed on behalf of the appellant, namely, "UCO Bank and Others vs. Prabhakar Sadashiv Karvade" (supra) (for short, Prabhakar Sadashiv Karvade) and "Ramesh Chandra Sharma vs. Punjab National Bank and Another" (supra) (for short, Ramesh Chander Sharma).

28. In Prabhakar Sadashiv Karvade, based on a charge sheet served on 09.09.2000, the incumbent was dismissed from service on 12.10.2004 while he had retired from service on 13.12.1993. In that context, this Court considered various service Rules/ Regulations which were extracted in Paragraph 8 of the judgment. Relevant portion of which is reproduced below:

"8.

Discipline and Appeal Regulations

4. Penalties- The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons-

Minor penalties -

(a) censure;

(b) withholding of increments of pay with or without cumulative effect;

(c) withholding of promotion;

(d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

(e) reduction to a lower stage in the timescale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer's pension. Major penalties -

(f) save as provided for in

(e) above, reduction to a lower stage in the timescale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.

(g) reduction to a lower grade or post,

(h) compulsory retirement;

(i) removal from service which shall not be a disqualification for future employment;

(j) dismissal which shall ordinarily be a disqualification for future employment."

"1979 Regulations

20 (3) (iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

"The Pension Regulations

46. Provisional Pension- (1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld, etc. either permanently or for a specified period.

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

Explanation.- in this Chapter-(a) to (e)

48. Recovery of pecuniary loss caused to the Bank-

(1) The competent authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in any departmental or judicial proceedings the pensioner is found guilty of grave

misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service; Provided that the Board shall be consulted before any final orders are passed.

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these Regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

(2) Where the competent authority orders recovery of pecuniary loss from the pension, the recovery shall ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee.

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these Regulations."

After considering the aforesaid Regulations, this Court held as under:

"9. A reading of the plain language of Regulation 4 of the Discipline and Appeal Regulations and Regulation 20(3)(iii) of the 1979 Regulations makes it clear that any of the penalties, whether major or minor can be imposed only on a serving officer employee of the Bank. This necessarily implies that none of the penalties specified in Regulation 4 of the Discipline and Appeal Regulations can be imposed on an officer employee after his retirement from service, though in terms of Regulation 20(3)(iii) of the 1979 Regulations, the disciplinary proceedings initiated against an officer employee before his retirement can be continued and final order is passed and further that such officer employee is not entitled to retiral benefits till the conclusion of disciplinary proceedings and passing of final order.

The only exception to this is that the officer is entitled to receive his own contribution to CPF. However, there is nothing in the language of these Regulations from which it can be inferred that the disciplinary authority has the power to impose a substantive punishment on retired officer employee. This becomes more explicit from a conjoint reading of Regulation 48 of the Pension Regulations which empowers the competent authority to withhold or withdraw a pension or a part thereof and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in a departmental or judicial

proceedings, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service.

Second proviso to Regulation 48 contains a fiction and lays down that if the departmental proceedings are instituted while the employee was in service, the same shall be deemed to be proceedings under the Regulations and continued and concluded as if the employee had continued in service. The third proviso imposes a bar on the initiation of departmental or judicial proceedings against an employee after his retirement in respect of an event which took place more than 4 years before such institution.

The sum and substance of these Regulations is that even though a departmental inquiry instituted against an officer employee before his retirement can continue even after his retirement, none of the substantive penalties specified in Regulation 4 of 1979 Regulations, which include dismissal from service, can be imposed on an officer employee after his retirement on attaining the age of superannuation. Therefore, we have no hesitation to hold that order dated 12-10-2004 passed by the disciplinary authority dismissing the respondent from service, who had superannuated on 31-12-1993 was ex facie illegal and without jurisdiction and the High Court did not commit any error by setting aside the same.

10. We may also observe that master and servant relationship between the respondent and the employer i.e. Appellant 1 Bank had come to an end for all practical purposes on 31-12-1993 i.e. the date of superannuation. The departmental inquiry initiated against the respondent before his retirement could be continued for a limited purpose for determining whether or not he is entitled for full pensionary benefits and gratuity."

(Emphasis supplied)

29. In Ramesh Chandra Sharma (supra), the issue was whether punishment of dismissal could be inflicted on an employee who has already retired on attaining the age of superannuation. In that context, this Court considered Regulation 20(3)(iii) of the Service Regulations (which is in same terms as Regulation 20(3) (iii) of 1979 Regulations extracted in the preceding paragraph) and Regulations 22, 43 and 48 of the Pension Regulations, which are reproduced below:

"22. (i) Resignation or dismissal or removal or termination of an employee from the services of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

43. Withholding or withdrawal of pension.-

The competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery of (sic or) acting fraudulently or is found guilty of grave misconduct.

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these Regulations.

48. Recovery of pecuniary loss caused to the Bank.-

(1) The competent authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed; Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these Regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service;

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution: Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3) Where the competent authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee:

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these Regulations."

Construing the object of Regulation 20(3)(iii) (supra), this Court observed:

"17.

The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For

the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect."

Thereafter, upon considering Regulations 22, 43 and 48 of the Pension Regulations, it was held:

"25. Indisputably as a consequence of the order imposing the punishment of dismissal from service the appellant would not have qualified for the pensionary benefits.

26. Where a proceeding is initiated for withholding or withdrawal of pension, Regulation 43 of the Pension Regulations would be attracted. But provisions of the said Regulation if read in its entirety clearly go to show that an officer would not qualify for pensionary benefits, if, inter alia, he is dismissed from service.

27. Regulation 48 empowers the Bank to recover pecuniary loss caused to it from the pensionary benefits. Regulation 20(3)(iii) of the (Discipline and Appeal) Regulations must be read in conjunction with the Pension Regulations. Where the employees are pension optees, Regulation 48(1) shall apply. In any event, if an officer is removed or dismissed from service under Regulation 4 of the (Discipline and Appeal) Regulations, the Bank need not take recourse to Regulation 48 of the Pension Regulations as Regulation 22 thereof would be attracted."

30. In *Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. vs. Rabindranath Choubey (supra)* (for short, Mahanadi Coalfields Ltd.), the issue, inter alia, under consideration was, 'whether, in view of Rule 34.2 of the 1978 Rules, the punishment of dismissal can be imposed upon finding one guilty of misconduct, where departmental enquiry is instituted while the employee is in service and continued after he attains the age of superannuation?'

31. Rule 34.2 and 34.3 of CDA Rules, which were considered by this Court in *Mahanadi Coalfields Ltd.*, read as under:

"34.2. Disciplinary proceeding, if instituted while the employee was in service whether before his retirement or during his re-employment shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

34.3. During the pendency of the disciplinary proceedings, the Disciplinary Authority may withhold payment of gratuity, for ordering the recovery from

gratuity of the whole or part of any pecuniary loss caused to the Company if have been guilty of offences /misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on reemployment after retirement. However, the provisions of Sections 7(3) and 7(3-A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in the case the employee is fully exonerated."

32. In that context, in Mahanadi Coalfields Ltd., this Court held:

"7. Indisputably, the respondent was governed by the CDA Rules. Therefore, Rules 34.2 and 34.3 of the CDA Rules shall be applicable and the respondent employee shall be governed by the said provisions. Rule 34 permits the management to withhold the gratuity during the pendency of the disciplinary proceedings. Rule 34.2 permits the disciplinary proceedings to be continued and concluded even after the employee has attained the age of superannuation, provided the disciplinary proceedings are instituted while the employee was in service. It also further provides that such disciplinary proceedings shall be deemed to be the proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

Therefore, as such, on a fair reading of Rule 34.2 of the CDA Rules, an employee shall be deemed to be continued in service, after he attains the age of superannuation/retired, for the limited purpose of continuing and concluding the disciplinary proceedings which were instituted while the employee was in service. Therefore, at the conclusion of such disciplinary proceedings any of the penalty provided under Rule 27 of the CDA Rules can be imposed by the authority including the order of dismissal.

If the submission on behalf of the employee that after the employee has attained the age of superannuation and/or he has retired from service, despite Rule 34.2, no order of penalty of dismissal can be passed is accepted, in that case, it will be frustrating permitting the authority to continue and conclude the disciplinary proceedings after retirement. If the order of dismissal cannot be passed after the employee has retired and/or has attained the age of superannuation in the disciplinary proceedings which were instituted while the employee was in service, in that case, there shall not be any fruitful purpose to continue and conclude the disciplinary proceedings in the same manner as if the employee had continued in service.

8. It is true that while considering the very provisions of the CDA Rules, namely, Rule 34.2 and Rule 34.3 of the CDA Rules, this Court in Jaswant

Singh Gill [Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584] has observed and held that once the employee is permitted to retire on attaining the age of superannuation, thereafter no order of dismissal can be passed. However, for the reasons stated hereinabove, we are not in agreement with the view taken by this Court in Jaswant Singh Gill [Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663: (2007) 1 SCC (L&S) 584]. As observed hereinabove, if no major penalty is permissible after retirement, even in a case where the disciplinary proceedings were instituted while the employee was in service, in that case, Rule 34.2 would become otiose and shall be meaningless.

9. On the contrary, there is a decision of three- Judge Bench of this Court in Ram Lal Bhaskar [SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249: (2012) 1 SCC (L&S) 402] taking just a contrary view. In Ram Lal Bhaskar [SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249: (2012) 1 SCC (L&S) 402], Rule 19(3) of the State Bank of India Officers Service Rules, 1992 came up for consideration which was *pari materia* with Rule 34.2 of the CDA Rules. The said Rule 19(3) of the State Bank of India Officers Service Rules, 1992 also permits the disciplinary proceedings to continue even after the retirement of an employee if those were instituted when the delinquent employee was in service.

In that case, charge-sheet was served upon the respondent before his retirement. The proceedings continued after his retirement and were conducted in accordance with the relevant Rules where charges were proved. Punishment of dismissal was imposed. The High Court allowed [Ramlal Bhaskar v. SBI, Writ-A No. 8415 of 2003, order dated 12-4-2006 (All)] the petition and quashed the order of dismissal. This Court reversed the said decision of the High Court.

In the said decision, it was specifically observed by this Court while considering the *pari materia* provisions that in case disciplinary proceedings under the relevant Rules of service have been initiated against an officer before he ceased to be in the bank's service by the operation of, or by virtue of, any of the Rules or the provisions of the Rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the Rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

In the said decision, this Court also took note of another decision of this Court in Rajinder Lal Capoor [UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] and it is observed even in the said decision that the UCO Bank Officer Employees' Service Regulations, 1979 which were also *pari*

materia to the SBI Rules as well as the CDA Rules, could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service."

33. What is important to note is that in Mahanadi Coalfields Ltd., this Court had the occasion to consider its earlier decision in Ramesh Chandra Sharma, and the same was approved.

34. The ratio of Mahanadi Coalfields Ltd. is found in paragraphs 47 and 48 of the judgment, which are reproduced below:

"47. Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be.

48. In view of the above and for the reasons stated above and in view of the decision of the three-Judge Bench of this Court in Ram Lal Bhaskar [SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249 : (2012) 1 SCC (L&S) 402] and our conclusions as above, it is observed and held that (1) the appellant employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service."

35. In Mahanadi Coalfields Ltd., Ajay Rastogi, J. wrote a separate opinion partly concurring and partly dissenting with the majority view. In respect of the first question, Ajay Rastogi, J. concurred with the majority view whereas in respect of the second question, that is, whether the penalty of dismissal could be imposed after the employee had retired from service, Ajay Rastogi, J. opined thus:

"78.2.Que. 2-Whether the penalty of dismissal could be imposed after the employee stood retired from service?

Ans. In my considered view, after conclusion of the disciplinary inquiry, if held guilty, indeed a penalty can be inflicted upon an employee/delinquent who stood retired from service and what should be the nature of penalty will always depend on the relevant scheme of the Rules and on the facts and circumstances of each case, but either of the substantive penalties specified under Rule 27 of the 1978 Rules including dismissal from service are not open to be inflicted on conclusion of the disciplinary proceedings and the punishment of forfeiture of

gratuity commensurate with the nature of guilt may be inflicted upon a delinquent employee provided under Rule 34.3 of the 1978 Rules read with subsection (6) of Section 4 of the 1972 Act."

36. On a survey of the decisions cited and discussed above, in our view, what is settled is that if the extant service Rules/Regulations permit continuance of the disciplinary proceedings, initiated against an officer/ employee before he had attained the age of superannuation, those can be continued and brought to its logical conclusion even after he had attained the age of superannuation.

And where, pursuant to such proceedings, the ultimate penalty imposed is of dismissal, there may be no technical difficulty in its implementation as it may result in forfeiture of pension and other retiral dues. Therefore, in such an event, the question of entitlement to pensionary benefits may not arise. However, where the punishment imposed is such which may, instead of forfeiture of pension in its entirety, result in mere reduction or adjustment of pension, or recovery from post retiral dues, the Court may have to consider whether such punishment is implementable or not, postretirement.

37. In the instant case, the punishment awarded is of reducing the pay scale by three stages on permanent basis. Such reduction in the pay scale would relate back to the date the incumbent superannuated from service. Ordinarily, pension is computed based on salary last drawn/payable. Therefore, in our view, it would not be difficult to implement such a punishment as pension can be computed accordingly.

38. For the foregoing reasons, in our view, the Division Bench of the High Court was justified in allowing the writ appeal by properly construing Regulation 20(3)(iii) of the Service Regulations.

39. The appeal therefore lacks merit and is accordingly dismissed. Pending applications, if any, shall stand disposed of. There shall be no order as to costs.

.....**J. (Pamidighantam Sri Narasimha)**

.....**J. (Manoj Misra)**

New Delhi;

March 19, 2026

1 High Court

2 Bank

3 Pension Regulations.

4 (2020) 18 SCC 71

5 Service Regulations.

6 (2007) 9 SCC 15

7 (2018) 14 SCC 98

8 (1984) 3 SCC 316

9 (2017) 2 SCC 308

10 (2016) 12 SCC 125

11 AIR 1965 SC 1325 : 1964 SCC OnLine SC 322

12. (2016) 12 SCC 724

13 (2022) 1 SCC 373

14 Which is contained in Annexure P-6

15 Disciplinary Authority-Cum-Regional Manager and others v. Nikunja Bihari Patnaik, (1996) 9 SCC 69

16 Mihir Kumar Hazara Choudhury v. Life Insurance Corporation and another, (2017) 9 SCC 404; Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar, (2003) 4 SCC 364.

IN THE SUPREME COURT OF INDIA

V. Ganesan

Vs.

State represented by the Sub Inspector of Police & Anr.

**[Criminal Appeal No. 1470 of 2026
arising out of SLP Criminal No. 10478 of 2023]**

Head Note – Dishonour of a post-dated cheque, by itself, is not sufficient to presume dishonest intention on the part of the drawer. The criminal liability for cheating requires proof of fraudulent intent at the inception of the transaction, and cannot be inferred merely from subsequent failure to fulfil a promise.

For an offence of cheating, the dishonest or fraudulent intention must exist at the time of making the promise.

Mere breach of contract or failure to keep a promise cannot automatically amount to cheating.

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. This appeal impugns the judgment and order of the High Court at Madras¹ dated 06.04.2023 in Crl. O.P. No. 847 of 2021 and Crl. M.P. No. 518 of 2021, whereby the prayer of the appellant to quash final report and consequential proceedings in C.C. No. 3569 of 2020 on the file of the Metropolitan Magistrate (CCB and CBCID, Metro Cases), Egmore, Chennai-600008, under Section 406 and 420 of the Indian Penal Code, 1860, was partly allowed to the extent of indictment under Section 406 IPC; however, the prayer to quash indictment under Section 420 IPC was declined.

3. In brief, the prosecution case, as could be evinced from the final report (i.e., police report) submitted under Section 173 of the Code of Criminal Procedure, 1973, is that the accused (the appellant herein) was producing a 'movie'. In the course of its production, he ran short of funds. He, therefore, requested the de-facto complainant (i.e., the second-respondent herein) to lend him money on assurance that it would be returned by a share in profits to the extent of 30%.

Later, further money was lent on promise of an additional 17% share in profits. Ultimately, two postdated cheques of Rs.24 lacs each were issued by the accused to the de facto complainant towards return of the principal amount

which returned unpaid for insufficient funds in the account. Based on above, it was alleged that the accused had cheated the complainant and had also committed offence of criminal breach of trust.

4. Aggrieved by the police report and the consequential proceedings, the appellant invoked the jurisdiction of the High Court under Section 482 of CrPC, inter alia, to quash the report and the consequential proceedings on the ground that a pure civil cause of action was given colour of a criminal offence.

5. By the impugned order, the High Court quashed the indictment of an offence punishable under Section 406 IPC but declined to quash the proceedings qua the offence of cheating punishable under Section 420 IPC.

6. We have heard the learned counsel for the parties.

7. On behalf of the appellant it is submitted that admittedly the second-respondent had invested money in a movie project on expectation of good returns. There is no dispute that the movie project was completed. However, it could not generate profits. In such circumstances, the appellant could not fulfil its commitment of providing good returns on the investment. Therefore, there was no dishonest intention and the dispute between the parties is purely civil in nature. Hence, institution and continuation of criminal proceedings is nothing but abuse of the process of Law.

8. Per contra, on behalf of the respondent(s) it is submitted that dishonest intention of the appellant was there from the very beginning which is evident from the fact that the two cheques got dishonoured for want of funds. Besides, on appellant's false assurance of profits, money was lent. In these circumstances, offence of cheating is made out.

9. We have accorded due consideration to the rival submissions and have perused the record.

10. The police report indicted the appellant for offences of criminal breach of trust and cheating punishable under Sections 406 and 420 IPC respectively. The High Court came to the conclusion, and rightly so, that no offence punishable under Section 406 of IPC is made out as there was no entrustment. Regarding the offence of cheating, the High Court concluded that prima facie it is made out. The reasoning of the High Court in support of its conclusions can be found in paragraph 6 of its judgment, which is extracted below:

"This Court on perusal of the impugned final report finds that the offence under Section 406 IPC is not made out. There is no entrustment made to the petitioner, in order to attract the offence of criminal breach of trust. However, this Court finds that there was an Agreement between the petitioner and the de-

facto complainant on 30.12.2013. The Agreement shows that the petitioner promised 30% interest on the initial invested amount on Rs. 19,60,000/-. Thereafter, the de-facto complainant paid Rs. 27,00,000/- on 03.04.2014; and the petitioner had promised 47% profit on the invested amount. The petitioner had not made any payment to the defacto complainant/second-respondent as promised.

While so, the de-facto complainant/second-respondent objected to the petitioner releasing the movie. The petitioner had given one more undertaking letter, wherein, he had promised to pay the principal sum in two instalments, profit on a subsequent date; and that if the project did not yield any profit, he would pay an interest on the said sum of Rs. 48,00,000/-. All the above facts, disclose that at every stage, the representation has been made to the de-facto complainant to induce him to part with money. The allegations prima facie disclose the offence under Section 420 IPC. In the facts of the instant case, the question whether it was only a breach of promise or cheating has to be adjudicated only during trial.

Therefore, this Court is not inclined to quash the impugned final report in so far as the offence under Section 420 IPC. Hence, the impugned final report is quashed only in respect of offence under Section 406 IPC. However, the learned Metropolitan Magistrate may try the case on the basis of evidence adduced before him without being influenced by any of the observations made in this order. The learned Metropolitan Magistrate (CCB and CBCID, Metro Cases), Egmore, Chennai - 600 008 may conduct the trial as expeditiously as possible⁴".

11. The above extract makes it clear that the High Court was of the view that as the money was advanced on a promise of good returns and, subsequently, an undertaking was also given to return the principal amount if the project did not yield any profit, it could be taken that the complainant parted with his money on the inducement of the appellant and therefore, prima facie, an offence punishable under Section 420 IPC is made out.

12. In *Iridium India Telecom Ltd. v. Motorola Inc.*⁵, this Court laid down the ingredients of an offence of cheating as defined in Section 415 of IPC. It was observed that Section 415 of IPC has two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Besides, such act or

omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property.

Thus, deception is a necessary ingredient for the offence of cheating under both parts of this section. Besides, the complainant must allege/ prove that the inducement had been caused by the deception exercised by the accused. In other words, such deception must produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from such deception. The explanation to the section clarifies that non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.

13. In order to constitute an offence of cheating the intention to deceive should be in existence when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep the promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.

14. In *Vesa Holdings Private Limited and Another v. State of Kerala and others*⁷, this court held that every breach of contract would not give rise to an offence of cheating. Only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same cannot amount to cheating.

In other words, for the purpose of constituting an offence of cheating, the complaint is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made about failure on part of the accused to keep his promise, in absence of a dishonest intention at the time of making the initial promise, no offence under Section 420 of IPC is made out.

15. Whether non-fulfilment of promise/ commitment by the accused is a reflection of his or her dishonest intention at the time of making the promise is ordinarily a matter of trial. However, in our view, where the transaction between the parties is such that fulfilment of the promise is not entirely in the control of the promisor, or there is an inherent risk in fulfilment of the promise, the High Court may, in exercise of its inherent powers under the Code, or under Article 226 of the Constitution, as the case may be, upon consideration of the attending circumstances, take a decision whether the dishonest intention existed or not at the time of making the promise. And, if it comes to the conclusion that the alleged conduct of the parties does not reflect a dishonest intention of the accused from the very beginning, it may quash the criminal complaint/ proceedings and relegate the aggrieved party to civil remedies.

16. In the present case, what the High Court overlooked is that money was advanced for movie making and initially the agreement was to share the profits. Importantly, when the first tranche of money was transferred by the de-facto complainant to the accused, the alleged promise was a share in profits. Second tranche of money was transferred when the project could not be completed for want of funds. It also appears from paragraph 2 of the impugned order that before the movie could be released, de facto complainant took objection to its release. However, when the appellant gave two post-dated cheques, the movie could be released.

17. The aforesaid facts would indicate that the initial payment of money by the de-facto complainant to the appellant was for a movie project on promise of a share in profits. Additional money was paid later for its completion under a promise of an enhanced share in the profits. Thereafter, post-dated cheques were issued to return the principal amount because of an objection taken by the de facto complainant to the release of the movie. Since there is no denial about the completion of the movie and its ultimate release, what is clear is that the promise to make a movie was not false.

Therefore, it cannot be said the appellant made a false promise that he would make a movie with the aid of funds received by him. Insofar as promise qua sharing of profits is concerned, there are no allegations that the movie earned profits. Therefore, from the allegations made in the complaint it cannot be said that there was any dishonest intention of the appellant in making the promise which remained unfulfilled. In our view, the High Court overlooked that movie making is a high risk business.

No one can be sure whether a movie would earn profits or would be a flop. If one agrees to share profits in lieu of his investment in a movie, he takes the risk of a possible zero return. Thus, the nature of transaction between the parties was a crucial factor in determining whether the investor party should be allowed to bring in a criminal action or pursue civil remedies. Unfortunately, the High Court overlooked this vital aspect.

18. Insofar as dishonour of those two cheques are concerned, it is clear that those were post-dated cheques issued not as an inducement to obtain delivery of money from the de facto complainant but to discharge an existing obligation at a future date. Thus, in essence, those cheques were not by way inducement to lend money or invest money in the proposed movie.

Therefore, dishonour of those cheques, though may give right to initiate proceeding under Section 138 of the Negotiable Instruments Act, 1881, would not ipso facto amount to an offence of cheating, inasmuch as for an offence of cheating dishonest intention must exist from the very beginning. Ordinarily,

post-dated cheques are issued either by way of security to discharge an existing or future liability or to discharge the liability at some point of time in future. It is quite possible that at the time of issuance of a post-dated cheque, the drawer may have reason to believe that he would have sufficient balance in his account by the date of the cheque. Therefore, in our view, dishonour of a postdated cheque by itself is not sufficient to presume existence of a dishonest intention on part of its drawer.

19. In the instant case, there is nothing to indicate that the appellant had a dishonest intention from the very beginning. Had it been a case where the appellant had not made the movie despite borrowing funds to make one, an inference about existence of a dishonest intention was permissible. However, here there is no allegation that movie was not made. Rather, it was made and released. The prosecution case itself is to the effect that further advance was taken to complete and release the movie. However, when complainant took objection to its release, the appellant issued post-dated cheques to repay the principal amount. Thus, those cheques were to discharge an existing liability and not by way of an inducement to take more money.

20. Assuming that by issuance of those cheques, the de facto complainant was led to vacate his objection to movie's release, even then an offence of cheating would not be made out for two reasons. First, those cheques were post-dated therefore, did not carry a representation of sufficient funds in the bank account at the time of its issuance. Second, initial agreement, as per the allegations, was to share profit on release of the movie.

Thus, in absence of allegations that movie made profits, in our view, the complaint and the supporting materials failed to indicate that the appellant harboured a dishonest intention from inception. In conclusion, the allegations only disclosed a civil cause of action and the High Court fell in error in not quashing the criminal proceedings.

21. For the foregoing reasons, the appeal is allowed. The impugned judgment and order of the High Court is set aside to the extent it declined quashing of the proceedings under Section 420 IPC. The impugned criminal proceedings under Section 420 IPC are also quashed. Pending applications if any stands disposed of.

.....J. (Pamidighantam Sri Narasimha)

.....J. (Manoj Misra)

New Delhi;

March 19, 2026

1 The High Court

2 IPC

3 CrPC

4 Extracted from typed copy of the judgment placed on record. May contain typographical mistakes.

5 (2011) 1 SCC 74, paragraph 68

6 **Section 415. Cheating.-** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation.- A dishonest concealment of facts is a deception within the meaning of this section.

7 (2015) 8 SCC 293, paragraph 12

IN THE SUPREME COURT OF INDIA

**Gabbar Singh alias Devendra Pratap Singh alias Rajesh Singh
Vs.
State of Uttar Pradesh and Ors.**

**[Criminal Appeal Nos. _____ of 2026
@ SLP (Crl.) No. 17929-17930 of 2025]**

Head Note – An incomplete Gang Chart cannot be sent to the jurisdictional court, and a Gang Chart becomes legally valid only after completion of a structured approval mechanism laid down in the Rules, which includes:

1. Express recommendation by the Station House Officer and Additional Superintendent of Police;
2. Consideration and satisfaction of the Superintendent of Police and the District Magistrate;
3. Final approval through a joint meeting between these authorities, followed by their signatures on the document.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. The appeals are filed against the impugned orders declining the prayer for quashing of an FIR and rejecting the review filed against the said order. FIR No.0125 of 2022 dated 28.05.2022 was filed under Section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as, 'the Act of 1986') at the Police Station Kotwali Nagar, District Bahraich. The High Court, after perusal of the Gang Chart produced as Annexure 2, found a number of criminal cases registered against the three different petitioners, one of whom is before us in the above appeals. It was also noticed that all the petitioners before the High Court were in jail, presumably arrested under the various criminal cases pending against them.

3. Under the Act of 1986 the petitioners were alleged to be members of a gang as defined therein indulging in activities specifically of land grabbing, fraudulent land transactions, extortion, voluntarily causing hurt, criminal intimidation, breach of peace, cheating, forgery and so on and so forth, many of which offences singly and together are alleged in the various crimes registered against them. The captioned FIR filed under the Act of 1986 relied solely on the Gang Chart drawn up, which was challenged before the High Court. The High Court noticing the various decisions, on interference in

criminal proceedings by quashing the FIR or the charge sheet, found a prima facie case made out against the petitioners including the appellant herein and declined relief.

4. The learned Senior Counsel appearing for the appellant, restricted the challenge to the procedure adopted under the Act of 1986 and the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as 'the Rules of 2021'). Reliance was also placed on Vinod Bihari Lal v. State of Uttar Pradesh¹. The learned Senior Counsel based on the documents produced in the records would contend that the Gang Chart filed along with the FIR was not in accordance with the prescription in the Rules of 2021, a certified copy of which; obtained from the Court to which the FIR was transmitted from the police station in which it was registered, having no signatures on it.

5. The learned Government Advocate for the State on the other hand, contended that the Nodal Officer who is the Station House Officer had forwarded the Gang Chart to the concerned Court at the first instance, when he had forwarded the same to the Additional Superintendent of Police. The original of the Gang Chart as produced by the appellant himself was specifically pointed out to show the different dates in which the various authorities had signed the same as prescribed under the Rules of 2021. The appellant is the leader of the gang, indulging in so many illegal activities raising threats and intimidation against the general public and is a menace to the society at large is the argument.

6. We would confine ourselves to the contention raised with respect to the prescription and the rules having not been followed to the letter, which is essential and necessary. Annexure P1 is the FIR registered on 28.05.2022 along with which is produced the Gang Chart as transmitted, presumably by the Nodal Officer. A Gang Chart mandates the recommendation of the Nodal Officer and the Additional Superintendent of Police, approved by the Superintendent of Police and the District Magistrate, the recommendations in the written form and the approval by affixing of signatures. Neither are the recommendations mandated are available nor the signatures of anyone visible in Annexure P1.

7. As pointed out by the learned Government Advocate for the State, Exhibit P4 shows the Nodal Officer and the Additional Superintendent of Police having signed the same with their express recommendations on 20.05.2022 and the Superintendent of Police and the District Magistrate having approved it by affixing their signatures on 26.05.2022 and 28.05.2022 respectively. The prescription in the Rules has thus been complied scrupulously, is the contention raised.

8. In this context, we have to look at the prescription in the Rules as had been noticed by this Court also in Vinod Bihari Lal¹, which had extracted the relevant rules. Section 5 (1) speaks of initiation of proceedings under the Act of 1986 inter alia by a Station House Officer, which by subsection (2) has to be presented to the District Head of Police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the specified gang.

Subsection (3) of Section 5 speaks of the multiple compliances of which, relevant for our purpose is the approval of the Gang Chart after due discussion in a joint meeting of the Commissioner/District Magistrate and the Senior Superintendent/Superintendent of Police; which obviously does not come out from the chart, the certified copy of which was received from the Court. Nor is there any indication of such a meeting having been held in Annexure-P4; though duly signed. According to the appellant the signatures were affixed post registration of the FIR. The absence of such a joint meeting was noticed in the cited decision also and faulted as a deviation and violation from the prescription in the rules.

9. Rule 16(1) speaks of the Additional Superintendent of Police taking quick forwarding action in the case, on receipt of the Gang Chart from an SHO clearly expressing his or her recommendation to the Senior Superintendent/Superintendent of Police. The Senior Superintendent/ Superintendent of Police has to then forward the same to the Commissioner/District Magistrate. Though satisfaction is to be arrived at by each of the said officers, a clear express recommendation is required only in the case of Additional Superintendent of Police and of course the SHO who initiates the proceedings; both of which are glaringly absent in the certified copy.

10. Undisputedly, the certified copy of the Gang Chart received from the Court to which the FIR was transmitted did not have the signatures of the various authorities including that of the Nodal Officer who is said to have initiated the recommendation. We are unable to agree with the learned Government Advocate that the Nodal Officer on preparation of the Gang Chart while forwarding it to the Additional Superintendent of Police had forwarded it to the Jurisdictional Court as well.

It has to be pertinently observed that there is no prescription in the Rules for forwarding the Gang Chart to the Court, before it assumes the status of a Gang Chart under the Act and Rules as prescribed therein; which process has to culminate with a joint meeting of the Superintendent of Police and the District Magistrate. The prescription also is that there should be express recommendation by the Additional Superintendent of Police, the satisfaction of

which has to be arrived at by both the Superintendent of Police and the District Magistrate by affixing their signatures to that document after a joint meeting.

Even if we assume for argument's sake that the Gang Chart was forwarded by the Nodal Officer to the Jurisdictional Court, it should have contained the recommendation and signature of the Nodal Officer, in the least. We may not be understood as having accepted such a procedure, which even if in vogue is not a mandate of the statute or the rules framed under it. More importantly it cannot be condoned since the FIR registered on the strength of the Gang Chart should have acquired that status under the Act and the Rules, by following the prescribed procedure which should be evident from the Chart itself.

11. We fall back upon the principle that when a particular thing is to be done, it should be done in the manner stipulated; here statutorily prescribed, or not at all. Especially when at stake is the liberty of an individual, precious to all and possible of breach only in accordance with law. More so in the precarious nature of the law, which permits mere naming of a person, as a gangster and automatic condemnation, which perilous consequences we leave to be considered in an appropriate case.

12. We find absolutely no reason to sustain the order of the High Court and allow the criminal proceedings to be continued on the basis of the FIR registered. We quash the FIR registered since the Gang Chart accompanying the FIR was not one as prescribed under the Act of 1986 and the Rules of 2021. We make it clear that the prescription under Section 5(3)(d) shall not disable the Authorities from taking any action in accordance with the Act and Rules, merely for the reason of the crimes having been mentioned in the subject Gang Chart, which we have quashed on grounds only of glaring procedural irregularity.

13. We also make it clear that we have not said anything about the allegations raised by the Police in the offences charged in the various criminal cases as noticed in the Gang Chart, the proceedings in which will have to be taken to its logical conclusion

14. The appeals stand allowed, setting aside both the impugned orders of the High Court and quashing FIR No.0125 of 2022 dated 28.05.2022 registered at Police Station Kotwali Nagar, District Bahraich.

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

.....J. (Sanjay Kumar)

.....J. (K. Vinod Chandran)

New Delhi;
March 20, 2026.

1 2025 SCC Online SC 1216

IN THE SUPREME COURT OF INDIA

State of Karnataka and Ors.

Vs.

Santhosh Kumar C

**[Civil Appeal No. _____ of 2026
arising out of SLP (C) No. 35896 of 2025]**

Head Note – A candidate cannot claim appointment as a matter of right from the same select list merely because a selected candidate failed to complete pre-appointment formalities or did not join duty. Such a vacancy must be filled in accordance with the governing recruitment rules and not by operating the same select list beyond its statutory framework.

JUDGMENT

Vikram Nath, J.

1) Leave granted.

2. The present appeal arises from the judgment and order dated 21.04.2025 passed by the High Court of Karnataka at Bengaluru (hereinafter referred to as the "High Court") in Writ Petition No. 24455 of 2023 (SKSAT), whereby the High Court allowed the writ petition filed by the respondent and set aside the order dated 13.10.2023 passed by the Karnataka State Administrative Tribunal, Bengaluru (hereinafter referred to as the "Tribunal") in Application No. 4990 of 2022, as well as the communication dated 27.06.2022 issued by the Department of Personnel and Administrative Reforms, Government of Karnataka (hereinafter referred to as "DPAR"). By the said judgment and order, the High Court directed the appellants, namely the State of Karnataka and its authorities, to consider the case of the respondent for appointment to the post in question.

3. The facts giving rise to the present appeal are as follows:

3.1. The Karnataka Public Service Commission (hereinafter referred to as the "KPSC") issued a notification dated 03.11.2011 inviting applications for recruitment to 362 posts of Karnataka Gazetted Probationers in Group A and Group B Services under the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997 (hereinafter referred to as the "1997 Rules").

3.2. The respondent, who is an ex-serviceman, participated in the said selection process. Upon conclusion of the process, the KPSC published the final select

list on 21.03.2014. In the General Merit Ex-Military Person category (hereinafter referred to as the "GM/Ex-MP category"), one Sri Aiyappa M.A. was selected to the post of Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale. The respondent was not selected to that post. He was, however, selected to the post of Assistant Commissioner of Commercial Taxes, Group A, pursuant to the same recruitment.

3.3. According to the record, Sri Aiyappa M.A. did not undergo the mandatory medical examination or police verification and did not report for duty. The respondent, on the other hand, was appointed as Assistant Commissioner of Commercial Taxes, Group A, by notification dated 05.05.2022 and joined duty on 09.05.2022.

3.4. On 26.05.2022, the respondent submitted a representation to DPAR, claiming that since Sri Aiyappa M.A. had not joined, the post of Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale, under the GM/Ex-MP category remained unfilled and ought to be offered to him. The basis of the claim was that he was immediately next below the selected candidate and had indicated preference for the said post.

3.5. By communication dated 27.06.2022, DPAR rejected the respondent's request. The communication stated that under the 1997 Rules there was no provision for preparation of an additional select list and that a post left unfilled on account of non-reporting by a selected candidate was required to be treated as a fresh vacancy to be filled in a subsequent recruitment.

3.6. Aggrieved by the said communication, the respondent filed Application No. 4990 of 2022 before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. In the said application, he questioned the communication dated 27.06.2022 and sought a direction to the respondents therein to select and appoint him to the post of Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale, under the GM/Ex-MP category against the vacancy said to have remained unfilled on account of the non-reporting of Sri Aiyappa M.A.

3.7. The appellants and the KPSC opposed the application. Their stand was that the 2011 recruitment process had culminated in a final select list corresponding to the vacancies notified, that the 1997 Rules did not contemplate any additional or waiting list, and that in view of sub-rule (3) of Rule 4 and Rule 11 of the 1997 Rules, a vacancy arising on account of non-joining by a selected candidate could not be filled by operating the same select list.

3.8. By order dated 13.10.2023, the Tribunal dismissed the application. The Tribunal held that there was no provision under the 1997 Rules for preparing

an additional select list and that a post not filled on account of non-reporting by a selected candidate had to be treated as a fresh vacancy. The Tribunal also accepted the stand of the appellants that the vacancy, if any, had to be filled only through a fresh recruitment process.

3.9. The respondent thereafter challenged the Tribunal's order by filing Writ Petition No. 24455 of 2023 (S-KSAT) before the High Court contending that since the selected candidate had not even undergone the mandatory medical examination, the vacancy continued to remain unfilled and should go to the candidate immediately next below. On behalf of the appellants and the KPSC, it was contended that mere inclusion in the select list did not confer a justiciable right to appointment and that Rule 11(3) of the 1997 Rules governed the matter.

3.10. By the impugned judgment and order dated 21.04.2025, the High Court allowed the writ petition. The High Court held that the vacancy in question continued to remain unfilled since the selected candidate had not undergone the mandatory medical examination. It further held that Rule 11(3) of the 1997 Rules was not attracted in the facts of the case. On that basis, the High Court quashed the order dated 13.10.2023 passed by the Tribunal and the communication dated 27.06.2022, and directed the appellants to consider the case of the respondent for appointment to the post in question.

4. Being aggrieved by the judgment and order dated 21.04.2025 passed by the High Court, the appellants have approached this Court in the present appeal.

5. We have heard the learned counsel for the parties and perused the material on record. The question that falls for consideration in the present appeal is whether, under the 1997 Rules, a vacancy arising in the course of the 2011 recruitment process on account of a selected candidate not undergoing the mandatory preappointment formalities or not reporting for duty could be claimed, as of right, by the respondent on the ground that he was immediately next below in the order of selection, or whether such vacancy had to be treated in accordance with the governing rules as a vacancy to be filled only through a subsequent recruitment process.

6. In order to answer the controversy in the present appeal, it is necessary to notice the relevant provisions of the 1997 Rules. Firstly, Sub-rule (3) of Rule 4 of the 1997 Rules provides as follows:

"The candidates who apply for the competitive examinations shall clearly indicate in their application forms the services or posts for which they wish to be considered for appointment in the order of preference. They shall not be considered for such of the service or posts which are not preferred by them."

Moreover, Rule 11 of the 1997 Rules, to the extent relevant, provides as follows:

"11. List of candidates suitable for appointment.

(1) Subject to the provisions of sub-rule (3) of Rule 4 and Rule 8, and the number of posts advertised for each of the services in Group A and Group B, the Commission shall prepare separate list of names of the candidates equal to the available number of vacancies considered suitable for appointment for each of the said services in Group A and Group B arranged in the order of merit determined on the basis of total marks secured in the main examination comprising written examination and personality test.

Provided that the name of a candidate shall not be included in more than one such list.

(2) The list prepared under sub-rule (1) shall be published by the Commission in the Official Gazette and the copies thereof shall be forwarded to the Government together with the marks secured by each of the candidates in the written examination and personality test and to each candidate whose name is included in such list.

(3) Candidates whose names are included in the list prepared in accordance with the provisions of sub-rule (1) shall be considered for appointment to the vacancies notified in each of the services and groups of posts in the order in which their names appear in the list.

Provided that no candidate shall be appointed unless the Government is satisfied after such enquiry and verification as may be considered necessary that the candidate is suitable for such appointment."

A bare perusal of the aforesaid provisions shows that the scheme of the 1997 Rules is one of recruitment against notified vacancies, with the candidates being considered on the basis of merit and their indicated order of preference. The list contemplated by Rule 11 is not an open-ended reservoir of candidates, but a service-wise list prepared equal to the number of available vacancies and meant to operate in respect of the vacancies notified in that recruitment itself.

7. A proper appreciation of the aforesaid provisions reveals that the scheme of the 1997 Rules is not one of mere abstract ranking, but of a structured and servicespecific selection against notified vacancies. Each candidate is required to indicate the services or posts for which he seeks consideration and that too in the order of preference. Rule 11, in turn, contemplates preparation of separate lists, equal to the available number of vacancies, for each of the services and groups of posts advertised.

The proviso to Rule 11(1), which stipulates that the name of a candidate shall not be included in more than one such list, further underlines the same position. Rule 11(3), when read with Rule 11(1), indicates that the list is prepared for consideration of candidates against the finite vacancies notified in that recruitment. The Rule does not indicate that the list is to continue as an open-ended source of appointment even after the notified vacancies have been exhausted or the selection process has otherwise run its course.

8. The first proviso to Rule 11(3) also makes it clear that inclusion in the list does not by itself result in appointment. Appointment remains subject to such enquiry and verification as may be considered necessary and to the satisfaction of the Government regarding suitability. Significantly, the 1997 Rules do not provide for any reserve list, waiting list, or additional list. Nor do they contain any provision enabling the State to revert to the same list and travel further downward to fill a post left unfilled on account of non-completion of pre-appointment formalities or non-joining by a selected candidate. The scheme of the 1997 Rules, therefore, is of recruitment against notified vacancies through service-wise lists prepared to the extent of available vacancies, and not of continued operation of the same list beyond its statutory framework.

9. The above understanding also accords with the settled principle that inclusion of a candidate's name in a select list does not by itself confer an indefeasible right to appointment. A select list makes a candidate eligible for consideration in accordance with the governing rules. It does not create a vested right to claim appointment dehors the statutory framework.

In *Shankarsan Dash v. Union of India*¹, this Court held that even where vacancies exist, a candidate whose name appears in the select list does not acquire an indefeasible right to appointment, unless the relevant rules so indicate. Similarly, in *Rakhi Ray v. High Court of Delhi*², and *State of Orissa v. Rajkishore Nanda*³, this Court has held that appointments must conform to the notified vacancies and the governing rules, and that a select list cannot be operated in a manner not contemplated by the statutory scheme.

10. Tested on the touchstone of the aforesaid principles, in our considered opinion, the respondent's claim cannot be sustained. The respondent does not point to any provision in the 1997 Rules under which a candidate placed below a selected candidate acquires a right to be appointed to a post left unfilled on account of non-completion of pre-appointment formalities or nonjoining. In the absence of such a provision, the mere fact that a selected candidate did not join cannot, by itself, create an enforceable right in favour of the respondent.

11. Applying the aforesaid principles to the facts of the present case, we find ourselves unable to sustain the claim of the respondent. The respondent was

not excluded from the recruitment process altogether. He participated in the selection pursuant to the notification dated 03.11.2011 and was in fact selected and appointed to the post of Assistant Commissioner of Commercial Taxes, Group A, under the same recruitment. He joined duty on 09.05.2022. His present claim, therefore, is not one arising from total nonselection, but a claim to appointment to another post, namely Assistant Commissioner, Karnataka Administrative Service, Group A, Junior Scale, on the ground that the selected candidate to that post did not undergo the mandatory medical examination, police verification, or report for duty.

12. The foundation of the respondent's case is that, since the selected candidate did not complete the pre-appointment process, the vacancy must necessarily go to him as the candidate immediately next below. The respondent has also sought to place reliance on the circumstance that he had indicated preference for the said post. In our view, neither of these circumstances can, by themselves, create an enforceable right in his favour. Under the 1997 Rules, the relevant question is not merely whether a post remained unfilled in fact, but whether the Rules permit such post to be filled by reverting to the same select list and moving downward to another candidate. As already noticed, the 1997 Rules contain no such enabling provision.

13. The matter assumes greater significance when one bears in mind the structure of the selection itself. The recruitment was to multiple services and posts in Group A and Group B. The Rules required candidates to indicate their order of preference. The KPSC was then to prepare separate lists, equal to the number of vacancies, for the respective services and groups of posts. The process, therefore, was one of service-wise selection and allocation against notified vacancies. Once that exercise had culminated in publication of the final list and appointments were made in accordance therewith, the respondent could not claim, in the absence of express statutory sanction, that he should be shifted to another post merely because the selected candidate for that post did not complete the pre-appointment formalities or did not join.

14. There is yet another feature which dissuades us from accepting the respondent's claim as one of clear entitlement. Even on the material placed on record, including the respondent's own subsequent stand, his asserted position as the person exclusively entitled to the vacancy is not free from difficulty. The record indicates that there were candidates above the respondent, and the respondent himself appears to have sought to explain why such candidates ought not to be considered. We do not propose to enter into the comparative position of such candidates, since none of them is before us. However, that circumstance itself is sufficient to show that the respondent's claim was not one of an automatic or self-evident right. A writ of mandamus directing

consideration for appointment against such a vacancy could not have been issued on so uncertain a premise.

15. In the end, the respondent's case rests on an assumption that whenever a selected candidate does not complete the pre-appointment requirements or does not report for duty, the post must pass on to the next candidate below. Such an assumption may have held good only if the governing rules expressly so provided. In the absence of any such provision in the 1997 Rules, the respondent could claim no more than what the statutory framework permitted. That framework did not confer upon him any enforceable right to appointment to the post in question.

16. The requirement of preference under sub-rule (3) of Rule 4 furnishes an additional reason for caution. The recruitment in question was not to a single post, but to multiple services and groups of posts in Group A and Group B. Candidates were required to indicate their preferences, and the KPSC was required to prepare separate lists corresponding to the vacancies in each service or group of posts. The process was, therefore, not one of a single linear progression where, upon one candidate falling out, the next candidate would necessarily step into the very same post. Any such post facto adjustment would risk unsettling a service-wise and preference-based allocation exercise which had already attained finality.

17. The observation of the High Court that the principle that inclusion in the select list does not confer a right to appointment would not apply because the Government had already decided to appoint, also does not commend acceptance. The decision of the Government to fill the notified vacancies cannot be equated with creation of a right in favour of every candidate below the selected candidate to claim automatic substitution in the event of non-joining. The right, if any, must arise from the Rules themselves. In the absence of any provision in the 1997 Rules enabling such substitution, the respondent could not claim appointment merely because one selected candidate did not complete the preappointment process.

18. The position is further reinforced by the Karnataka Civil Services (Validation of Selection and Appointment of 2011 Batch Gazetted Probationers) Act, 2022 (hereinafter referred to as the "Validation Act"). Section 3 thereof validates the selection of the 2011 batch Gazetted Probationers made by the KPSC and mandates issuance of appointment orders as per the KPSC selection list. It further provides that no suit or other proceeding shall be maintained for review of any such appointment made in accordance with the provisions of the Act.

Though the Validation Act may not by itself conclude the entire controversy, it certainly underscores the legislative intent to attach finality to the 2011 selection and appointments as made in accordance with the KPSC selection list. A direction which, in effect, reopens that concluded process and compels recourse to a mode of appointment not contemplated by the 1997 Rules would be plainly inconsistent with such legislative finality.

19. The principal reason for the impugned order of the High Court is that, since the selected candidate did not undergo the mandatory medical examination, the post continued to remain unfilled and, therefore, the respondent, being the candidate immediately next below, ought to have been considered against that post. In our view, this approach conflates the factual existence of an unfilled post with the legal question as to the permissible mode of filling it.

Even if it were assumed that the post continued to remain vacant in fact, the further question still remained whether the 1997 Rules permitted the same select list to be operated for filling such post. It is precisely on that question that the High Court, with respect, fell into error. The High Court was also not justified in holding that Rule 11(3) of the 1997 Rules had no application to the case at hand. On the contrary, Rule 11(3), read with Rule 11(1) and sub-rule (3) of Rule 4, lies at the heart of the controversy.

It is these provisions which delineate the scope of the select list, the manner in which service-wise consideration is to take place, and the limits within which appointments may be made against the vacancies notified in that recruitment. Once the Rules themselves define the contours of the list and do not provide for any reserve or additional list, the absence of a selected candidate from the field cannot enlarge the statutory operation of the list.

20. In our considered view, therefore, the impugned judgment cannot be sustained. The Tribunal was right in holding that the 1997 Rules do not contemplate preparation or operation of any additional or waiting list, and that a post left unfilled on account of noncompletion of pre-appointment formalities or nonjoining by a selected candidate could not be claimed by the respondent as of right from the same selection process. The High Court erred in quashing the communication dated 27.06.2022 issued by DPAR and the order dated 13.10.2023 passed by the Tribunal.

21. In view of the above discussion and analysis, the appeal is allowed.

22. The impugned judgment and order dated 21.04.2025 passed by the High Court in Writ Petition No. 24455 of 2023 (S-KSAT) is set aside and the writ petition stands dismissed.

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

.....J. [Vikram Nath]

.....J. [Sandeep Mehta]

New Delhi

March 23, 2026.

1 (1991) 3 SCC 47

2 (2010) 2 SCC 637

3 (2010) 6 SCC 777

IN THE SUPREME COURT OF INDIA

Chinthada Anand

Vs.

State of Andhra Pradesh and Ors.

**[Criminal Appeal No. 1580 of 2026
arising out of SLP (Criminal) No. 9231/2025]**

Head Note – Once an individual converts to Christianity and actively professes and practices the same, he cannot be regarded as a member of the Scheduled Caste community.

No person who professes a religion other than Hinduism, Sikhism or Buddhism can be regarded as a member of a Scheduled caste. Conversion to any other religion results in the immediate and complete loss of Scheduled Caste Status.

Constitution (Scheduled Caste) Order, 1950, made this clear, and the bar under this Order was absolute. Conversion to any religion not specified in Clause 3 of the 1950 order results in immediate loss of Scheduled caste status, regardless of birth.

No statutory benefit, protection or reservation or entitlement under the Constitution or enactment of Parliament or state legislature can be claimed by or extended to any person who, by operation of clause 3, is not deemed to be a member of the Scheduled Caste. This bar is absolute and admits no exception. A person can't simultaneously profess and practice a religion other than the one specified in clause 3 and claim membership of the Scheduled caste.

JUDGMENT

Prashant Kumar Mishra, J.

1) Leave granted.

2) The present Appeal arises out of the impugned judgment dated 30.04.2025 passed by the High Court of Andhra Pradesh¹ at Amaravati in Criminal Petition No. 7114 of 2022 filed under Section 482 of the Code of Criminal Procedure, 1973, whereby, the High Court has quashed the criminal proceedings against respondent nos. 2 to 7 in Spl. SC No. 36 of 2021 arising out of FIR No. 08 of 2021 registered for offences punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 341, 506 and 323 read with

Section 34 of the Indian Penal Code, 18604 on the file of the Special Court under the SC/ST Act, Guntur District.

FACTUAL MATRIX

3) The appellant in the present proceedings is Chinthada Anand, resident of Kothapalem Village, Pittalavanipalem Mandal, Guntur District. He claims to belong to the Madiga community, a Scheduled Caste and states that for nearly ten years prior to the incident, he had been conducting Sunday prayer meetings as a Pastor at different houses in the village, including the house of one Doma Koti Reddy.

4) According to the appellant, in December 2020, he began receiving abusive and intimidating telephone calls from unknown numbers, in which he was allegedly abused by caste-based slurs and was threatened with dire consequences. These calls, according to him, were on account of his religious activities and his presence in the village as a Pastor.

5) The first incident is stated to have occurred on 03.01.2021. The appellant alleges that while he was conducting Sunday prayers at around noon at the house of Doma Koti Reddy, one of the accused called him outside, assaulted him by slapping and striking him, abused him by referring to his caste, and warned him against continuing the prayer meetings. The appellant states that he did not retaliate.

6) The second and principal incident is stated to have occurred on 24.01.2021. It is alleged that after completing Sunday prayers and while returning home, the appellant was wrongfully restrained at the entrance of the nearby hamlet by respondent nos. 2 to 7 and twenty-five others. He alleged that his mobile phone and vehicle keys were forcibly snatched, he was dragged, beaten and abused by caste name in public view, and threatened with death. It is also alleged that threats were extended to kill his family members and kidnap his children.

7) On the next day, i.e., 25.01.2021, the appellant submitted a written complaint before Chandole Police Station. On the basis of the said complaint, FIR No. 08 of 2021 came to be registered on 26.01.2021 for the offences punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the SC/ST Act and Sections 341, 506, 323 read with Section 34 of the IPC.

8) Investigation was undertaken by the Sub-Divisional Police Officer, Bapatla. During the course of investigation, statements of the appellant, his wife and several villagers were recorded. The appellant was medically examined and the injury sustained by him was certified to be simple in nature. The Tahsildar conducted verification regarding the caste status of the appellant and issued a certificate showing him as belonging to Hindu-Madiga community (Scheduled

Caste), while the accused persons admittedly belonged to the Reddy community (OC category).

9) Upon completion of investigation, the Police filed the charge-sheet on 30.04.2021, which was taken on file as Spl. SC No. 36 of 2021 before the Special Court under the SC/ST Act for Guntur District. All the aforementioned offences were included in the charge-sheet.

10) The accused persons thereafter approached the High Court by filing a petition under Section 482 of the Cr.PC seeking quashing of the proceedings. The primary ground urged before the High Court was that the appellant had admittedly converted to Christianity and was working as a Pastor for about ten years, and therefore, in view of the Constitution (Scheduled Castes) Order, 1950, he could not legally claim the status of a Scheduled Caste so as to invoke the provisions of the SC/ST Act.

11) Vide impugned judgment dated 30.04.2025, the High Court had quashed the entire criminal proceedings in Spl. SC No. 36 of 2021 qua respondent nos. 2 to 7, holding inter alia that the appellant cannot claim protection under the SC/ST Act since he had been openly professing Christianity and working as a Pastor for about a decade. The High Court was of the view that caste system is not recognised in Christianity and that a person who has converted and continues to actively work as a Pastor and profess Christianity, cannot, in law, claim protection under the SC/ST Act.

12) Further, the High Court noted that the statements of witnesses did not consistently support the appellant's version of a large group assault, and only a limited corroboration was available for the alleged restraint and attack, the medical evidence showed only a simple injury sustained by the appellant. On an overall assessment, the High Court held that continuation of the criminal proceedings against respondent nos. 2 to 7 would amount to an abuse of the process of law.

13) Aggrieved, the appellant has preferred the present Appeal challenging the quashing of proceedings against respondent Nos. 2 to 7 in Spl. SC No. 36 of 2021 arising out of FIR No. 08 of 2021.

SUBMISSION OF PARTIES

14) We have heard the learned counsels for both the parties and perused the materials on record.

15) Learned counsel for the appellant submitted that the High Court wrongly quashed the criminal proceedings against respondent nos. 2 to 7 despite there being a prima facie case made out against them. Learned counsel highlighted

that the High Court failed to appreciate that the appellant was subjected to physical assault as well as caste-based insults, was also intimidated by the accused persons.

16) Furthermore, learned counsel for the appellant submitted that the High Court gravely erred in holding that the appellant was disentitled from invoking the provisions of the SC/ST Act, merely on account of his conversion to Christianity. It was argued that caste is a matter of birth and not of faith, and a change of religion does not wipe out the social identity and historical disadvantages attached to one's caste.

17) To bolster his submission, learned counsel for the appellant placed reliance on G.O. Ms. No. 341 dated 30.08.1977, issued by the Government of Andhra Pradesh, which specifically stipulates that mere change of religion shall not operate as a bar to Scheduled Caste persons from securing the benefits to which they were otherwise entitled prior to conversion.

18) Per contra, learned senior counsel for respondent nos. 2 to 7 supported the impugned judgment and submitted that the High Court has rightly exercised its jurisdiction under Section 482 of the Cr.PC to quash the proceedings, as the very foundation for invoking the provisions of the SC/ST Act was absent.

19) Learned senior counsel submitted that the appellant is admittedly a Pastor, performing Sunday prayers for more than a decade, and by his own showing professes and practises Christianity. In such a situation, he cannot claim the protection of the SC/ST Act, which is applicable only to persons who are members of the Scheduled Castes or Scheduled Tribes within the ambit of clauses (24) and (25) of Article 366 read with Articles 341 and 342 of the Constitution of India, 1950.

20) Learned senior counsel pointed out that Clause 3 of the Constitution (Scheduled Castes) Order, 1950 unequivocally provides that no person who professes a religion different from Hinduism, Sikhism or Buddhism shall be deemed to be a member of a Scheduled Caste. It was further argued that the expression "professes" has consistently been interpreted by this Court to mean open declaration or practice of a religion, and that the relevant test is the material time when the benefit is claimed.

21) Learned senior counsel for respondent nos. 2 to 7 further argued that the sine qua non for offences under the SC/ST Act is that the victim must be a bona fide SC/ST member. It was highlighted that where the appellant does not belong to an SC/ST community, the very jurisdictional requirement for applying the SC/ST Act fails. Hence, according to the learned senior counsel, the High Court rightly quashed the proceedings.

22) It has been contended by learned senior counsel for respondent nos. 2 to 7 that the appellant's reliance on a purported caste certificate is of no assistance. It is pointed out that there is no evidence whatsoever to suggest that the appellant reconverted to Hinduism or that the community accepted him back. Therefore, mere production of a certificate cannot override the admitted fact that the appellant is a practising Christian.

23) Learned senior counsel for respondent nos. 2 to 7 submitted that reliance of the appellant on G.O.Ms. No. 341 issued by the State is wholly misplaced since an executive order cannot override the Presidential Order issued under Article 341 of the Constitution of India, and the State has no authority to enlarge, modify, or alter the Scheduled Caste list.

24) Lastly, the learned senior counsel for respondent nos. 2 to 7 submitted that the present case concerns criminal prosecution, and no person can be subjected to penal consequences under the SC/ST Act unless the appellant indisputably falls within the definition of "Scheduled Caste or Scheduled Tribe" under the Constitution of India. The High Court, therefore, according to learned senior counsel, has correctly held that, in the absence of such foundational facts, continuance of the proceedings would be an abuse of process.

ANALYSIS

25) Before considering the correctness of the High Court's decision to quash the criminal proceedings against respondent nos. 2 to 7, it becomes necessary to first delineate the broader legal issue that arises, namely, the conditions under which a person, who has undergone religious conversion, may avail the statutory benefits granted to the members of the Scheduled Castes and Scheduled Tribes. The clarification of this overarching principle is essential, as the resolution of the present controversy must rest upon its proper application.

26) To address the aforesaid issue, it is appropriate to state the authorities which talk about the Scheduled Castes and Scheduled Tribes. Under the Constitution of India, 1950, Articles 341 and 342 enumerate about the Scheduled Castes and Scheduled Tribes. The relevant Articles are reproduced hereinbelow:

"341. Scheduled Castes.-

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State⁸[or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.-

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

27) The core object of the above provisions is to provide right for the purpose of affording protection to Scheduled Castes and Scheduled Tribes having regard to the backwardness they suffer. The question which is now required to be posed at the outset is what is a 'tribe'?

28) In *State of Kerala vs. Chandramohan*⁵, a three-Judge Bench of this Court had the opportunity to discuss the concept of 'tribe' and its characteristics. The relevant observations are reproduced hereinbelow:

"4. The object of the said provision is to provide right for the purpose of grant of protection to the Scheduled Tribes having regard to the economic and educational backwardness wherefrom they suffer. For the aforementioned purpose only the President of India has been authorised to issue the notification to parts or groups within the tribes. It is not in dispute that the Constitution (Scheduled Tribes) Order, 1950 made in terms of the aforementioned provisions is exhaustive. The question which is required to be posed at the outset is what is a tribe?

"Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e.g. bands, villages or neighbourhoods and are

often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organisation in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties though it is no longer used for kin groups in the strict sense, such as clans."

(See Dr Gupta, Jai Prakash: The Customary Laws of the Munda & the Oraon.)

"Tribe in the Dictionary of Anthropology is defined as 'a social group, usually with a definite area, dialect, cultural homogeneity, and unifying social organization. It may include several subgroups, such as sibs or villages. A tribe ordinarily has a leader and may have a common ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family, or blood ties'."

(See Bhowmik, K.L.: Tribal India: A Profile in Indian Ethnology.)"

(emphasis supplied)

29) Under clause (1) of Article 342, the President of India promulgated the Constitution (Scheduled Tribes) Order, 1950, identifying the tribes and tribal communities recognised as "Scheduled Tribes" for different States and Union Territories. The said order is reproduced hereinbelow:

"Constitution (Scheduled Tribe) Order, 1950

1. This Order may be called the Constitution (Scheduled Tribes) Order, 1950.
2. The Tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XXII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Schedule.
3. Any reference in this Order to State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976."

30) A person can claim benefits under the Constitution (Scheduled Tribes) Order, 1950 only if he/she continues to belong to that particular tribe in substance. If, due to conversion or long-term abandonment of tribal customs, his/her tribal identity is in doubt, that question becomes a factual matter to be determined at trial. In this regard, this Court in Chandramohan (supra) had observed:

"16. Before a person can be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, he must belong to a tribe. A person for the purpose of obtaining the benefits of the Presidential Order must fulfil the condition of being a member of a tribe and continue to be a member of the tribe. If by reason of conversion to a different religion a long time back, he/his ancestors have not been following the customs, rituals and other traits, which are required to be followed by the members of the tribe and even had not been following the customary laws of succession, inheritance, marriage etc. he may not be accepted to be a member of a tribe.

In this case, it has been contended that the family of the victim had been converted about 200 years back and in fact the father of the victim married a woman belonging to a Roman Catholic, wherefrom he again became a Roman Catholic. The question, therefore, which may have to be gone into is as to whether the family continued to be a member of a Scheduled Tribe or not. Such a question can be gone into only during trial."

(emphasis supplied)

31) From the above, it becomes clear, that once a person belonging to a Scheduled Tribe converts to another religion, ultimately through the passage of time, the customs, rituals and other traits of that particular tribe may fall into eclipse. If so, in such circumstance, it is proved that the person in question has completely renounced himself from the customs, rituals and other traits of his tribe, and has assimilated into the converted religion following the practices and customs of that particular religion, a reasonable inference can be drawn that such a person shall not be considered a part of the tribe.

32) Let us now pivot to the legal foundations of Scheduled Castes. The initial question which is required to be posed is what is a 'caste'?

33) In *C.M. Arumugam vs. S Rajagopal*⁶, a three-Judge Bench of this Court had the opportunity to discuss on the question: what is 'caste'? The relevant observation is reproduced hereinbelow:

"10. But that immediately raises the question: what is a caste? When we speak of a caste, we do not mean to refer in this context to the four primary castes, but to the multiplicity of castes and sub-castes which disfigure the Indian social scene. "A caste", as pointed out by the High Court of Madras in *Cooposami Chetty v. Duraisami Chetty* [ILR 33 Mad 67] "is a voluntary association of persons for certain purposes". It is a well defined yet fluctuating group of persons governed by their own rules and regulations for certain internal purposes. Sir H. Risley has shown in his book on *People of India* how castes are formed based not only on community of religion, but also on community of

functions. It is also pointed out by Sankaran Nair, J. in *Muthusami v. Masilamani* [ILR 33 Mad 342 : 20 Mad LJ 49]:

"a change in the occupation sometimes creates a new caste. A common occupation sometimes combines members of different castes into a distinct body which becomes a new caste. Migration to another place makes sometimes a new caste."

A caste is more a social combination than a religious group. But since, as pointed out by Rajamannar, C.J., in *G. Michael v. S. Venkateswaran* [AIR 1952 Mad 474] ethics provides the standard for social life and it is founded ultimately on religious beliefs and doctrines, religion is inevitably mixed up with social conduct and that is why caste has become an integral feature of Hindu society. But from that it does not necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he belonged prior to his conversion.

It is no doubt true, and there we agree with the Madras High Court in *G. Michael* case that the general rule is that conversion operates as an expulsion from the caste, or, in other words, the convert ceases to have any caste, because caste is predominantly a feature of Hindu society and ordinarily a person who ceases to be a Hindu would not be regarded by the other members of the caste as belonging to their fold. But ultimately it must depend on the structure of the caste and its rules and regulations whether a person would cease to belong to the caste on his abjuring Hinduism."

(emphasis supplied)

34) In exercise of powers conferred under clause (1) of Article 341 of the Constitution, the President issued the Constitution (Scheduled Castes) order, 1950. This Order specifies the castes deemed to be Scheduled Castes in relation to various States and Union territories. The said Order is reproduced hereinbelow:

"Constitution (Scheduled Caste) Order, 1950

1. This Order may be called the Constitution (Scheduled Castes) Order, 1950.
2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts to [XXV] of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.

[3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste.

[4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976."

(emphasis supplied)

35) The question as to whether a person is a member of Scheduled Caste or Scheduled Tribe remains an absolute question of fact. In the instant case, the legislative history of Clause 3 of the Constitution (Scheduled Castes) Order, 1950 is of immense significance. As originally enacted in the year 1950, Clause 3 restricted Scheduled Caste status to persons professing the Hindu religion. It was subsequently amended in the year 1956 to include persons professing the Sikh religion. Later, in the year 1990, the provision was further extended to include persons professing the Buddhist religion. It is important to note that Christianity has not been included under this Order by any of these amendments.

36) A careful perusal of Clause 3 of Constitution (Scheduled Castes) Order, 1950 reveals that the term "professes" is of crucial significance. The clause excludes any person who professes a religion different from Hindu, Sikh or Buddhist from being deemed a member of a Scheduled Caste. It is, therefore, necessary to examine what constitutes to professing a religion.

37) The interpretation of the term "profess" as used in Clause 3 of the Constitution (Scheduled Castes) Order, 1950 came up for consideration before this Court in *Punjabrao vs. D.P. Meshram*⁷, wherein it was observed thus:

"13. What clause (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order, he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in *Karwadi v. Shambharkar* [AIR 1958 Bom 296] has said that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly into a religions state" and that for this purpose a mere declaration by a person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient.

The meanings of the word "profess" have been given thus in Webster's New World Dictionary: "to avow publicly; to make an open declaration of to declare one's belief in : as, to profess Christ. To accept into a religious order". The meanings given in the Shorter Oxford Dictionary are more or less the same. It

seems to us that the meaning "to declare one's belief in : as to profess Christ" is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest.

Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word "profess" in the Presidential Order appears to have been used in the sense of an open declaration or practice by a person of the Hindu (or the Sikh) religion. Where, therefore, a person says, on the contrary, that he has ceased to be a Hindu he cannot derive any benefit from that Order."

(emphasis supplied)

38) It is clear from the aforesaid interpretation that the term "profess" connotes to publicly declare or practice a religion. The essence of the word lies in the open avowal of one's religious beliefs in a manner discernible to the public at large. It is not merely a question of personal belief or private conviction, but requires an outward manifestation of one's faith.

39) It may be observed that Christianity, by its very theological foundation, does not recognize or incorporate the institution of caste. The foundational Christian scripture, The New Testament states: There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus.⁸ Christianity in India exists in several denominational forms: Roman Catholics (who adhere to liturgical traditions of the Latin Church), various Protestant denominations (including the Church of South India, Baptist, Lutheran, and Pentecostal churches), and the ancient Syrian Christian communities.

40) The aforesaid denominational distinctions arise from differences in theological interpretation, liturgical practice (the form of worship) and ecclesiastical governance (the organizational framework within the church). They do not represent any caste-based hierarchal stratifications.

41) In the present case, the facts are unequivocal. The appellant has been serving as a Pastor for the past ten years. The appellant is also the treasurer of the Pastors fellowship in Pittalavanipalem. The evidence further reveals that the appellant conducted prayer meetings on Sundays at the residence of one Doma Koti Reddy in Kohapalem Village, and regularly performed pastoral

duties including preaching and conducting religious services for the Christian congregation.

42) A pastor occupies a position of religious leadership within the Christian faith, entrusted with the responsibility of preaching the gospel and conducting religious services in accordance with the Christian doctrine. The appellant's occupation and conduct over this extended period constitute an open and public declaration of his Christian faith. Viewing through the lens of Punjabrao (supra), the appellant indubitably professes Christianity within the meaning of Clause 3 of the Constitution (Scheduled Caste) Order, 1950.

43) It is an admitted fact that the appellant previously belonged to the Madiga community, which is specified at Serial No. 32 in Part I (Andhra Pradesh) of the Schedule to the Constitution (Scheduled Caste) Order, 1950, and is recognized as a Scheduled Caste. Had the appellant continued to profess Hinduism, his status as a member of the Scheduled Caste would have been beyond question. However, the appellant now professes Christianity.

44) Clause 3 of the Constitution (Scheduled Castes) Order, 1950 is categorical and unambiguous in its terms. It provides that notwithstanding anything contained in Clause 2, no person who professes a religion different from Hindu, Sikh, or Buddhist shall be deemed to be a member of a Scheduled Caste. The appellant professes Christianity, which is not among the three religions specified in Clause 3. Irrespective of the appellant's caste of origin, he cannot be deemed to be a member of a Scheduled Caste. However, the learned counsel for the appellant has sought to challenge this position by placing reliance on certain State Government Orders.

45) The learned counsel for the appellant has placed reliance upon G.O. Ms No.341, Social Welfare Department, Government of Andhra Pradesh, dated 30.08.1977, which extends certain concessions granted to Scheduled Castes (Hindus) by the State Government to Scheduled Caste converts to Christianity and Buddhism. It is contended that in view of this Government Order, the appellant ought to be recognized as a member of the Scheduled Caste for the purposes of invoking the provisions of the SC/ST Act. For proper appreciation of this contention, it is necessary to reproduce the relevant portions of G.O.Ms. No.341 dated 30.08.1977:

"Government of Andhra Pradesh Abstract

Social Welfare (PR) Department

Dated: 30.08.1977

Social Welfare-Scheduled Caste Converts to Christianity and Buddhism-Non-Statutory Concession available for Scheduled Castes-Extension to Converts for Scheduled Castes to Christianity and to Buddhism-Orders Issued.

G.O.Ms.No.341

Order:

Representations have been received by Government from time to time requesting for the extension of the concessions granted to Scheduled Castes (Hindus) to Scheduled Castes Converted to Christianity and Buddhism on the ground that the scheduled castes converts also suffer from all the social disabilities as Scheduled Castes, irrespective of their conversion. At the state Harijan Conference held in April 1976 also, it was recommended that mere change of religion should not become a bar to Scheduled Castes persons from securing the benefits that they would have been eligible as Scheduled Castes, before conversion and, therefore, the Scheduled Castes converts should be given all the benefits they would have enjoyed before conversion to any other religion.

2. Government have carefully examined the matter in the light of the recommendations made by the State Harijan Conference and other relevant considerations. Government have decided to extended all the non statutory concessions now available to Scheduled Castes (Hindus) to Scheduled Caste converts to Christianity and to Buddhism. Accordingly in suprecession of the orders issued in this behalf, Government direct that all non -statutory concessions granted to Scheduled Castes (Hindus) by the State Government including economic support schemes sanctioned by Andhra Pradesh Scheduled Castes Cooperative Finance Corporation be extended to Scheduled Castes converts to Christianity and to Buddhism.

3. However, the statutory concessions i.e., reservations in educational institutions and reservation in public services for scheduled castes are applicable only to scheduled castes with reference to the constitution (Scheduled Castes) order 1950. The Scheduled Castes converts to Christianity and Buddhism will not therefore be eligible for these facilities. The existing orders in this respect will continue.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.R.Sankaran. Secretary to Government."

(emphasis supplied)

46) A careful perusal of the aforesaid State Government Order reveals that it is of no avail to the appellant. The Government Order itself draws a clear and categorical distinction between statutory and non-statutory benefits. Clause 2 of the Government Order states that only "non-statutory concessions" are being extended to Scheduled Caste converts to Christianity and Buddhism. These non-statutory concessions include economic support and similar welfare schemes which do not flow from statutory mandate.

47) More significantly, Clause 3 of the State Government Order is unambiguous and unequivocal. It states that statutory concessions, including reservations in educational institutions and public services, are applicable only to Scheduled Castes with reference to the Constitution (Scheduled Castes) Order, 1950. The clause categorically states that Scheduled Caste converts to Christianity and Buddhism "will not therefore be eligible for these facilities". The Government Order thus explicitly recognizes and reaffirms the position embodied in Clause 3 of the Constitution (Scheduled Castes) Order, 1950, which restricts Scheduled Caste status to persons professing Hindu, Sikh, or Buddhist religion.

48) The SC/ST Act is a statutory enactment of the Parliament of India. The Act serves as a crucial legal framework to protect the rights and dignity of Scheduled Castes and Scheduled Tribes in India, ensuring stringent measures against offences of atrocities and promoting their welfare and security. The inapplicability of G.O.Ms No. 341 issued by the State to such central enactments has been authoritatively clarified by the Central Government itself.

49) In a written reply to the Lok Sabha on 3rd August, 2021, the Minister of State for Social Justice and Empowerment, Shri A. Narayanaswamy, addressed this precise issue. The Press Information Bureau issued a press release⁹ titled "Benefit of Centrally Sponsored Schemes to Converted Christians" recording this parliamentary reply, which reads as follows:

"Ministry of Social Justice & Empowerment Benefit of Centrally Sponsored Schemes to Converted Christians

प्रविष्टि तिथि: 03 AUG 2021 5:25PM by PIB Delhi

No person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of a Scheduled Caste. The benefits of Centrally Sponsored Schemes (CSS) meant for the welfare and development of Scheduled Castes can not be extended to Converted Christians from Scheduled Castes. Government of Andhra Pradesh vide their letter dated 30.07.2021 has informed that they have issued orders vide GO.Ms. No. 341, Social Welfare Dept., dated 13.08.1977 that non-statutory concessions granted

to the Scheduled Castes (Hindus) by the State Government be extended to Scheduled Caste converts to Christian and to Buddhism.

Since this will not apply to the benefits under Centrally Sponsored Schemes or any other statutory benefits, no further action is contemplated from the Ministry. This information was given by The Minister of State for Social Justice and Empowerment Shri A. Narayanaswamy in the Loksabha in a written reply today.

MG/IA

(रिलीज़ आईडी: 1741930) आगंतुक पटल : 2758”

(emphasis supplied)

50) The aforesaid Press Release by the Ministry of Social Justice and Empowerment clarifies that G.O.Ms. No. 341 does not apply to the benefits under centrally sponsored schemes or any other statutory benefits. Hence, the reliance placed by the appellant on the Government Order is wholly misconceived. 51) To further appreciate our discussion on the issue raised, it is necessary to refer to some of the decisions of this Court which had addressed the same questions. In C.M. Arumugam (supra), a three-Judge Bench of this Court had observed as follows:

"17. It is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalistic outlook and status-oriented approach which attaches social and economic disabilities to a person belonging to a scheduled caste and that is why certain favoured treatment is given to him by the Constitution. Once such a person ceases to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a scheduled caste."

(emphasis supplied)

52) Thereafter, in Guntur Medical College vs. Y Mohan Rao¹⁰, a Constitution Bench of this Court had discussed in detail the Constitution (Scheduled Castes) Order, 1950. The observations made by the Court are as follows:

"The President in exercise of the power conferred upon him under Article 341 has issued the Constitution (Scheduled Castes) Order, 1950. Paras (2) and (3) of this Order are material and they read as follows:

"2. Subject to the provisions of this Order, the castes, races or tribes or parts of or groups within caste or tribes specified in Part I to XIII of the Schedule to this Order shall, in relation to the States to which these parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule.

3. Notwithstanding anything contained in para 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste."

The schedule to this order in Part I sets out the castes, races or tribes or parts of or groups within castes or tribes which shall in the different areas of the State of Andhra Pradesh be deemed to be scheduled castes. One of the castes specified there is Madiga caste and that caste must, therefore, be deemed to be a scheduled caste. But by reason of clause (3), a person belonging to Madiga caste would not be deemed to be a member of a scheduled caste unless he professes Hindu or Sikh religion at the relevant time. It is not necessary that he should have been born a Hindu or a Sikh. The only thing required is that he should at a material time be professing Hindu or Sikh religion."

(emphasis supplied)

53) Following the dictum in Y Mohan Rao (supra), a Division Bench of this Court in M. Chandra vs. M. Thangamuthu and Another¹¹, observed as follows:

"28. Under these provisions, the Constitution (Scheduled Castes) Order was issued in 1950. It sets out the castes, races and tribes in each State of India and provides under Para 2, that a person belonging to any of the castes specified therein be deemed to be a Scheduled Caste for the purpose of the Constitution. Para 3 contains a proviso to the effect that notwithstanding anything contained in Para 2, no person who professes a religion different from the Hindu, Sikh or Buddhist religion shall be deemed to be a member of a Scheduled Caste. Reading Paras 2 and 3 of the Presidential Order would show that if a person belongs to a caste which is notified in the Schedule to the Presidential Order he/she would have the status of a Scheduled Caste, provided he/she professes Hinduism or one of the other religions specified in Para 3 of the Order.

(emphasis supplied)

54) Before we further deal with this aspect, it would be apposite to refer to a recent decision of this Court in C. Selvarani vs. The Special Secretarycum-District Collector and Others¹², wherein a Division Bench was adjudicating the claim of a person seeking reservation benefits, available to Scheduled

Castes, after conversion to Christianity. The relevant portion of the said decision is as follows:

"38. At this juncture, we may observe that India is a secular country. Every citizen has a right to practise and profess a religion of their choice as guaranteed under Article 25 of the Constitution. One converts to a different religion, when he/she is genuinely inspired by its principles, tenets and spiritual thoughts. However, if the purpose of conversion is largely to derive the benefits of reservation but not with any actual belief on the other religion, the same cannot be permitted, as the extension of benefits of reservation to people with such ulterior motive will only defeat the social ethos of the policy of reservation.

39. In the instant case, the evidence presented clearly demonstrates that the appellant professes Christianity and actively practices the faith by attending church regularly. Despite the same, she claims to be a Hindu and seeks for Scheduled Caste community certificate for the purpose of employment. Such a dual claim made by her is untenable and she cannot continue to identify herself as a Hindu after baptism. Therefore, the conferment of Scheduled Caste communal status to the appellant, who is a Christian by religion, but claims to be still embracing Hinduism only for the purpose of availing reservation in employment, would go against the very object of reservation and would amount to fraud on the Constitution."

(emphasis supplied)

POSTULATES

55) Upon a cumulative reading of the aforesaid discussion and in the light of the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950, the following principles emerge for determining the entitlement of a person to be recognised as a member of a Scheduled Caste or Scheduled Tribe:

- a) The claimant must demonstrably belong to a caste or tribe which is specifically notified and recognised under Clause 2 of the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950, and such status must be established by clear, cogent, and unimpeachable evidence.
- b) No person who professes a religion other than Hindu, Sikh or Buddhist shall be deemed to be a member of a Scheduled Caste. This bar under Clause 3 of the Constitution (Scheduled Castes) Order, 1950 is categorical and absolute. Conversion to any religion not specified in Clause 3 results in immediate and

complete loss of Scheduled Caste status from the moment of conversion regardless of birth.

c) No statutory benefit, protection, reservation, or entitlement under the Constitution or under any enactment of Parliament or State Legislature that is predicated upon the membership of a Scheduled Caste can be claimed by or extended to any person who, by operation of Clause 3 of the Constitution (Scheduled Castes) Order, 1950, is not deemed to be a member of a Scheduled Caste. This bar is absolute and admits no exception.

d) A person cannot simultaneously profess and practice a religion other than the ones specified in Clause 3 of Constitution (Scheduled Castes) Order, 1950 and claim membership of a Scheduled Caste at the same time. A person who professes and practices such religion for personal, social and spiritual purposes cannot in law, assert membership of a Scheduled Caste for the purpose of securing statutory benefits. The two positions are mutually exclusive and contrary to the Constitutional scheme.

e) In cases where a person claims to have reconverted from a religion not specified in Clause 3 of the Constitution (Scheduled Castes) Order, 1950 back to Hindu, Sikh or Buddhist religion, the following three conditions must be cumulatively and conclusively established:

i. There must be a clear proof that the person originally belonged to a caste notified under the Constitution (Scheduled Castes) Order, 1950.

ii. There must be credible and unimpeachable evidence of bona fide reconversion to the original religion, accompanied by complete and unequivocal renunciation of the religion to which conversion had taken place, total dissociation therefrom, and actual adoption and observance of the customs, usages, practices, rituals, and religious obligations of the original caste.

iii. There must be satisfactory and credible evidence establishing acceptance and assimilation by the members of the original caste and the concerned community. Mere self-proclamation is insufficient i.e., the community must recognize and accept the person as one of their own. All the above three conditions are mandatory and cumulative. The burden of proving reconversion lies entirely on the claimant, to be proven through unimpeachable evidence. Failure to establish even one condition renders the claim unsustainable.

f) Where a person ceases to be a member of a Scheduled Caste by virtue of Clause 3 of the Constitution (Scheduled Castes) Order, 1950, the loss of such status carries with it the automatic and immediate termination of all eligibility

for statutory benefits, protections, reservations, preferences and entitlements that are predicated upon or flow from such membership.

g) With respect to Scheduled Tribes, this Court clarifies that unlike the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Tribes) Order, 1950 does not prescribe religion-based exclusion. The determination of Scheduled Tribe status, therefore, cannot rest on conversion alone, but must turn on whether the claimant continues to possess and is recognised for the essential attributes of tribal identity, including customary practices, social organisation, community life, and acceptance by the concerned tribal community.

Where conversion or subsequent conduct results in a complete severance from the tribal way of life and loss of community recognition, the foundational basis for Scheduled Tribes status will stand eroded. Conversely, where such attributes demonstrably subsist or are genuinely re-established and accepted by the tribal community, the claim cannot be rejected mechanically. The assessment in such cases is necessarily fact-specific and is left to the competent authority to decide in accordance with Constitutional principles.

56) Reverting to the facts of the present case, it is not in dispute that the appellant was originally born into the Madiga community of Scheduled Caste. It is equally undisputed that he subsequently embraced Christianity. The submission advanced on behalf of the appellant that he continues to retain his Scheduled Caste status by birth notwithstanding such conversion cannot be accepted.

When the postulates enunciated hereinabove are applied to the facts at hand, it becomes manifest that for a person to be recognised as a member of a Scheduled Caste, he must be professing the Hindu religion or such other religions as are expressly recognised under the Constitution (Scheduled Castes) Order, 1950. Once the appellant converted to Christianity, the caste status, which he earlier enjoyed as a member of the Madiga community, stood eclipsed in the eyes of law.

57) In the present case, it is not the case of the appellant that at any stage, he had reconverted from Christianity to his original religion or has been accepted back into the fold of the Madiga community. On the contrary, the evidence on record unmistakably establishes that the appellant continues to profess Christianity and has been functioning as a Pastor for more than a decade, conducting regular Sunday prayer meetings in different houses of the village. It is also an admitted position that at the time of the alleged incident, the appellant was conducting prayer meeting as a Pastor at the house of one Doma

Koti Reddy. These concurrent facts leave no room for doubt that the appellant continues to remain a Christian on the date of the occurrence.

58) As far as the contention of the learned counsel for the appellant placing reliance on the caste certificate is concerned, we are of the view that mere possession of the certificate will not be of any benefit to the appellant. The said caste certificate is mandatorily required to be in consonance with the Constitution (Scheduled Castes) Order, 1950. In this regard, we place reliance on the decision of this Court in *K.P. Manu vs. Scrutiny Committee for Verification of Community Certificate*¹³, wherein a Division Bench had laid out three mandatory tests to be established by a person who claims to be a beneficiary of a caste certificate:

"38. In our considered opinion, three things that need to be established by a person who claims to be a beneficiary of the caste certificate are:

(i) there must be absolutely clear-cut proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Castes) Order, 1950;

(ii) there has been reconversion to the original religion to which the parents and earlier generations had belonged; and

(iii) there has to be evidence establishing the acceptance by the community. Each aspect according to us is very significant, and if one is not substantiated, the recognition would not be possible."

(emphasis supplied)

59) From the above, it is clear that the administrative action of the State in providing the caste certificate to the appellant cannot be in disharmony with the Constitution (Scheduled Castes) Order, 1950. In the present case, we have no hesitation in holding that the appellant, having ceased to be a member of the Madiga community upon his conversion to Christianity and having failed to establish any subsequent reconversion, does not satisfy the mandatory Constitutional requirement for claiming the status of Scheduled Caste.

WHETHER THE HIGH COURT WAS RIGHT IN QUASHING PROCEEDINGS AGAINST RESPONDENT NOS. 2 TO 7?

A. Offences alleged under the SC/ST Act

60) At the very outset, it must be unequivocally stated that the offences registered under the SC/ST Act against respondent nos. 2 to 7 at the instance of the appellant cannot be sustained. Having already held that the appellant ceased to be a member of the Scheduled Caste community upon his conversion to

Christianity, he cannot subsequently invoke the provisions of the SC/ST Act. The said statute is a special legislation enacted with the avowed object of preventing atrocities against the members of the Scheduled Castes and Scheduled Tribes and once the foundational requirement of caste status stands extinguished, the statutory protection thereunder is no longer available.

61) Therefore, we are of the view that the High Court was right in holding that the appellant has ceased to be a member of the Scheduled Caste on his conversion to Christianity. Accordingly, the appellant cannot be a person aggrieved under the SC/ST Act.

B. Offences alleged under the IPC

62) Before we discuss on the alleged offences under Sections 341, 506 and 323 read with Section 34 of the IPC against respondent nos. 2 to 7, it is apposite to refer to the decision of this Court in *State of Haryana vs. Bhajan Lal*¹⁴, wherein a Division Bench of this Court had deliberated on the list of cases, wherein power under Section 482 of the Cr.PC should be exercised by the High Court for quashing proceedings:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis supplied)

63) In light of the aforesaid legal parameters, we now proceed to examine the allegations levelled against respondent nos. 2 to 7 in relation to the offences punishable under Sections 341, 506 and 323 read with Section 34 of the IPC, as alleged to have been committed against the appellant.

64) The case of the appellant, as emerging from the complaint, is that on the date of the incident, after offering Sunday prayers and while returning to his residence, he was allegedly wrongfully restrained at the entrance of a nearby hamlet by respondent nos. 2 to 7, along with approximately twentyfive other persons. It is further alleged that his mobile phone and vehicle keys were forcibly taken away, that he was dragged and assaulted with hands and legs, and that threats to his life were extended.

65) The charge-sheet filed in the matter cites sixteen witnesses, including the appellant himself. Upon consideration of the material placed on record, the High Court, by the impugned judgment, proceeded to quash the criminal proceedings initiated at the instance of the appellant against respondent nos. 2 to 7. In this context, we consider it appropriate to extract the relevant reasoning of the High Court pertaining to the offences alleged under the IPC:

"38. In so far as the allegations of commission of offences under Sections 341, 506 and 323 read with 34 of IPC is concerned except for the statement of LW.1

there is no other corroborating statement of any of the witnesses. On the contrary LW.2 the wife of LW.1 would state that she came to know about the alleged altercation and that by the time she went there LW.1 had already started in a car with one Pothurlanka Srinivasa Rao-LW.4 in the car belonging to LW.3 - Addepalli Anil Kumar.

She also stated that Anil Kumar and Pothurlanka Srinivasa Rao had dropped LW.1 at her house. Both LWs.3 and 4 state that there was an altercation and that about 30 people were questioning LW.1 about his activities in the village and that LWs.3 and 4 intervened and pacified the situation and thereafter dropped LW.1. LWs.3 and 4 state that about 30 people have assembled and questioned LW.1; however, LW.5 to LW.9 do not state so in their statement.

41. Similarly, except for the listed witness Nos.1 and 3 no other witness speak about the altercation involving 30 people. Even the charge sheet does not state that 30 people had participated in the altercation. The only person accompanying LW.1 at the time of the alleged altercation was LW.9, she does not state about the alleged presence of the 30 people. All that she says in her statement recorded on 27.01.2021 i.e., one day after the date of filing of complaint. LW.9 stated that, she was the pillion rider of the two wheeler which was driven by LW.1, when LW.1 and LW.9 reached cross roads of Kothapalem Village some people came and stopped the two wheeler stating that they wanted to talk with the Pastor and that LW.9 was dropped off at her house on another bike.

It is also stated by LW.9 she after reaching her home, she overheard people shouting. Later she came to know that Reddy's of Kothapalem village have threatened LW.1 not to perform Sunday Prayers in the village. With these allegations, the requirements under Sections 341, 506, 323 read with 34 of IPC cannot be made out even after full fledged trial. This Court is of the considered view that a false complaint is filed and no purpose would be served if the petitioners are relegated to the trial Court and to undergo the rigmarole of trial."

66) The allegations of wrongful restraint, hurt and criminal intimidation rest solely on the statement of the appellant, with no independent witness attributing any specific overt act to respondent nos. 2 to 7. LW-2 was admittedly not present at the scene, while LW-3 and LW-4, though referring to an altercation, stated that the situation was pacified and the appellant was escorted away. Their version does not support any allegation of restraint, assault or threat.

The claim regarding the presence of a large unlawful assembly is unsupported by the chargesheet or other witnesses, thereby weakening the case of a

concerted act under Section 34 of the IPC. LW-9, who accompanied the appellant, also does not allege any assault, restraint or intimidation; her subsequent statements are hearsay in nature. Moreover, absence of consistent ocular testimony identifying the assailants or manner of occurrence, does not advance the prosecution's case.

67) Thus, we are of the view that the basic foundation in respect of allegations of wrongful restraint, causing hurt and criminal intimidation are not present in the material collected during investigation.

68) In Bhajan Lal (supra) and recently in Neeharika Infrastructure Private Limited vs. State of Maharashtra¹⁵, this Court has clearly held that where the uncontroverted allegations and the evidence collected during investigation do not disclose the commission of any offence, continuation of criminal proceedings would amount to an abuse of the process of law.

69) We are of the view that the High Court, upon a careful and correct appreciation of the material on record, arrived at the conclusion that the allegations under Sections 341, 506 and 323 read with Section 34 of the IPC are not borne out even if the prosecution's case is taken at its face value.

70) In view of the above analysis, we find no substance in the Appeal which fails and is hereby dismissed.

.....**J. (Prashant Kumar Mishra)**

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

New Delhi;

March 24, 2026

1 'High Court'

2 'Cr.PC'

3 'SC/ST Act'

4 'IPC'

5 (2004) 3 SCC 429

6 (1976) 1 SCC 863

7 1964 SCC OnLine SC 76

8 Galatians 3:28 (NIV) Galatians 3:28 NIV - There is neither Jew nor Gentile,
- Bible Gateway

9 Ministry of Social Justice and Empowerment, "Benefit of Centrally Sponsored Schemes to Converted Christians (PIB Press Release, 03rd August, 2021)

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1741930&reg=3&lang=2>

10 (1976) 3 SCC 411

11 (2010) 9 SCC 712

12 2024 INSC 900

13 (2015) 4 SCC 1

14 1992 Supp (1) SCC 335

15 (2021) 19 SCC 401 (Para 33)

IN THE SUPREME COURT OF INDIA

State of Himachal Pradesh
Vs.
Hukum Chand alias Monu

[Criminal Appeal No. 1275 of 2015]

Head Note – Expressed concern over the disclosure of a rape victim's identity in court records and directed all Registrars General of High Courts to ensure strict compliance with the statutory prohibition under Section 228-A IPC in all pending cases, including those instituted prior to its 2018 judgment in **Nipun Saxena Vs. Union of India, (2019) 2 SCC 703**. The mandate against disclosure of a victim's identity is a long-standing position in law, yet it has not been consistently followed.

JUDGMENT

Sanjay Karol, J.

1. The State of Himachal Pradesh, aggrieved by final judgment and order dated 3rd June 2014 in Criminal Appeal No 721 of 2008¹ whereby the learned Division Bench set aside the findings of guilt and consequent sentence returned by the District and Sessions Judge, Mandi² in Sessions Case No. 12 of 2008 in terms of the judgment dated 12th September 2008 and instead, entered a finding of acquittal against the respondent-accused, has preferred this appeal.

2. A nine-year-old girl was sent by her mother to fetch buttermilk bright and early in the morning of 27th August 2007, however, the brightness was soon extinguished. She was taken into a cowshed by the neighbour's son and sexually assaulted. Upon returning home, she described the horrifying incident to her mother and later in the day to her father, who was a mason by profession and worked elsewhere.

He made a couple of phone calls, including one to the little girl's maternal uncle, who visited their home subsequently and they went and filed the First Information Report³ with the police. The victim was medically examined, and her bloodstained clothes were handed over to the authorities. Upon conclusion of the investigation, the police filed a charge sheet under Sections 376, 201 of the Indian Penal Code,⁴ 18604 and Section 3(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁵.

3. The Trial Court, having appreciated the testimony of sixteen witnesses for the prosecution and three for the defense, convicted the accused under Section

376 IPC and the offence under the SC/ST Act, and acquitted him under Section 201 IPC. The sentence awarded was rigorous imprisonment for ten years and a fine of Rs. 10,000/- for the former offence, with a further rigorous imprisonment of one year in default of payment of fine.

For the latter offence, imprisonment of the same description for five years and a fine of Rs. 10,000/- with a further rigorous imprisonment of one year in default of payment of fine. To arrive at this conclusion, reliance was placed on the testimony of the victim, and its corroboration by subsequent witnesses such as her parents, the medical witnesses and also the person from whom she was sent to fetch buttermilk, altogether forming a web of factors pointing to the guilt of the accused-respondent.

4. The impugned judgment reverses these findings. The sum and substance of the High Court's reasoning is that major contradictions in the witness testimonies have been ignored by the Trial Court. It was found that the prosecution version suffered from serious improbabilities. The prosecutrix had apparently gone to fetch lassi from a house that was about 8 kilometers away. This meant she would have had to travel approximately 16 kilometers to go and return within two hours, which appeared to the Court to be highly improbable.

Next considered was the aspect of the acrimonious relationship between the two families in so far as alleged theft of grass and fuelwood from the accused's land. Importantly, a quarrel had taken place between the families on the very same day as the alleged incident. The prosecutrix herself admitted that her parents had cut grass from the accused's land that day and that tensions already existed. Further, the Court found material contradictions and inconsistencies in the statements of the prosecutrix, her mother, her father, and her maternal uncle. There were differences regarding how and when the incident was reported, who went where before lodging the FIR, and whether the maternal uncle came to the house or met them on the road.

These inconsistencies were considered significant. Still further, the Court also questioned the conduct of the prosecutrix's mother. She stated that she had become aware of the incident in the morning when she noticed bloodstains, yet no immediate report was made. Instead, the matter was disclosed only after the father returned home at night, and the FIR was lodged the next morning. The Court found this delay relevant in the overall evaluation of the case.

With respect to the SC/ST Act charges, the Court noted that these provisions were not included in the original FIR. They were added later by the supervising officer. Similarly, Section 201 IPC was added later, even though the Investigating Officer did not find grounds for it during the initial investigation.

Although the medical evidence indicated that the prosecutrix had been exposed to a sexual act, the Court held that medical opinion alone could not be treated as substantive evidence. In view of the inconsistencies and surrounding circumstances, the medical evidence was not sufficient to sustain the conviction.

5. The State challenges the said judgment in these proceedings. At the outset, a disturbing fact must be acknowledged. The Legislature had as far back as 1983 introduced a provision into IPC seeking to protect the identity of the victim of the offence under Section 376 IPC, in the aftermath of the State of Maharashtra v. Tukaram⁶. The amendment was made apparently to address a specific mischief that emerged starkly from the way sexual offence cases were handled: the public disclosure of a survivor's identity. Before 1983, there was no statutory bar on publishing the name or particulars of a woman against whom a sexual offence was alleged; Court reporting and media coverage could expose survivors to social stigma, ostracism, and lifelong reputational harm.

This perspective is reflected in academic discussions on the evolution of the law on sexual assault⁷, which identify the 1983 amendments as marking the beginning of a victim-centred orientation in Indian criminal law; protections such as in-camera trials, evidentiary presumptions, and anonymity were designed to reduce the barriers and fears that previously discouraged reporting and effective prosecution of sexual offences. Clearly, the intent of this Section has been given a miss in these proceedings. The name of the victim is treated like that of any other witness and is freely used throughout the record. This must be deprecated in the strongest terms. In fact, this Court has noticed earlier also that the mandate of this provision is not being followed.

6. Moving further, it is important to note that this is a case of differing views from the Trial Court and the High Court. The effect of this Court interfering in this appeal would be that an acquittal would be set aside despite the well-established position that this Court is loath to interfere in acquittals unless the said conclusion has been arrived at in disregard of principles of law or on an entirely misdirected analysis of evidence leading to injustice. This Court recently in State of U.P. v. Ajmal Beg⁸, observed as follows:

"15. Having appreciated the provisions and the judgments as aforesaid, let us now proceed to consider whether, in view of the evidence, the High Court was justified in setting aside the findings of the Trial Court. However, prior to that we will undertake the task of examining the scope of this Court's power under Article 136 of the Constitution of India in criminal matters.

15.1 In Surajdeo Mahto v. State of Bihar, 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 judgements, viz., Ramaniklal Gokaldas v. State of Gujarat, Nadodi Jayaraman v. State of T.N., Banwari Ram v. State of U.P., 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 reappraisal 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."

The above observations were followed and referred in State of H.P. v. Chaman Lal⁹.

7. Before proceeding further, however, it is important to also take note of principles qua appreciation of the testimony of child witnesses. In State of Rajasthan v. Chatra¹⁰ this Court through one of us, (Sanjay Karol J.,) formulated the following principles for the appreciation of the testimony of child witnesses:

"22. Recently, a coordinate Bench of this Court in State of M.P. v. Balveer Singh [State of M.P. v. Balveer Singh, (2025) 8 SCC 545] speaking through J.B. Pardiwala, J., considered a large number of prior decisions of this Court to lay down guidelines for the appreciation of the evidence of a child witness. We have perused through the same. Reference can also be made to other judgments in State of M.P. v. Ramesh [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493]; Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561]; and State of U.P. v. Ashok Dixit [State of U.P. v. Ashok Dixit, (2000) 3 SCC 70: 2000 SCC (Cri) 579], etc.

23. The principles that can be adduced from an overview of the aforesaid decisions, are:

23.1. No hard and fast rule can be laid down qua testing the competency of a child witness to testify at trial.

23.2. Whether or not a given child witness will testify is a matter of the trial Judge being satisfied as to the ability and competence of the said witness. To determine the same the Judge is to look to the manner of the witness, intelligence, or lack thereof, as may be apparent; an understanding of the distinction between truth and falsehood, etc.

23.3. The non-administration of oath to a child witness will not render their testimony doubtful or unusable.

23.4. The trial Judge must be alive to the possibility of the child witness being swayed, influenced and tutored, for in their innocence, such matters are of ease for those who may wish to influence the outcome of the trial, in one direction or another.

23.5. Seeking corroboration, therefore, of the testimony of a child witness, is well-placed practical wisdom.

23.6. There is no bar to cross-examination of a child witness. If the said witness has withstood the cross-examination, the prosecution would be entirely within their rights to seek conviction even solely relying thereon."

(emphasis supplied)

An earlier instance in *State of Himachal Pradesh v. Manga Singh*¹¹ is also noteworthy. It was held:

"10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.

8. When it comes to inconsistencies and omissions in testimonies, which is one of the primary grounds on which the reasoning of the High Court rests, it is well recognised that human perception, memory and narration are imperfect. As such, the Court has consistently held that minor inconsistencies or trivial discrepancies in the testimony of witnesses do not by themselves make the evidence unreliable. In *State of U.P. v. M. K. Anthony*¹², this Court explained that while appreciating evidence, courts must not attach undue importance to minor discrepancies. Variations in trivial matters that do not affect the core of the case should not lead to rejection of credible testimony in its entirety.

The evidence must be assessed as a whole to determine whether it carries the ring of truth. Similarly, in *Appabhai v. State of Gujarat*¹³, the Court cautioned against placing undue weight on minor contradictions or omissions. Truthful witnesses may differ in detail due to normal lapses of memory or differences in perception. The essential question is whether the inconsistencies materially compromise the backbone of the prosecution narrative.

In *State of Rajasthan v. Kalki*¹⁴, the Court distinguished between normal discrepancies arising from errors of observation or memory and material discrepancies that go to the core of the case. Only the latter undermine the prosecution in a substantial manner. [See also: *Rakesh v. State of Uttar Pradesh*¹⁵] In conclusion, it may be said that a truthful witness may make honest mistakes or omit immaterial details, and such normal variation should not result in wholesale rejection of evidence. However, when omissions or contradictions relate to material facts that form the foundation of the prosecution's version, they assume significance and may create reasonable doubt.

9. Keeping the aforesaid principles in view, we now move to the appreciation of evidence. We have perused all the testimonies. The following is a snapshot of the main witnesses:

PW-1, who is aged 9-10 years, is the victim/prosecutrix. In her examination-in-chief she has positively identified the accused-respondent as being present in Court, and he being the one who took her to the cow-shed and committed sexual assault on her. She described informing her mother and later father of the incident, and also the subsequent actions of the father leading to the registration of the FIR. Certain facts elicited in the cross-examination are that the parents of the victim and the accused respondent had quarreled several times over the alleged theft of grass. She has categorically denied the suggestion that she was not sexually assaulted and the injury to her private parts was a result of her mother's insertion of her finger, therein, in order to frame the accused.

The one significant departure from the testimony of other witnesses, that can be noticed here is that she has specifically deposed qua the factum of the respondent accused's mother coming to PW-2, the mother of the prosecutrix and requesting her not to disclose this incident to the villagers. However, this position has been specifically denied by DW-2, Phula Devi. Nothing has been discussed about the same in cross-examination. PW-2, namely Roshani Devi, testified that the prosecutrix informed her about the acts of the respondent accused, which she relayed to DW-2 too, and the latter asked her to refrain from disclosure as it would bring disrepute to both families. She categorically said that she disclosed the incident to her husband, PW-3, namely Jia Lal, upon his return home at 9:30 pm in the evening, and was scolded for not having done so earlier. Jia Lal called up Hemraj PW-15 who apparently called them to the road, whereafter all of them, together, went to the police station to lodge the FIR.

In her cross-examination she has denied that the incident is fabricated in order to teach the family of the respondent-accused, a lesson. She further denied injuring PW-1 on purpose to that end. PW-5 was Suresh Kumar, who was the person from whom the prosecutrix was sent to secure buttermilk. It is while coming back from having bought buttermilk that the alleged incident took place. PW-5 positively states that the prosecutrix did take buttermilk from him. PW-7, namely Dr. Sushma Dutta, Medical Officer, Civil Hospital, Sundar Nagar, deposed that although the medical examination of the prosecutrix had taken place one day after the alleged incident, i.e., on 28th July 2007, the victim was wearing the same clothes that she allegedly had on, at the time of the incident. The injuries reported were as follows:

"Local examination:

Mens pubis not well developed public hairs absent. There was lacerated wound on right paraurethral region of size 1 x 1/2 c.m. red looking with slight bleeding on touch.

2. There was lacerated wound on left paraurethral region of size 2x2x1/2 c.m. which also bleed on touch.

Vagina could admit little finger easily. Hymen was torn at position 9' clock. There was no injury seen around anus.

Vaginal swabs and smear were taken. Clothes were preserve, sealed and handed over to the police. Public hair were not available for examination. There was no history of any disease or any drug in take.

Vide chemical analysis report reported by Chemical Examiner vide Ext. PH, human blood was present on the salwar of the victim, but no semen was present. This report was shown to me by the police on 13.02.2007.

In my opinion, she has been exposed to sexual act and my opinion remained the same after the report of Chemical Examiner. The probable duration of injuries was within 48 hours. I issued the MLC Ext. PJ which bears my signatures and is in my hand. The victim was referred to Z.H. Mandi for age verification vide X-ray from Ext. PK by me, shirt Ext. P1 and salwar Ext. P2 are the same."

Nothing in the cross-examination substantially dislodges the testimony in the examination-in-chief. PW-10 was Dr. S.K. Fotedar, Medical Officer, CHC, Ratti. He is the one who examined the respondent accused. He deposed that the accused was capable of sexual intercourse. The injury that he suffered was testified to be possible in the course of agricultural work. The description of the injury is as follows: One superficial abrasion 0.5 cm x 0.75 cm on right ear, medially on pinna opposite right mastoid with blood stains on mastoid area. No fresh bleedings was present. The wound was 24 to 36 hours old. But at the same time, it was further submitted that an injury is not necessary on the commission of rape.

10. We may observe that the approach adopted by the High Court is one of attempting to pick holes in a case that otherwise has withstood the test of cross-examination. The prosecutrix has positively identified the respondent-accused and has unequivocally stated that it was he who forced himself upon her. Not even a sh/red of doubt could be created by cross-examination on these two most essential points. Neither the testimony of the mother nor the father, that supported the version of the prosecutrix could be credibly questioned.

0The discrepancy that does appear pertains to the alleged quarrel between the families of the prosecutrix and the accused respondent. The prosecutrix and PW-2 state that repeated quarrels between the two families were a regular feature but PW-3 submits otherwise. That apart, one major improbability noticed by the High Court was that the prosecutrix had travelled 16 kms to and fro from the house of PW-5 within two hours. This has been observed to be almost impossible.

11. Be that as it may. Even if it is the case that to travel 16 kilometres was not possible in two hours, it still is an uncontroverted reality that the factum of sexual assault has not been disturbed. In proving the occurrence of an offence within a particular time frame, the Court does not look for mathematical precision. For the purposes of argument, even if the alleged time frame is

extended by an hour, the possibility of the occurrence of the offence is still not shaken.

12. At this stage, let us deal with the rejection of the medical evidence of PW-7 on account of 16 kilometre distance being improbable and the apparent site map which is a part of record. In the considered view of the High Court, these two combined falsify the medical evidence. It is well-established that medical evidence is in the nature of expert opinion and is corroborative in nature. It is equally well established that medical evidence when it contravenes other credible evidence particularly ocular evidence, then in such a situation, it can be kept aside or ignored.

That is not the case here. It cannot be lost sight of that the expert evidence squarely corroborates the evidence of the prosecutrix, that she was sexually assaulted. In her evidence, at the cost of repetition, it may be stated positively that she identified him and attributed the act to him. The same has not been challenged or questioned by the process of law. Then the question is, on the basis of some alleged improbability of time, can we ignore other credible evidence? We think not. That would be a stand entirely in contravention of law.

13. As already referred above, the evidence of the prosecutrix alone, in matters such as these is sufficient to convict the accused. As such, on PW-1's evidence alone the offence stands established. The evidence of others only adds further credence to the statement of the victim. We may add that animosity is a double-edged sword and if given undue weight, may lead to injustice, in view of the uncontroverted testimony of the victim.

14. In that view of the matter, the impugned judgment acquitting the respondent- accused cannot stand and is required to be set aside. Appeal is accordingly allowed. He is directed to surrender forthwith and serve the remainder of the sentence.

15. In the end, we direct that a copy of this judgment be sent to all the Registrars General of the High Courts to ensure that in all matters dated prior to the passing of this Court's judgment in *Nipun Saxena v. Union of India*¹⁶ which has mandated the non-disclosure of the victim's identity, and still pending, the proscription in Section 228-A IPC is followed strictly. This has been the long-standing position in law but, it has not been followed.

The primary reason thereamongst, one supposes, is the general indifference of the Courts below and possibly even the lack of awareness of the deep stigma that follows such offences. Immediate reference can be made to *State of Punjab v. Gurmit Singh*¹⁷ which touched upon this issue in connection with Section

327 CrPC, and also Bhupinder Sharma v. State of HP¹⁸. Suffice it to say that both these judgments were pronounced by this Court much prior to the incident in question. Pending applications, if any, shall be disposed of.

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

March 24, 2026

1 Impugned judgment

2 Trial Court

3 FIR No. 355 of 2007 registered at PS Sunder Nagar

4 IPC

5 SC/ST Act

6 (1979) 2 SCC 143

7 Shruti Bedi, The Indian Rape Law: Vocabulary of Protest, Reactionary Legislations and Quality of Equality Culture, Udayana Journal of law and Culture, Vol 7 No.1, (2023)
<https://doi.org/10.24843/UJLC.2023.v07.i01.p01>

8 2025 SCC OnLine SC 2801

9 2026 SCC OnLine SC 85

10 (2025) 8 SCC 613

11 (2019) 16 SCC 759

12 (1985) 1 SCC 505

13 1988 Supp SCC 241

14 (1981) 2 SCC 752

15 (2021) 7 SCC 188

16 (2019) 2 SCC 703

17 (1996) 2 SCC 384

18 (2003) 8 SCC 551

IN THE SUPREME COURT OF INDIA

Sandeep Yadav

Vs.

Satish & Ors.

**[Criminal Appeal No. 1617 of 2026
arising out of SLP (Crl.) No. 8035 of 2025]**

Head Note – The absence of a signature on the charge-framing order sheet is a curable procedural defect and does not vitiate the trial, particularly where the accused was duly informed of and understood the charges against them.

It is, at best, a curable procedural irregularity within the ambit of Sections 215 and 464 Cr.P.C. In the absence of any demonstrated failure of justice, such defect cannot vitiate the proceedings.

Where the accused (persons) clearly understood the nature of the allegations and had a full opportunity to defend themselves, defects in the charge cannot be treated as fatal.

The omission of a signature on the charge, though a procedural lapse, does not render the proceedings invalid when the charge was in fact prepared, recorded, read over, and acted upon by the Court and the parties.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. The present Criminal Appeal arises out of the order dated 18.02.2025 passed by the High Court of Judicature at Allahabad¹ in an application under Section 482 of the Code of Criminal Procedure, 1973, being Application No. 39342 of 2024. By the impugned order, the High Court allowed the application filed by Respondents 1 to 5 (accused persons), set aside the order dated 07.10.2024 passed by the Additional District and Sessions Judge, Court No. 5 Aligarh 3 in Sessions Trial No. 21 of 2008, and directed that the trial be proceeded afresh in accordance with the mandate of Sections 241 and 242 Cr.P.C.

3. Briefly stated, the facts giving rise to the present appeal are as follows:

3.1. An FIR being No. 5 of 2007 was registered on 04.01.2007 at Police Station Quarsi, District Aligarh on the complaint lodged by the first informant, Rao

Singh, for offences punishable under Sections 147, 148, 149, 307, 302 and 120B of the Indian Penal Code, 18604 and Section 7 of the Criminal Law Amendment Act, 1932 against nine accused persons, namely, Tanuj (A1), Satish (A2 / Respondent No. 1), Bijendra Singh (A3 / Respondent No. 2), Omkar (A4 / Respondent No. 3), Nempal (A5), Subhash (A6 / Respondent No. 4), Preetam (A7), Mohkam (A8 / Respondent No.5) and Narendra Sharma (A9).

3.2. As per the prosecution case, a dispute had arisen between the complainant party and Narendra Sharma (A9) relating to the sale of land. It was alleged that on 04.01.2007, the accused persons, sharing a common intention, arrived on motorcycles, armed with licensed as well as illegal firearms, and opened fire using pistols, rifles and double-barrel guns upon the informant and his brothers, namely Nahar Singh, Shripal Singh, Krishnapal and Kuldeep, resulting in serious injuries. One of the injured, Nahar Singh, later succumbed to his injuries. The appellant herein is his son.

3.3. Upon completion of investigation, a charge sheet was filed against the accused persons. The jurisdictional Magistrate, after taking cognizance, committed the case to the Court of Sessions for trial.

3.4. On 27.03.2009, the trial Court proceeded to frame charges, to which the accused pleaded not guilty. However, the order framing charges remained unsigned owing to the absence of one of the accused, namely, Bijendra Singh (A3). Thereafter, on 01.06.2009, all the accused persons, along with their counsel, were present before the court, and charges were framed, whereafter the matter was posted for recording of prosecution evidence on 15.06.2009. The trial thereafter proceeded in the normal course, with the prosecution examining its witnesses, and the matter eventually reaching the stage of recording statements of the accused under Section 313 Cr.P.C.

3.5. At that stage, it came to the notice of the learned Presiding Officer that the formal charge had inadvertently remained unsigned. In order to cure the said defect, the trial Court framed a formal charge afresh against all the accused persons on 11.09.2024.

3.6. Subsequently, an application was moved by the appellant seeking that the evidence already recorded be taken into consideration and that the trial proceed from the existing stage. By order dated 07.10.2024, the trial Court allowed the said application, observing that the accused were fully aware of the charges framed against them and had extensively cross-examined the prosecution witnesses. The Court further noted that two prosecution witnesses had expired, one had turned hostile, and there existed a likelihood of other witnesses turning hostile; thus, recalling witnesses for fresh examination would seriously

prejudice the prosecution. Accordingly, the matter was directed to proceed to the stage of recording statements under Section 313 Cr.P.C.

3.7. Aggrieved thereby, Respondent Nos. 1 to 5 (accused persons) invoked the inherent jurisdiction of the High Court under Section 482 Cr.P.C. The High Court, by the impugned order dated 18.02.2025, allowed the application and directed that the trial be conducted afresh.

3.8. Therefore, the appellant has preferred the present appeal challenging the direction issued by the High Court.

4. The learned senior counsel for the appellant submitted that all the accused persons were fully aware of the charges framed against them and had actively participated in the trial for more than fourteen years. During this period, they effectively cross-examined the prosecution witnesses at length. It was contended that the present attempt to seek a de novo trial is a calculated effort to exploit a technical procedural irregularity, particularly in view of the fact that two of the most crucial witnesses, namely Rao Singh (Informant / PW-1) and Kuldeep Singh (Injured witness / PW-3) have since expired.

4.1. It was urged that the present case is not one of absence of charge, as erroneously assumed in the impugned order. On the contrary, charges were duly framed and the accused were fully aware both of the nature of accusations and the evidence led against them.

4.2. Elaborating further, learned senior counsel submitted that on 27.03.2009, charges were formally framed in the presence of all accused except Bijendra Singh (A3 / Respondent No. 2). Consequently, all other accused were put to notice of the charges on that date itself. Thereafter, on 01.06.2009, when all the accused persons, including Bijendra Singh, appeared before the court along with their counsel, the order sheet clearly recorded that charges stood framed against all of them. It was thus submitted that even Bijendra Singh was duly appraised of the charges on that date, and only thereafter did the trial proceed to the stage of recording evidence.

4.3. According to the learned senior counsel, since the charge had already been drafted on 27.03.2009, the same was read over and applied to all the accused on 01.06.2009. The mere fact that a fresh typed charge was not prepared or signed again does not lead to the conclusion that no charge had been framed.

4.4. It was further contended that the order dated 01.06.2009, which unequivocally records that charges had been framed against all the accused, was never challenged at any point of time over a span of more than fourteen years. The accused cannot now be permitted to contend that no charge had been framed from the inception of the trial.

4.5. The learned senior counsel emphasised that the legal requirement is not the obtaining of signatures of the accused on the formal charge, but ensuring that they are made aware of the accusations against them. The order sheet dated 27.03.2009, duly signed by the Presiding Officer, records the presence of all accused except Bijendra Singh. In such circumstances, it cannot be presumed that the charges were not read over or explained to them merely because the formal document does not bear their signatures.

4.6. As regards Bijendra Singh, it was reiterated that he was duly put to notice of the charges on 01.06.2009 in the presence of counsel. No objection was raised either on that date or at any subsequent stage, which clearly indicates that the accused had full knowledge of the charges and suffered no prejudice.

4.7. It was submitted that, at best, the omission to prepare or sign a fresh typed charge on 01.06.2009 constitutes a procedural irregularity. Such an inadvertent lapse cannot be elevated to a fatal defect so as to vitiate the entire trial.

4.8. The learned senior counsel further contended that the High Court failed to consider the significance of the order dated 01.06.2009 and instead proceeded solely on the basis that the formal charge dated 27.03.2009 was not signed by all accused.

4.9. It was also pointed out that the charges framed were identical to those set out in the charge sheet supplied to the accused, and no new or altered charge had been introduced so as to prejudice their defence. The extensive cross examination conducted by the accused over the course of the trial further demonstrates their complete awareness of the prosecution case.

4.10. The learned senior counsel additionally submitted that the present case is intertwined with a cross-case, wherein the accused in the present matter are prosecution witnesses, and vice versa. It was alleged that both sides entered into a compromise with a view to avoid conviction, pursuant to which PW-11 (Pappu) turned hostile in the present case, while Satish (A2 / Respondent No. 1) deposed as PW-7 in the cross-case also turned hostile. In furtherance of this arrangement, both sides filed applications under Section 311 Cr.P.C. on the same day seeking recall of witnesses, ostensibly to enable further witnesses to resile from their earlier statements. However, the trial Court rejected these applications, observing that they were intended solely to facilitate witnesses turning hostile.

4.11. It was submitted that having failed in their attempt under Section 311 Cr.P.C., the accused have now adopted a different strategy by raising a belated objection regarding the alleged defect in the framing of charge, with the ulterior motive of securing a de novo trial and thereby recalling witnesses.

4.12. The learned senior counsel contended that the present attempt is aimed at effacing the evidence recorded over a prolonged period of fourteen years, particularly when key witnesses have died. Significantly, the accused have neither pleaded nor demonstrated that they were misled in their defence on account of the alleged defect in the charge.

4.13. It was emphasised that no objection to the framing of charges was raised at any stage during the trial, and the issue surfaced only on 10.09.2024 when a technical irregularity was pointed out by the prosecution.

4.14. Reliance was placed on the Constitution Bench judgment in Willie (William) Slaney v. State of Madhya Pradesh⁵, wherein it was held that even absence of a charge does not ipso facto vitiate a trial unless prejudice is shown. Referring to the principles underlying Sections 464 and 465 Cr.P.C., it was submitted that defects or irregularities in framing of charge are curable and cannot be treated as fatal unless they occasion a failure of justice.

4.15. In these circumstances, it was urged that permitting a fresh trial or recalling witnesses at this stage would seriously prejudice the prosecution and defeat the ends of justice, particularly when such a course is sought to be invoked on a belated and purely technical ground.

4.16. The learned senior counsel accordingly prayed that the impugned order be set aside and the trial be permitted to proceed from the stage at which it presently stands.

5. Supporting the case of the appellant, the learned counsel appearing for Respondent No. 6 - State of Uttar Pradesh submitted that the impugned order passed by the High Court suffers from serious legal infirmity.

5.1. It was contended that the direction for conducting a de novo trial has the effect of discarding the entire body of evidence recorded over a period of fourteen years. Such a course is neither warranted in law nor conducive to the ends of justice, particularly when the accused had actively participated in the proceedings throughout. It was further pointed out that during the pendency of the trial, certain crucial prosecution witnesses have expired, and there exists a real likelihood of other witnesses turning hostile if the trial is recommenced from the initial stage.

5.2. The learned counsel submitted that no prejudice whatsoever has been caused to the accused. The record clearly demonstrates that the accused were fully aware of the charges framed against them. The order dated 01.06.2009 specifically records that charges had been framed against all the accused in their presence and in the presence of their respective counsel. Significantly, the said order remained unchallenged for more than fifteen years.

5.3. The learned counsel emphasised that Section 464(1) Cr.P.C. expressly provides that no finding, sentence or order shall be invalidated merely on the ground of absence of charge or any error, omission, or irregularity therein, unless such defect has occasioned a failure of justice. In the present case, no such failure of justice has either been pleaded or demonstrated.

5.4. It was contended that the framing of charges afresh on 11.09.2024 was only a corrective step to cure a procedural irregularity. Such rectification does not ipso facto necessitate a retrial. A de novo trial is warranted only where the defect has caused real and substantial prejudice to the accused. In the absence of such prejudice, the trial ought to proceed on the basis of the evidence already recorded.

5.5. Reliance was placed on *Dinesh Seth v. State of NCT of Delhi*⁶, wherein, this Court held that only such defect which affects the fundamental fairness of the trial, such as denial of a hearing or denial of an opportunity to defend, can be regarded as fatal, whereas procedural irregularities are curable in the absence of prejudice.

5.6. The learned counsel further emphasised that the criminal justice system must balance the rights of the accused with the interests of victims and society. Directing a retrial at this stage, particularly after the demise of key witnesses, would seriously prejudice the prosecution and undermine the administration of justice.

5.7. In view of the above, it was urged that the order of the trial Court dated 07.10.2024 be upheld and the impugned order of the High Court directing a de novo trial be set aside.

6. The learned senior counsel appearing for Respondent No. 1 (accused) contended that the procedure adopted by the trial Court by its order dated 07.10.2024 is wholly illegal, arbitrary and contrary to the settled principles governing criminal trials.

6.1. It was submitted that in the present case, fresh charges were admittedly framed by the trial Court on 11.09.2024. Once such charges were framed, the earlier proceedings relating to the alleged framing of charges in 2009 lost their legal sanctity, particularly in view of the observations made by the learned Sessions Judge himself. The defect in the earlier proceedings was not a mere irregularity but a patent illegality, which could not be cured by resort to Section 464 Cr.P.C. Consequently, the trial was required to proceed afresh from the stage of framing of charge.

6.2. Elaborating further, it was submitted that the first order dated 27.03.2009, purporting to frame charges, was not signed by the Presiding Officer. On the

same day, another order was passed which, though signed by the Presiding Officer, did not bear the signatures of all the accused persons. It contained the signatures of only five out of nine accused, namely Satish, Omkar, Preetam Singh, Narendra Sharma and Tanuj @ Rajesh. The remaining accused were not present when the charges were purportedly framed.

6.3. The learned senior counsel emphasised that Section 228 Cr.P.C. embodies both procedural and substantive safeguards. Procedurally, it mandates that charges must be framed before the trial commences. Substantively, it requires that the accused be asked whether he pleads guilty or claims to be tried. In the event of a plea of guilt, the court may convict; otherwise, it must proceed to trial.

6.4. It was contended that in the present case, this mandatory requirement was never complied with. There is nothing on record to indicate that the accused were ever called upon to plead guilty or not guilty after a valid framing of charge. In particular, insofar as those accused who were absent on 27.03.2009 are concerned, there is no material to show that their cases were segregated in exercise of powers under Section 317(2) Cr.P.C. Thus, the trial proceeded in clear violation of the statutory mandate.

6.5. It was further argued that such a foundational defect goes to the root of the matter and cannot be cured under Section 464 Cr.P.C. The trial Court, however, proceeded to allow the application of the prosecution and directed that the trial continue on the basis of evidence already recorded. In doing so, it overlooked the fundamental principle that the procedural foundation must precede the evidentiary process.

6.6. According to the learned senior counsel, once fresh charges were framed on 11.09.2024, it was incumbent upon the trial Court to strictly comply with Section 228(2) Cr.P.C. and call upon the accused to enter their plea. Upon denial of guilt, the court ought to have proceeded to record the prosecution evidence afresh. Instead, by directing reliance on previously recorded evidence, the trial Court acted in excess of its jurisdiction.

6.7. In these circumstances, it was submitted that the High Court rightly set aside the order dated 07.10.2024 and directed that the trial be conducted afresh in accordance with law.

7. The learned senior counsel appearing for Respondent No. 2, at the outset, submitted that in the Indian criminal justice system, courts are the repository of public faith and the guardians of fundamental rights. It was contended that strict adherence to due process is integral to a fair trial, and any departure from

the procedure prescribed by law must be corrected to preserve the legitimacy of the judicial process.

7.1. It was submitted that the central issue in the present case concerns the validity of the order dated 27.03.2009 purporting to frame charges. According to the learned senior counsel, the said order was fundamentally defective, being unsigned and passed in the absence of certain accused, including Respondent No. 2. In such circumstances, the subsequent proceedings conducted without compliance with the mandatory requirements of Section 228 Cr.P.C stood vitiated.

7.2. The learned senior counsel further pointed out that the trial Court itself, upon noticing these defects, passed an order dated 02.09.2024 acknowledging the irregularities in the earlier proceedings. This order was not challenged by any party. Consequently, it was only on 11.09.2024 that charges were validly framed for the first time. Once this position is accepted, it necessarily follows that the trial had to recommence from the stage contemplated under Section 228 Cr.P.C.

7.3. Emphasising a distinct facet, learned senior counsel submitted that the subsequent order dated 07.10.2024 suffers from a clear jurisdictional error. After framing charges on 11.09.2024, the trial Court entertained an application (Application No. 159-Kha) filed by the son of the deceased, seeking that statements of witnesses recorded prior to the framing of valid charges be treated as evidence. According to the learned senior counsel, by permitting such an application and directing reliance on previously recorded evidence, the trial Court effectively bypassed the statutory framework governing criminal trials. This amounts to a patent jurisdictional error and not a mere procedural irregularity.

7.4. It was further submitted that once fresh charges were framed on 11.09.2024, the accused acquired a statutory right to seek discharge, to be called upon to enter their plea, and to defend themselves in a trial conducted strictly in accordance with law. Permitting earlier recorded evidence to be read against them would seriously prejudice these rights and result in a failure of justice.

7.5. It was thus submitted that the High Court having taken note of these serious statutory violations, rightly exercised its inherent jurisdiction to set aside the order dated 07.10.2024 and direct that the trial shall proceed afresh in accordance with law.

8. Adopting the submissions advanced on behalf of Respondent Nos. 1 and 2, the learned senior counsel appearing for Respondent Nos. 3 to 5 submitted that

the impugned order of the High Court represents a plausible and legally sustainable view, is consistent with due process, and consequently, warrants no interference by this Court.

9. We have considered the submissions made by the learned senior counsel and the learned counsel appearing for the parties and perused the materials available on record.

10. This Court, by order dated 23.05.2025, stayed the operation of the impugned order passed by the High Court. The said interim protection was extended from time to time and continued to operate until the matter was finally reserved for judgment.

11. The incident dates back to 04.01.2007, pursuant to which an FIR was registered against nine accused persons. Upon completion of investigation, a charge sheet was filed under Sections 147, 148, 149, 307, 302 and 120B IPC and Section 7 of the Criminal Law Amendment Act, 1932. The present controversy arises from the manner in which charges were framed.

Although an order purporting to frame charges was passed on 27.03.2009, it remained unsigned due to the absence of one accused, and a subsequent order was passed on 10.06.2009 to the effect that charges were framed. The trial thereafter proceeded without objection, with several prosecution witnesses being examined and cross-examined. Upon noticing defects in the earlier process of charge framing, including the absence of a valid order in terms of Section 228 Cr.P.C, charges were subsequently framed by the trial Court, vide order dated 11.09.2024.

11.1. The appellant, son of deceased Nahar Singh, sought permission for the trial to proceed on the basis of evidence already recorded. This application was allowed by the trial Court by order dated 07.10.2024, and the matter was fixed for recording statements under Section 313 Cr.P.C. Aggrieved, the accused approached the High Court, which by order dated 18.02.2025, set aside the order of the trial Court, and directed that the trial proceed afresh in accordance with Sections 241 and 242 Cr.P.C. This order is under challenge in the present appeal.

12. It is also pertinent to note that a counter-FIR being FIR No. 5A of 2007 dated 05.01.2007 arising out of the same incident, is pending before the Court of the Additional District and Sessions Judge, Court No. 05, Aligarh, and is stated to be at the stage of defence evidence.

13. On the basis of the pleadings and submissions advanced, the following issues arise for our consideration:

(i) Whether there was substantial compliance with the requirement of framing of charges in accordance with law?

(ii) Whether the defect, if any, in the framing or signing of the charges constitutes an illegality vitiating the trial, or a curable irregularity within the meaning of Sections 215 and 464 Cr.P.C.?

(iii) Whether the High Court was justified in directing that the trial be conducted afresh, despite the fact that the trial had substantially progressed and prosecution evidence had already been recorded?

14. Issue No. 1 Whether there was substantial compliance with the requirement of framing of charges in accordance with law?

14.1. The purpose of framing a charge in a criminal trial is to provide the accused with clear and precise notice of the accusation so as to enable him to effectively prepare and present his defence. Sections 211 to 213 Cr.P.C. make it clear that a charge must disclose the nature of the offence and the essential particulars necessary to inform the accused of the case he is required to meet. The fundamental object of a charge is thus one of notice and not a mere ritualistic formality. Section 228 Cr.P.C. further contemplates that upon consideration of the record and hearing the parties, the Court shall frame a charge in writing.

14.2. The Constitution Bench in *Willie (William) Slaney v. State of Madhya Pradesh* (supra), observed that criminal procedure is intended to advance the ends of justice and not to frustrate them by technicalities. It was further held that where there is substantial compliance with the requirements of law and the accused has had a fair trial with full knowledge of the case against him, mere procedural errors or omissions would not vitiate the trial unless prejudice is demonstrated. The following paragraph is pertinent:

“5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure,

mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."

14.3. The settled position of law is that the validity of a charge must be tested on whether the accused understood the case against him and was afforded a fair opportunity to defend himself. In *Main Pal v. State of Haryana*⁷, this Court explained that the object of framing a charge is to give the accused a clear idea of the accusations and the essential facts he must meet, and that courts must look to the substance rather than technicalities while assessing prejudice. The following paragraph is apposite:

"17. The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:

(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

(iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself."

14.4. In *Rafiq Ahmad v. State of Uttar Pradesh*⁸, this Court reiterated that the purpose of framing of charge is to put the accused to notice regarding the offence for which he is being tried. It was further held that non-framing of a

charge or defects therein would not ipso facto vitiate the trial and that the question must always be examined in the facts of each case to determine whether prejudice or failure of justice has been occasioned. The following paragraphs are apposite:

“39. During the conduct of the trial, framing of a charge is an important function of the court. Sections 211 to 224 of Chapter XVII of the Code of Criminal Procedure, 1973 have been devoted by the legislature to the various facets of the framing of charge and other related matters thereto. Under Section 211, the charge should state the offence with which the accused is charged and should contain the other particulars specified in that section-

41. We have referred to these provisions primarily to indicate that the purpose of framing of a charge is to put the accused at notice regarding the offence for which he is being tried before the court of competent jurisdiction. For want of requisite information of the offence and details thereof, the accused should not suffer prejudice or there should not be failure of justice, as held by this Court in *Shamnsaheb M. Multtani v. State of Karnataka* [(2001) 2 SCC 577 : 2001 SCC (Cri) 358]. The requirements of putting the accused at notice and there being a charge containing the requisite particulars, as contemplated under Section 211 CrPC, has to be read with reference to Section 215 of the Code. Every omission would not vitiate the trial.

42. *Dinesh Seth v. State (NCT of Delhi)* [(2008) 14 SCC 94 : (2009) 2 SCC (Cri) 783] was a case where the accused was charged with an offence under Section 304-B read with Section 34 IPC but was finally convicted for an offence under Section 498-A. The plea of prejudice, on the ground that no specific charge under Section 498-A was framed and the court, while referring to the facts and circumstances of the case and the cross-examination of the prosecution witnesses found that it was unmistakably shown that the defence had made concerted efforts to discredit the testimony alleging cruelty, was rejected and the accused was punished for an offence under Section 498-A.

This clearly demonstrates the principle that in all cases, non-framing of a charge or some defect in drafting of the charge per se would not vitiate the trial itself. It will have to be examined in the facts and circumstances of a given case. Of course, the court has to keep in mind that the accused “must be” and not merely “may be” guilty of an offence. The mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions (*Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : AIR 1973 SC 2622]).

14.5. Applying the aforesaid principles to the facts of the present case, the record indicates that on 27.03.2009, the trial Court prepared the formal charge

and recorded that the charges had been typed but were not signed due to the absence of one of the accused. Subsequently, on 01.06.2009, the Court recorded the presence of all the accused along with their counsel and noted that the charges had been framed, after which the matter was fixed for prosecution evidence. These contemporaneous proceedings clearly indicate that the charge was read over and explained to the accused, thereby satisfying the substantive requirement that they must understand the nature of the accusations.

14.6. The trial thereafter proceeded in the ordinary course and the prosecution examined several witnesses over a considerable period. The defence actively participated in the proceedings and extensively cross-examined the prosecution witnesses. The nature of such cross-examination demonstrates that the accused were fully aware of the prosecution case, including their alleged roles, the manner of commission of the offence, and the defence sought to be set up, including the plea of alibi. The continued participation of the accused in the trial without raising any objection to the alleged defect in the charge further reinforces that they were not misled in any manner.

14.7. This Court has consistently held that where the accused clearly understood the nature of the allegations and had a full opportunity to defend themselves, defects in the charge cannot be treated as fatal. In *Soundarajan v. State* represented by the Inspector of Police, Vigilance Anti-Corruption, Dindigul⁹ it was reiterated that omission to frame a proper charge or defects therein are not fatal unless it is shown that such omission has occasioned a failure of justice. The following paragraph is relevant:

“16. Under Section 464 CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW 3 and other prosecution witnesses made by the advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6-8-2004 and the subsequent alleged demand and acceptance on 13-8-2004. There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal.”

14.8. In the present case, the record affirmatively establishes that the accused were fully aware of the nature of the accusations and had an effective opportunity to defend themselves. No prejudice whatsoever has been demonstrated. Therefore, we are of the considered view that there was

substantial compliance with the requirement of framing of charges in accordance with law.

15. Issue No. (ii) Whether the defect, if any, in the framing or signing of the charges constitutes an illegality vitiating the trial, or a curable irregularity within the meaning of Sections 215 and 464 Cr.P.C?

15.1. Section 215 Cr.P.C. provides that no error or omission in the charge shall be regarded as material unless the accused was in fact misled and a failure of justice has been occasioned. Section 464 Cr.P.C. expressly stipulates the effect of omission to frame a charge or any error, omission, or irregularity therein. It makes it clear that no finding, sentence or order shall be deemed invalid merely on such ground unless in the opinion of the appellate or revisional court, a failure of justice has in fact been occasioned.

15.2. For ease of reference, the aforesaid provisions read as under:

“215. Effect of errors.-

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

“464. Effect of omission to frame, or absence of, or error in, charge.-

(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit: Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

A plain reading of Sections 215 and 464 Cr.P.C. indicates that the legislative emphasis is not on the existence of a defect, but on its consequence. Even the absence of a formally framed charge does not vitiate the proceedings. The decisive test is whether the accused was misled in the conduct of his defence and whether a failure of justice has resulted.

15.3. Significantly, Section 464(2) Cr.P.C. itself provides the remedial course where such failure is found, including framing of a charge and recommencement of trial from an appropriate stage, or directing a fresh trial. This clearly indicates that the legislative intent is to cure defects in a manner that preserves the proceedings to the extent possible, rather than to invalidate the entire trial on technical grounds.

15.4. The jurisprudence on this issue stands settled since the Constitution Bench decision in *Willie (William) Slaney v. State of Madhya Pradesh* (supra), wherein this Court drew a distinction between fundamental illegality and curable procedural irregularity. It was held that only those defects which go to the root of jurisdiction or occasion real prejudice can vitiate the proceedings, whereas defects of a lesser degree constitute irregularities requiring proof of failure of justice. In that decision, this Court observed:

“83. After all, in our considering whether the defect is illegal or merely irregular, we shall have to take into account several factors, such as the form and the language of the mandatory provisions, the scheme and the object to be achieved, the nature of the violation, etc. Dealing with the question whether a provision in a statute is mandatory or directory, Lord Penzance observed in (*Howard v. Bodington* [*Howard v. Bodington*, (1877) LR 2 PD 203], PD pp. 210-11)

“There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end.”

These words can be applied *mutatis mutandis* to cases where there is no charge at all. The gravity of the defect will have to be considered to determine if it falls within one class or the other. Is it a mere unimportant mistake in procedure or is it substantial and vital? The answer will depend largely on the facts and circumstances of each case. If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the

seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established.

15.5. The distinction between an illegality and an irregularity is thus well established. An illegality is one that strikes at the root of jurisdiction or renders the trial fundamentally unfair, whereas an irregularity is a defect in procedure which does not vitiate the proceedings unless prejudice is demonstrated.

15.6. Applying these principles to the present case, the defect complained of does not rise to the level of a jurisdictional illegality. The record indicates that the charge was substantively framed on 01.06.2009 in the presence of the accused, and the trial thereafter proceeded without objection from the defence.

15.7. The omission of a signature on the charge, though a procedural lapse, does not render the proceedings invalid when the charge was in fact prepared, recorded, read over, and acted upon by the Court and the parties. The record affirmatively demonstrates that the accused had full knowledge of the accusations and effectively contested the prosecution case. The nature of cross-examination and the defence adopted leave no manner of doubt that the accused were neither misled nor prejudiced.

15.8. This position is consistent with the principles laid down in *Kamalanantha and others v. State of Tamil Nadu*¹⁰, where active participation in trial and full awareness of the prosecution case was treated as decisive indicators of absence of prejudice despite defects in the charge.

15.9. The conduct of the accused is also significant. The objection to the alleged defect was raised belatedly in the year 2024, after substantial progress of the trial and after the demise of key eyewitnesses. Such delayed challenge is a relevant circumstance indicating absence of genuine prejudice, as recognized in *Willie Slaney* (supra).

15.10. The record further shows that the defence had already availed full opportunity of cross-examination, as noted by the trial Court while rejecting the application under Section 311 Cr.P.C. The attempt to reopen the proceedings at such a belated stage reinforces the conclusion that the objection is technical in nature.

15.11. Acceptance of such belated challenges founded on procedural irregularities would defeat the object of criminal procedure, which is to advance the cause of justice and not to frustrate it on technical grounds.

15.12. In view of the above, this Court holds that the defect relating to the absence of signature on the charge does not constitute an illegality. It is, at best, a curable procedural irregularity within the ambit of Sections 215 and 464

Cr.P.C. In the absence of any demonstrated failure of justice, such defect cannot vitiate the proceedings.

15.13. Accordingly, this issue is answered in favour of the appellant by holding that the defect is curable and does not invalidate the trial.

16. Issue No. (iii) Whether the High Court was justified in directing that the trial be conducted afresh, despite the fact that the trial had substantially progressed and prosecution evidence had already been recorded?

16.1. A direction to conduct a trial afresh implies that the earlier proceedings are set aside and the case is reopened from the initial stage as if no trial had taken place. The law is well settled that such a course is an exceptional one and can be resorted to only where it is indispensable to avert a miscarriage of justice. This power cannot be exercised to enable the prosecution to fill lacunae or to rectify deficiencies in its case. The governing consideration must always be the ends of justice.

16.2. In *State of M.P. v. Bhooraji and others*¹¹ this Court emphasised the limited scope for directing a fresh trial and cautioned that appellate courts must not set aside proceedings merely on account of procedural irregularities unless such irregularity has resulted in a failure of justice. It was observed that Section 465 Cr.P.C. embodies a legislative mandate discouraging the annulment of proceedings on technical grounds in the absence of prejudice. The following paragraph is relevant:

“15. A reading of the section 465 makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned “a failure of justice” the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.”

16.3. The expression “failure of justice” has been explained in *Shamnsaheb M. Multtani v. State of Karnataka*¹², where this Court cautioned that the said expression should not be employed loosely and that courts must carefully ascertain whether there has been a real miscarriage of justice or whether the plea is merely a pretext. The following paragraph is apposite:

“23. We often hear about ‘failure of justice’ and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression ‘failure of justice’ would appear, sometimes, as an etymological

chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of the Environment* [(1977) 1 All ER 813; 1978 AC 359; (1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."

16.4. The contours of the power to order a fresh trial were further elucidated in *Ajay Kumar Ghoshal and others v. State of Bihar and another*¹³, wherein it was held that such a direction can be issued only in exceptional circumstances, such as where the trial is vitiated by serious illegality, lack of jurisdiction, or where the parties were prevented from leading material evidence, resulting in there being no real trial in the eyes of law. The relevant paragraph reads as under:

"12. "De novo" trial means a "new trial" ordered by an appellate court in exceptional cases when the original trial failed to make a determination in a manner dictated by law. The trial is conducted afresh by the court as if there had not been a trial in first instance. Undoubtedly, the appellate court has power to direct the lower court to hold "de novo" trial. But the question is when such power should be exercised. As stated in *Ukha Kolhe v. State of Maharashtra* [*Ukha Kolhe v. State of Maharashtra*, (1964) 1 SCR 926 : AIR 1963 SC 1531; (1963) 2 Cri LJ 418], the Court held that: (AIR p. 1537, para 11)

"11. An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again.

An order of retrial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons."

16.5. Similarly, in *Nasib Singh v. State of Punjab and another*¹⁴, this Court reiterated that retrial may be directed only in exceptional cases to avert

miscarriage of justice, and not for mere procedural lapses or minor irregularities.

16.6. The settled test, therefore, is whether the earlier trial was so fundamentally flawed that it resulted in a complete failure of justice, or whether the defect is of such a nature that it cannot be cured without directing a fresh trial.

16.7. Applying the aforesaid principles to the facts of the present case, the direction of the High Court to conduct the trial afresh was clearly unwarranted.

16.8. The record indicates that the trial had substantially progressed. Charges were framed in the presence of the accused on 01.06.2009, and the prosecution examined several witnesses over a prolonged period. The accused actively participated in the proceedings and extensively cross-examined the witnesses. The trial had reached an advanced stage and was nearing completion.

16.9. It is also a matter of record that two crucial eyewitnesses, namely PW-1 Ravi Singh and PW-3 Kuldeep Singh, had passed away by the time the High Court passed the impugned order. Directing the trial to be conducted afresh in such circumstances would irretrievably prejudice the prosecution by depriving it of vital evidence and would defeat, rather than advance, the cause of justice.

16.10. As discussed, the defect in the charge was, at best, a curable procedural irregularity falling within the ambit of Sections 215 and 464 Cr.P.C. No finding has been recorded by the High Court that such defect had occasioned a failure of justice or that the accused were misled in the conduct of their defence.

16.11. An order directing a fresh trial cannot be passed in a routine or mechanical manner. It must be supported by a clear and reasoned finding that the earlier proceedings were vitiated to such an extent that continuation thereof would result in miscarriage of justice. No such finding is discernible in the impugned order. In the absence of any demonstrated prejudice, the High Court was not justified in invoking its jurisdiction under Section 482 Cr.P.C. to set aside the entire trial and direct that it be conducted afresh.

16.12. It must also be borne in mind that criminal proceedings cannot be prolonged indefinitely on account of curable procedural defects. The rights of victims and the interest of society in timely administration of justice are equally relevant considerations.

16.13. Accordingly, this issue is answered against the respondents, holding that the High Court was not justified in directing that the trial be conducted afresh after it had substantially progressed and evidence had already been recorded.

17. For the reasons stated above, we are of the considered view that the impugned judgment of the High Court cannot be sustained.

18. Accordingly, the Criminal Appeal is allowed. The impugned order dated 18.02.2025 passed by the High Court is set aside and the order dated 07.10.2024 passed by the trial Court is restored. The trial Court shall proceed with the matter from the stage at which it stood prior to the passing of the impugned order and shall make an endeavour to conclude the proceedings expeditiously in accordance with law.

19. Pending application(s), if any, shall stand disposed of.

.....J. [Ahsanuddin Amanullah]

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

New Delhi;

March 25, 2026.

1 Hereinafter referred to as "the High Court"

2 For short, "Cr.P.C"

3 Hereinafter referred to as "the trial Court"

4 For short, "IPC"

5 AIR 1956 SC 116

6 (2008) 14 SCC 94

7 (2010) 10 SCC 130

8 (2011) 8 SCC 300

9 (2023) 16 SCC 141

10 (2005) 5 SCC 194

11 (2001) 7 SCC 679

12 (2001) 2 SCC 577

13 (2017) 12 SCC 699

14 (2022) 2 SCC 89

IN THE SUPREME COURT OF INDIA

Dr. Naresh Kumar Garg
Vs.
State of Haryana and Ors.

**[Criminal Appeal No. _____ of 2026
arising out of SLP (Criminal) No. 5915 of 2025]**

Head Note – The dismissal of a suit for default does not operate as res judicata since there is no adjudication on merits.

A litigant who had an opportunity to pursue a claim but allowed proceedings to be dismissed repeatedly may still be denied relief on equitable principles, as such conduct can amount to abuse of the process of court.

While a dismissal for default may not constitute res judicata in the strict sense under Section 11, CPC, the conduct of the appellants in abandoning the earlier suits, after having raised a positive case therein, attracts the broader principles akin to *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*. A litigant who set the ball rolling for decision on an issue later elects not to pursue it cannot be permitted to revive the same dispute at a later stage, particularly in collateral or execution proceedings, and that too by seeking to obtain an order behind the back of the contestants.

JUDGMENT

Dipankar Datta, J.

THE APPEAL

1. This civil appeal, by special leave granted on 14th March, 2013, assails the judgment and decree dated 21st October, 2010¹ passed by the High Court of Andhra Pradesh at Hyderabad² of dismissal of a second appeal³ preferred by the appellants, thereby affirming the judgment and decree of the first appellate court dated 17th January, 2007. Appellants⁴ were directed to seek their remedies by way of a separate civil suit.

FACTUAL BACKGROUND

2. Facts giving rise to the present appeal, shorn of unnecessary details, are these.

2.1 Appellants instituted a suit⁵ seeking specific performance of an agreement for sale dated 15th December, 1986 in respect of the northern portion of an

immovable property bearing Municipal No. 3-6-996, situated at Himayat Nagar, Hyderabad before the Senior Civil Judge, City Civil Court, Hyderabad⁷.

2.2 The suit property allegedly belonged to Smt. Amatul Wahab Jaffernnisa Begum, who died on 25th January, 1983. Upon her demise, her only son, Abdul Mujeeb Mahmood, succeeded to the property. While in possession thereof, he entered into the agreement⁸ for sale with the appellants for a consideration of Rs. 4,25,000/- in respect of a portion admeasuring approximately 685 square yards.

2.3 Trigger for the suit for specific performance and possession⁹ was the alleged failure on the part of Abdul Mujeeb Mahmood - the defendant - to perform his obligations under the said agreement.

2.4 By judgment and decree dated 28th October, 1998, the Trial Court decreed the specific performance suit, directing the appellants to deposit the balance consideration and further directing execution of the sale deed through court in the event of default by the defendant. The decree attained finality.

2.5 Appellants thereafter initiated Execution Petition No. 37 of 1999 before the executing court. A sale deed was executed through court on 25th January, 2001, and warrants for delivery of possession were issued. Delivery of possession commenced through the process of court.

2.6 At that stage, the respondents 1 to 3 (who were not parties to the specific performance suit) filed an application¹⁰ under Order XXI Rules 99 to 101, Code of Civil Procedure, 1908¹¹ asserting independent title and possession over portions of the same property on the basis of sale deeds dated 5th July, 1990 and 20th July, 1990, purportedly executed by one Mir Sadat Ali acting through a General Power of Attorney¹² holder. It was claimed that Mir Sadat Ali had derived title pursuant to an alleged oral gift made in his favour by the original owner, Smt. Amatul Wahab Jaffernnisa Begum.

It was vigorously claimed that the appellants had instituted two suits¹³ seeking cancellation of the said sale deeds; however, the said suits came to be dismissed for default on 18th October, 1996 and 27th October, 1998 respectively. Not only that, proceedings initiated thereafter for restoration of the two suits also met the same fate. Since the appellants accepted the orders of dismissal, the issue as to legality and validity of the sale deeds by which the respondents 1 to 3 claimed to have acquired title attained finality.

2.7 The said respondents also asserted that they were bona fide purchasers for value; that the decree passed in the specific performance suit was not binding upon them as neither their vendors nor they were parties to such suit; and that

the execution proceedings were vitiated by fraud. They sought protection of possession and consequential reliefs.

2.8 The objection petition was contested by the appellants. The executing court conducted a detailed enquiry, permitting the parties to adduce oral and documentary evidence. Issues relating to title, possession, authority of the alleged vendor, validity of documents and prior litigation were examined.

2.9 By an order dated 30th January, 2006, the executing court dismissed the objection petition, recording findings that the said respondents had failed to establish any valid or independent title; that the alleged power of attorney and oral gift were not proved; that municipal and revenue records supported the appellants' case; and that the respondents 1 to 3 were not entitled to resist execution of the decree.

2.10 Aggrieved by dismissal of their objection petition, the respondents 1 to 3 preferred an appeal¹⁴ before the Additional Chief Judge, City Civil Court, Hyderabad¹⁵. Vide judgment and decree dated 17th January 2007, the Appellate Court allowed the appeal and set aside the order of the Executing Court. The Appellate Court held that since the respondents were not parties to the specific performance suit and claimed independent title, the decree passed therein was not operative against them, and that the appellants were required to institute a separate suit to establish their rights as against the respondents.

2.11 Appellants carried the decree in the above-referred second appeal before the High Court, raising substantial questions of law relating to the scope and effect of adjudication under Order XXI Rules 99 to 101, CPC.

JUDGMENT OF THE APPELLATE COURT

3. The Appellate Court framed the following points for consideration:

- i. Whether the petitioners have right and title to the petition schedule property and have right to resist the execution proceedings taken out by the respondents 1 to 3 in view of the dismissal of OS No 892 of 1990 and OS No 893 of 1990?
- ii. Whether the petitioners are bound by the Decree in favour of the respondents 1 to 3 in the OS No 329 of 1988, in which the execution proceedings are taken up?
- iii. To what relief?

4. It is not necessary to delineate here what the detailed findings were, which the Appellate Court returned. Suffice it is for the present case to note the answers to the aforesaid questions.

5. While answering the first point, the Appellate Court proceeded to hold that dismissal of O.S. Nos. 892 and 893 of 1990 for default and the subsequent applications seeking restoration of the said two suits also having been dismissed for default, such dismissal had become final and "it operates as resjudicata under Sec 11 CPC against the respondents".

6. We also find the following passage from the Appellate Court's judgment: "Res judicata pro veritate accipitur" is the full maxim which has, over the years, shrunk to mere "res judicata". Section 11 CPC contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the State that there be an end to law suits) and partly on the maxim "nemo debet bis bis vexari pro una et eadem cause" (no man should be vexed twice over for the same cause).

The section does not affect the jurisdiction of the court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a court, competent to try the subsequent suit in which such issue has been raised. In the present case, the respondents did not claim all the reliefs that are essential for affective (sic, effective) adjudication of their claim in OS No 329 of 1988 and hence, cannot be permitted to raise the same plea now. The respondents having allowed the suits to be dismissed for default and having allowed te (sic, the) dismissal to become final, tries to get the same relief by executing the decree against the petitioners, though themselves or their purchasers are parties to the said decree.

7. On the second point, the Appellate Court held that: In view of my findings in Point No 1, the petitioners are not bound by the decree in OS No 329 of 1988. The respondents have to necessary file a fresh suit against the petitioners, seeking their relief. The Trial Court has erred in appreciating the material on record and arrived at an erroneous conclusion. The order and Decree of the Trial Court are liable to be set aside.

IMPUGNED JUDGMENT

8. The impugned judgment is short and cryptic, which could have led to grant of leave. It dismissed the second appeal at the admission stage holding that no substantial question of law arose for consideration. The High Court affirmed the view of the Appellate Court that the decree in the specific performance suit was not binding on the respondents 1 to 3 and that the appellants must seek their remedies by way of a separate suit.

SUBMISSIONS OF THE APPELLANTS

9. Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellants, contended that both the Appellate Court as well as the High Court fell into manifest error in interfering with the well-reasoned order of the Executing Court.

10. Developing his submissions, Mr. Ahmadi urged that the sale deeds dated 5th July, 1990 and 20th July, 1990, purportedly executed in favour of the respondents 1 to 3, were clearly hit by the doctrine of lis pendens embodied in Section 52 of the Transfer of property Act, 1882 since the specific performance suit was pending on the date of such transfers. According to him, any alienation made during the pendency of the suit could not defeat the rights flowing from the eventual decree.

11. Mr. Ahmadi next submitted that the courts below committed a serious jurisdictional error in allowing the application preferred by the respondents 1 to 3 under Order XXI Rule 101 of the CPC and, yet, directing the appellants to institute a separate suit. Such a direction, it was argued, runs contrary to the express scheme of Order XXI Rules 97 to 101, CPC which confers ample power upon the executing court to adjudicate all questions relating to right, title or interest in the property arising between the parties, or even "any person" resisting delivery of possession, whether or not bound by the decree. Reliance was placed on the decision of this Court in *Shreenath v. Rajesh*¹⁶, to buttress the proposition that a party ought not to be driven to a separate suit once such adjudicatory power is available in execution. Paragraphs 11 and 13, to which our attention was drawn, reads thus:

11. So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and the other person claiming title on their own right to get it adjudicated in the very execution proceedings.

We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. Order 21 Rule 97, as aforesaid, conceives of cases where delivery of possession to the decree-holder or purchaser is resisted by any person. "Any person", as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger.

13. So far sub-clause (1) of Rule 97 the provision is the same but after the 1976 Amendment all disputes relating to the property made under Rules 97 and 99 are to be adjudicated under Rule 101, while under unamended provision under subclause (2) of Rule 97, the executing court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the court puts back a decree-holder in possession where the court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the court has to dismiss the decree-holder's application.

Thus even prior to 1976, right of any person claiming right on his own or as a tenant, not party to the suit, such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property on the own, if resists delivery of possession to the decree-holder, the dispute and his claim has to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99.

However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he was to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the executing court itself finally under Rule 101.

12. Inviting our notice to the findings recorded by the Executing Court, Mr. Ahmadi submitted that the respondents 1 to 3 had failed to establish any semblance of right, title or interest in the suit property. He emphasized that their claim rested upon the sale deeds executed by a GPA holder of one Mir Sadat Ali. The latter, in turn, claimed title on the strength of an alleged oral gift.

He argued that such oral gift was a mere afterthought which was neither registered, nor proved through cogent evidence, nor supported by examination of any attesting witness. Significantly, in O.S. No. 671 of 1991, a competent court had declared that no such oral gift had been made in favour of Mir Sadat Ali. That decree having attained finality, Mir Sadat Ali could not have conveyed any valid title, nor could he have authorised execution of sale deeds through a GPA. The original sale deeds and the power of attorney were, in any event, not produced before the court.

13. Elaborating further, Mr. Ahmadi submitted that under Mohammedan law, a valid gift requires (i) a clear declaration by the donor, (ii) acceptance by the donee, and (iii) delivery of possession. In the present case, none of these

essential ingredients stood satisfied. The original owner admittedly continued in possession; hence, the very basis of the respondents' claim was legally untenable.

14. It was further submitted that dismissal of O.S. Nos. 892 and 893 of 1990 for default could not operate as res judicata, the suits having not been adjudicated on merits. In any event, no plea of res judicata had been raised by the respondents in accordance with law.

15. Lastly, it was urged that in a suit for specific performance, only the parties to the contract are necessary parties. The High Court, according to Mr. Ahmadi, erred in proceeding on the premise that since the respondents or their alleged vendors were not parties to the specific performance suit, the decree therein would not bind them. Such reasoning, he submitted, overlooks both the doctrine of lis pendens and the settled principle that a transferee pendente lite is bound by the decree passed in the suit.

16. Resting on the aforesaid submissions, Mr. Ahmadi prayed that upon setting aside of the judgments of the Appellate Court and the High Court, the executing court's judgment be restored.

SUBMISSIONS OF THE RESPONDENTS

17. Mr. Raval, learned senior counsel, appearing on behalf of the respondents 1 to 3, advanced elaborate submissions in support of the impugned judgment.

18. Mr. Raval submitted that the respondents have been in settled possession of the suit property since 1990 by virtue of registered sale deeds. The validity of these sale deeds had already been put in issue by the appellants in earlier proceedings and the challenge thereto did not succeed. Appellants having allowed those proceedings to lapse and attain finality, cannot now be permitted to reopen the same issues in the guise of execution proceedings. His submissions, in substance, are as follows:

18.1 The contention of the appellants that the sale of the property in favour of the respondents is hit by the doctrine of lis pendens is misconceived. The doctrine operates only against the parties to the suit and those claiming under them. Neither the respondents nor their vendors were parties to the proceedings in O.S. No. 329 of 1988, nor do they claim through any of the defendants therein. In such circumstances, the doctrine has no application and cannot be invoked to invalidate the respondents' purchase.

18.2 Reliance placed by the appellants on Order XXI Rule 102, CPC is equally misplaced. The provision contemplates a situation where a judgment debtor transfers the property after the institution of the suit to a person who thereafter

obstructs execution. In the present case, the respondents did not derive title from the judgment debtor. Their title flows from independent registered sale deeds. The foundational requirement for invoking the rule is, therefore, absent.

18.3 Appellants themselves had instituted two independent suits, O.S. No. 892 of 1990 and O.S. No. 893 of 1990, seeking to challenge and set aside the very sale deeds under which the respondents claim title. Both suits, however, were dismissed for default, and even the applications filed for their restoration were dismissed. In view of Order IX Rule 9, CPC, the appellants are barred from instituting a fresh proceeding on the same cause of action. Having failed to pursue the remedies they themselves invoked, the appellants must be taken to have abandoned the challenge to the sale deeds and cannot now attempt to question their validity indirectly in execution.

18.4 Having regard to the above, the principles of res judicata, constructive res judicata and issue estoppel are clearly attracted. Appellants consciously chose their remedy, initiated proceedings and then allowed them to be dismissed. The law does not permit a litigant to reopen issues which have already been concluded or which ought to have been pursued in earlier proceedings.

19. Mr. Raval further contended that the present execution proceedings themselves are misconceived. The execution petition has been filed on the strength of the decree passed in O.S. No. 329 of 1988. However, the decree does not contain any operative direction for delivery of possession. In the absence of such a decree, a proceeding seeking possession through execution is unsustainable.

20. It was also urged that the appellants have not approached the Court with clean hands. While prosecuting O.S. No. 329 of 1988, they failed to disclose the existence of the registered sale deeds executed in favour of the respondents, though they were fully aware of them. More significantly, even after instituting O.S. No. 892 of 1990 and O.S. No. 893 of 1990 seeking cancellation of those very sale deeds, the appellants did not inform the trial court in the earlier suit about the pendency of these proceedings. This, according to the respondents, amounts to suppression of material facts.

21. Lastly, it was submitted that the appellants have also placed reliance upon a decree passed in O.S. No. 679 of 1991. However, that decree was passed against a person who had already died before the judgment was pronounced. A decree against a dead person is a nullity in the eye of law and has no legal effect. Such invalidity can be raised at any stage, including in collateral or execution proceedings. Reliance placed by the appellants on such a decree is, therefore, wholly untenable. **22.** It was, accordingly, prayed that the appeal be dismissed.

ISSUES INVOLVED

23. Having noted the factual canvas and the arguments advanced on behalf of the parties, the following issues fall for determination: A. Whether the Appellate Court was right in returning the finding that the claim of the appellants was hit by res judicata and the High Court was right in affirming such finding? B. Whether the conduct of the appellants is such that the same would disentitle them to any relief?

ANALYSIS

24. Our answers to the issues ought to be prefaced by a brief reference to certain relevant facts once again.

25. In the present case, it is not in dispute that while the specific performance suit was pending adjudication, the appellants instituted O.S. Nos. 892 and 893 of 1990 seeking cancellation of the sale deeds in favour of the respondents 1 to 3 and their vendors in respect of the very same subject property. In those suits, it was specifically averred in paragraph 4 that the appellants had entered into the said agreement and had already instituted the specific performance suit, which was pending consideration.

It was further pleaded that they were forcibly dispossessed by the respondents 1 to 3 and their vendor on 07th July, 1990, and that the sale deeds dated 05th July, 1990 and 20th July, 1990 were concocted documents. What the appellants themselves asserted was that effective relief in the specific performance suit could not be granted unless the defendants' title was negated and possession restored.

26. At the cost of repetition, the subsequent course of proceedings in O.S. Nos. 892 and 893 of 1990 is also necessary to be taken note of. Both suits ultimately came to be dismissed for default.

27. The record reveals that O.S. No. 892 of 1990 was transferred to another court and notice of such transfer had been duly served upon the advocate on record for the appellants. To contest the suit, a written statement was filed by the defendants therein. However, there was non-appearance on behalf of the appellants resulting in the suit being dismissed for default on 18th October, 1996.

28. As regards O.S. No. 893 of 1990, the record indicates that it was not transferred and continued before the same Court. In that suit as well, a written statement had been filed. Nonetheless, owing to the appellants' non-appearance, it too was dismissed for default on 27th October, 1998. The material fact remains that O.S. No. 893 of 1990, pending before the Trial

Court, was dismissed for default on 27th October, 1998 - a day prior to the decree dated 28th October, 1998 being passed in the specific performance suit.

NOT RES JUDICATA

29. At the outset, we record our inability to concur with the reasoning of the Appellate Court, which has since been affirmed by the High Court, that dismissal of a suit for default would, by itself, operate as res judicata within the meaning of Section 11, CPC to bar adjudication of proceedings initiated by the appellants for execution.

30. Section 11 postulates that the matter must have been "heard and finally decided". Dismissal of a suit for default, not being a decision on merits, cannot ordinarily be regarded as a final adjudication so as to attract the strict application of Section 11, CPC.

31. Issue-A is thus answered in favour of the appellants.

CONDUCT OF THE APPELLANTS

32. Though res judicata is not applicable here, we find the Appellate Court to have referred to the maxim *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*. With this principle in mind coupled with the fact that the relief of specific performance, as it stood prior to the 2018 Amendment of the Specific Relief Act, 1963¹⁷, was discretionary in nature (based on equitable principles and considerations of fairness, good faith, and the conduct of the parties), we move forward to examine whether the case of the appellants falter on application of these principles.

33. According to Black's Law Dictionary¹⁸, the said maxim means that no one ought to be twice troubled, if it appears to the court that it is for one and the same cause of action. In simple terms, once a dispute relating to a particular cause has been brought before a competent court, the same party cannot be allowed to raise the very same issue again in another proceeding (emphasis ours) or at a later stage.

The rule is meant to prevent repeated litigation over the same matter and to ensure finality in judicial decisions. It protects parties from being subjected to multiple proceedings based on the same cause. As we read and understand the maxim, it is different from res judicata in the sense that its application in a given situation does not require a decision on merits to be rendered in the earlier round of proceedings before the court.

34. In *S.C.F. Finance Co. Ltd. v. Masri and another* (No.3)¹⁹, the Court of Appeal reiterated that where a litigant, having had the opportunity to establish

a case, declines to proceed and submits to dismissal, he may, save in exceptional circumstances, lose the right to agitate the same issue in subsequent proceedings. The principle succinctly stated is that a party who has had the opportunity of proving a fact in support of his claim and chooses not to rely on it, cannot thereafter seek to raise it before another tribunal. Elaborating the principle and placing reliance on *Khan v. Goleccha International Ltd*²⁰, it was held thus:

First, for the general principle (*Ord v Ord* [1923] 2 KB 432 at 439, [1923] All ER Rep 206 at 210 per Lush J; I need not narrate the facts): "The words 'res judicata' explain themselves. If the res-the thing actually or directly in dispute-has been already adjudicated upon, of course by a competent Court, it cannot be litigated again. There is a wider principle, to which I will refer in a moment, often as covered by the plea of *res judicata*, that prevents a litigant from relying on a claim or defence which he had an opportunity of putting before the Court in the earlier proceedings and which he chose not to put forward."

I turn straight to the wider principle ([1923] 2 KB 432 at 443, [1923] All ER Rep 206 at 212):

"The maxim 'Nemo debet bis vexari' prevents a litigant who has had an opportunity of proving a fact in support of his claim or defence and chosen not to rely on it from afterwards putting it before another tribunal. To do that would be unduly to harass his opponent, and if he endeavoured to do so he would be met by the objection that the judgment in the former action precluded him from raising that contention. It is not that it has been already decided, or that the record deals with it. The new fact has not been decided; it has never been in fact submitted to the tribunal and it is not really dealt with by the record.

But it is, by reason of the principle I have stated, treated as if it had been'. Finally, Brightman LJ dealt with an argument put forward that, while an order by consent at first instance founded on an admission made by one party could lead to *res judicata*, an order by consent on appeal dismissing the appeal could not on the ground that an appellate court could not properly interfere with the decision of an inferior court without proper judicial consideration. Brightman LJ continued ([1980] 2 All ER 259 at 267, [1980] 1 WLR 1482 at 1491):

"I refer back to what Lush J said in *Ord v Ord* [1923] 2 KB 432 at 443, [1923] All ER Rep 206 at 212: The maxim 'Nemo debet bis vexari' prevents a litigant who has had an opportunity of proving a fact in support of his claim or defence and chosen not to rely on it from afterwards putting it before another tribunal'. In this case [the plaintiff] had his opportunity, in support of his appeal on the previous occasion, of establishing that money was lent. He chose not to

establish that position. His counsel got up in court and deliberately abandoned it. So it seems to me that he loses his right of establishing that same position before another tribunal."

35. In this context, reliance may also be placed upon *Barber v. Staffordshire County Council*²¹, wherein it was observed that an order dismissing proceedings, even without a detailed consideration on merits, may, in appropriate circumstances give rise to estoppel, if a party having put forward a positive case declines to pursue it and allows the matter to be dismissed. The Court emphasised that such dismissal is not a mere administrative act but a judicial determination capable of attracting estoppel.

36. The Latin maxim referred above was recently considered by this Court in *Amruddin Ansari (Dead) Through Lrs v. Afajal Ali*²² in the context of Section 11 CPC, emphasizing that an issue once finally decided by a competent court cannot be reopened. While that interpretation was in the strict statutory sense, the peculiar facts of the present case and the conduct of the parties justify a broader application of the maxim to uphold finality and prevent repeated litigation on shifting grounds. Such a purposive approach is consistent with comparative jurisprudence, including *S.C.F. Finance Co. Ltd.* (supra) and *Barber* (supra).

37. We now proceed to apply the above discussed principles to the present case. It is undisputed that the appellant instituted the specific performance suit in the year 1988, when the field was governed by the unamended provisions of the 1963 Act. Two years later, they instituted the two suits (O.S. Nos. 892 and 893 of 1990) for cancellation of the sale deeds, which were allowed by the appellants to be dismissed for default.

38. The dismissal of both suits (O.S. Nos. 892 and 893 of 1990), in such situation, despite the issues raised therein being central to the dispute over title and possession of the subject property, is a material circumstance which cannot be overlooked while assessing the overall conduct of the appellants. These proceedings were not incidental or collateral; they directly concerned the competing claims over the suit property. Though the dismissal was not on merits but on account of non-prosecution, the rival claims remained undetermined because of the appellants themselves.

39. Once a suit is dismissed for default owing to the absence of the plaintiff but when the defendant is present, the legal consequences under Order IX Rule 8, CPC come into operation. In such a situation, the remedy available to the plaintiff is circumscribed by Order IX Rule 9 of CPC, which expressly bars the institution of a fresh suit on the same cause of action. The only course open to

such a plaintiff is to seek restoration of the earlier suit by demonstrating sufficient cause for his absence on the date of dismissal.

40. It is further borne out that even the restoration applications, one of which was filed admittedly after a significant delay of 308 days, ultimately came to be dismissed for default and the orders passed therein have attained finality. In course of the restoration proceedings arising out of O.S. No. 893 of 1990, the appellants had moved an application to bring on record the legal heirs of Mir Sadat Ali; however, no effective steps were taken to pursue the matter to its logical conclusion.

The cumulative effect of these events is that the appellants not only permitted the original suits to be dismissed for default but also allowed the restoration proceedings to meet the same fate. Such repeated non-prosecution cannot be simply brushed aside as a lack of initiative to carry proceedings forward; on the contrary, it manifests that the appellants intended to steal a march (over the defendants in such suits) by resorting to dubious methods, deliberately avoiding direct proceedings and instead securing orders through proceedings wherein they were not parties.

41. It is clear as daylight that the very institution of the said suits by the appellants demonstrates their awareness of the claim of the respondents 1 to 3 in respect of the suit property. The defence that the respondents 1 to 3 had raised was also within the knowledge of the appellants, since the written statements in the suits had been filed by the former. Having derived clear knowledge of the competing claims, surfacing from the pleadings, the appellants cannot later claim ignorance or treat them as unimportant.

It becomes apparent that the appellants were aware of the legal title claimed by the respondents 1 to 3 and despite such knowledge, chose not to implead either them or their vendors as parties in the specific performance suit. This omission, coupled with the failure to properly pursue the earlier suits or seek their restoration after dismissal by pursuing further remedy available in law, is a relevant circumstance while assessing the bona fides and overall conduct of the appellants.

42. In this backdrop, it becomes important to emphasize that the increasing influx of litigation appears to be driven less by a pursuit of justice and more by an attempt to delay proceedings, harass opponents, and consume valuable judicial time. The judicial process is designed to resolve genuine disputes and not facilitate repetitive or frivolous claims. Parties who initiate or persist in vexatious or frivolous proceedings must remain mindful that such conduct risks facing judicial disapproval and may warrant appropriate orders, including dismissal with costs, so as to prevent abuse of the process of the court.

43. Contextually, it is apposite to refer to *S.P. Chengalvaraya Naidu v. Jagannath*²³, where this Court touched upon the obligation on the part of a plaintiff to come to court with clean hands and held that a person, whose case is based on falsehood, has no right to approach the court; he can be summarily thrown out at any stage of the litigation.

44. This Court in *Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh*²⁴ considered a somewhat similar situation in the light of principles of estoppel, acquiescence and waiver. It was observed that a party cannot be permitted to take inconsistent stands in successive proceedings after having abandoned an earlier plea and allowing it to attain finality.

45. While a dismissal for default may not constitute *res judicata* in the strict sense under Section 11, CPC, the conduct of the appellants in abandoning the earlier suits, after having raised a positive case therein, attracts the broader principles akin to *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*. A litigant who set the ball rolling for decision on an issue later elects not to pursue it cannot be permitted to revive the same dispute at a later stage, particularly in collateral or execution proceedings, and that too by seeking to obtain an order behind the back of the contestants.

46. To permit such a course would be to allow an abuse of the judicial process. The maxim *interest reipublicae ut sit finis litium* reminds us that it is in the public interest that litigation must come to an end. Courts cannot allow parties to reopen or indirectly challenge issues which they have chosen not to pursue earlier.

47. Quite apart, it would also not be unfair to criticise the conduct of the appellants as amounting to an abuse of the process of the court. Having allowed their earlier challenge to the sale deeds to attain finality, they cannot now seek to reopen the same issue in execution. Such attempt is impermissible. The process of the court cannot be used to revive what has already been consciously abandoned. This position stands squarely covered by the decision of this Court in *K.K. Modi v. K.N. Modi*²⁵, wherein it was authoritatively held that relitigation of an issue already raised, or capable of being raised, constitutes an abuse of process, even if the strict requirements of *res judicata* are not satisfied. This Court held thus:

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase "abuse of the process of the court" thus:

"This term connotes that the process of the court must be used *bona fide* and properly and must not be abused. The court will prevent improper use of its

machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as *res judicata*. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court.

Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

45. In the case of *Greenhalgh v. Mallard* [(1947) 2 All ER 255] the Court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the Court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of *res judicata* or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of the court.

46. In *McIlkenny v. Chief Constable of West Midlands Police Force* [(1980) 2 All ER 227] the court of appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to relitigate a question or issue which has already been decided against him even though the

other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel.

(emphasis ours)

48. In the exercise of equitable jurisdiction, this Court cannot ignore such conduct where a party plays fast and loose with the court. Allowing proceedings touching upon title to be dismissed for default, while continuing to pursue relief in another proceeding concerning the same property, raises concerns as to procedural fairness. Equity frowns upon selective prosecution. A party cannot act recklessly with the judicial process, invoking it as per his convenience and abandoning it when inconvenient, only to resurrect advantage in execution.

49. A profitable reference can also be made to Order XXIII Rule 1, CPC where the underlying principle is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject matter again after abandoning the earlier suit or by withdrawing it except with the permission of the court to file a fresh suit.

Reliance may be placed on *Sarguja Transport Service v. State Transport Appellate Tribunal*²⁶, where this Court explained that such a bar does not arise from Section 11, CPC (since there is no "hearing and final decision"), but from public policy embedded in Order XXIII Rule 1 thereof. The object is to prevent a litigant from repeatedly invoking the court's jurisdiction on the same cause of action, abandoning the proceeding when it suits him, and then re-agitating the same matter again. This Court therein held as follows:

7. The Code as it now stands thus makes a distinction between "abandonment" of a suit and "withdrawal" from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. *Invito beneficium non datur* - the law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it.

In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court.

(emphasis ours)

50. It would, thus, be contrary to public policy too, as enunciated in *Sarguja Transport Service (supra)*, to permit the appellants to reap the benefits of the decree for its execution against the respondents 1 to 3 and have them dispossessed from the property.

51. We, therefore, answer issue-B against the appellants.

CONCLUSION

52. In the absence of any exceptional circumstance, the appellants stand precluded to reap the benefit of the decree through execution proceedings having chosen not to pursue O.S. Nos. 892 and 893 of 1990. The same was rightly interdicted and thwarted by the Appellate Court.

53. In view of the foregoing discussion, and notwithstanding our reservations with regard to certain aspects of the reasoning assigned by the Appellate Court and the cryptic nature of the impugned judgment of the High Court, we are in agreement with the ultimate conclusion reached by the Appellate Court, which has finally been affirmed by the High Court.

54. Having regard to the conduct of the appellants, the finality attached to the earlier proceedings, the settled principles of law discussed above and the utter abuse of the process of court on their part, we are of the considered opinion that no case is made out for interference.

55. The impugned judgment is, thus, upheld but for reasons other than those assigned therein. As a sequel thereto, the appeal fails and is dismissed. Parties shall, however, bear their own costs.

56. Pending application(s), if any, stand disposed of.

.....J. (Dipankar Datta)

.....J. (Augustine George Masih)

New Delhi,

March 25, 2026.

1 impugned judgment

2 High Court

3 Second Appeal No. 620 of 2007

4 plaintiffs in the original suit

5 O.S. No. 329 of 1988

6 suit property

7 Trial Court

8 said agreement

9 specific performance suit

10 objection petition

11 CPC

12 GPA

13 O.S. Nos. 892 and 893 of 1990

14 C.M.A. No. 15 of 2006

15 Appellate Court

16 (1998) 4 SCC 543

17 1963 Act

18 Seventh Edition

19 [1987] 2 WLR 81

20 [1980] 1 WLR 1482

21 [1996] 2 All ER 748 (CA)

22 2025 SCC OnLine SC 912

23 (1994) 1 SCC 1

24 (2019) 14 SCC 449

25 (1998) 3 SCC 573

26 (1987) 1 SCC 5

7. Important Allahabad High Court Cases

March 2026

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S.N.	Subject	Case Reference
1.	A Special Court or Magistrate is not automatically bound to direct registration of an FIR on an application filed under Section 173(4) BNSS merely because the applicant belongs to the Scheduled Caste or Scheduled Tribe community.	Kusum Kannaujiya Vs. State of U.P. and 6 Ors., decided on 09.03.2026
2.	Advises Judicial Magistrates in UP to make a reference for initiating contempt of court proceedings if they face any intimidation from police officers.	Sandeep Audichya Vs. State of U.P. and Ors., decided on 09.03.2026
3.	Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules made thereunder cannot be invoked to title and ownership disputes between third parties who are not related to the senior citizens.	Magghu Ram Vs. State of U.P. Thru. Prin. Secy. (Revenue Deptt.) Lko. and 5 Ors., decided on 09.03.2026
4.	Order 41 Rule 27 C.P.C., is not applicable in appeals against order of temporary injunction by the Trial Court.	Kusum Mishra and Anr. Vs. U.P. Avas Evam Vikas Parishad Thru. Executive Engineer Lko. and 5 Ors., decided on 10.03.2026
5.	Registrar and Sub-Registrar under the Registration Act are not Court and therefore, Section 5 of the Limitation Act will not be applicable to proceedings under the Registration Act.	Mohd. Yaqoob and Anr. Vs. District Registrar/A.D.M. Fandr Bahraich and 2 Ors., decided on 10.03.2026
6.	Court has suo moto powers to extend the time limit for disciplinary proceedings fixed by an earlier Court to ensure that serious misconduct does not go unpunished.	State of U.P. Thru. Addl. Chief Secy. Tax and Registration Deptt. U.P. Govt. Lko and Anr. Vs. Anshul Jagannath, decided on 10.03.2026
7.	State cannot seize property under	Mansoor Ansari Vs. State of

	the UP Gangster and Anti-Social Activities (Prevention) Act, 1986, based on "mere bald allegations" or simply because an individual is related to a known gangster.	U.P., decided on 12.03.2026
8.	There can be no embargo on prayers, religious functions being conducted within the private premises of a person. Article 25 of the Constitution protects the right to congregate for worship to every religious denomination in this country, but the same does not accord protection to incitement of one faith by the other in the garb of prayer.	Munazir Khan Vs. State of U.P. and 4 Others, decided on 16.03.2026
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11.	There is no indefeasible right to force the State to conclude the examination process when papers leaked may have benefited the candidates	Km. Lakshmi and 10 Ors. Vs. State of U.P. and Ors., decided on 17.03.2026
12.	Referred to a larger bench the question as to whether an anticipatory bail application is maintainable after an accused is summoned in a complaint case involving a non-bailable offence.	Brajpal @ Birju @ Bijendra and Anr. Vs. State of U.P. and Anr., decided on 18.03.2026
13.	Sec. 482 Cr.P.C. plea is not maintainable against NIA Court's refusal to discharge even if state police probed scheduled offence. Remedy lies in statutory appeal	Mohd. Faizan and 2 Ors. Vs. State of U.P. Thru. Addl. Chief Secy./Prin. Secy. Home Lko. and Anr., decided on 20.03.2026
14.	An individual who is already married and has a living spouse cannot legally be permitted to enter into a live-in relationship with a third person	Anju and Anr. Vs. State of U.P. and 3 Ors., decided on 20.03.2026

	without seeking a divorce from the earlier spouse. Right to Freedom or Right to Personal Liberty is not an absolute or unfettered right and that the freedom of one person ceases where another person's statutory right begins. A spouse has a statutory right to the company of their counterpart, and that right cannot be deprived for the sake of personal liberty. The freedom of one person cannot encroach on or outweigh the legal right of another person.	
15.	Committing a person to a civil prison for default in paying maintenance to his wife or children does not absolve him of his legal liability to pay further monthly maintenance arrears.	Smt. Hasina Khatoon Vs. State of U.P. and Anr., decided on 24.03.2026
16.	Granted anticipatory bail to Swami Avimukteshwaranand Saraswati in the Prayagraj POCSO Case	Swami Avimukteshwaranand Saraswati Jagatguru Shankaracharya Jyotishpeethadheeshwar and Anr. Vs. State of U.P. and 5 Ors., decided on 25.03.2026
17.	There is no offence if a married man stays with an adult in a live-in relationship with the consent of the other person.	Anamika and Anr. Vs. State of U.P. and Ors., decided on 25.03.2026
18.	Persons governed by Muslim personal law are not precluded from seeking custody of a minor under the Guardians and Wards Act, 1890	Rizwana and 2 Ors. Vs. State of U.P. and 3 Ors., decided on 25.03.2026
19.	A judicial order passed by a criminal court cannot be challenged by filing a writ petition under Article 226 of the Constitution.	Smt. Archana Mishra Vs. State of U.P. Thru. Prin. Secy. Deptt. of Home Lko. and Anr., decided on 26.03.2026

Important Allahabad High Court Cases

March 2026

1. A Special Court or Magistrate is not automatically bound to direct registration of an FIR on an application filed under Section 173(4) BNSS merely because the applicant belongs to the Scheduled Caste or Scheduled Tribe community.

Kusum Kannaujiya Vs. State of U.P. and 6 Ors

Criminal Appeal No. 2318 of 2026

Date of Decision – 09.03.2026

Hon'ble Allahabad High Court clarified that a **Special Court** or Magistrate is not obliged to order the registration of a **First Information Report (FIR)** based solely on an application filed under Section 173(4) of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** when the applicant belongs to the Scheduled Caste or Scheduled Tribe community.

Hon'ble Mr. Justice Anil Kumar-X, in dismissing a criminal appeal, asserted that the Court's judicial discretion remains intact and is not limited by the provisions of the **SC/ST Act** that are designed to govern the duties of public servants.

The appellant had sought a directive under Section 173(4) BNSS (which replaces Section 156(3) Cr.P.C.) for FIR registration.

The Trial Court dismissed this application after an inquiry into the allegations, prompting the present appeal.

The appellant's counsel argued that the Trial Court's decision to conduct an inquiry rather than mandating the registration of an FIR was not legally valid.

Citing the judgment in **Asha Vs. State of Uttar Pradesh**, it was claimed that **Section 4 of the SC/ST Act** and Rule 5 of the SC/ST Rules prohibit such inquiries. The appellant maintained that once an offence under the Act is reported, the Court should direct the registration of an FIR.

In contrast, the Additional Government Advocate (AGA) for the State contended that the SC/ST Act does not impose such limitations on Special Courts. He stressed that Courts should not function as mere *“post offices”* and must retain their judicial discretion when addressing applications under Section 173(4) BNSS.

The Court identified two key questions: whether a Special Court is required to direct FIR registration for **SC/ST** victims under Section 173(4) BNSS, and whether **Section 4 of the SC/ST Act and Rule 5 of the SC/ST Rules** diminish judicial discretion in these matters.

Concerning the precedent cited (**Asha Vs. State of U.P.**), the Court noted that while that case deemed some inquiries to be prohibited under Section 18-A of the **SC/ST Act**, a closer examination of the statutes revealed a different legislative intent.

The Court observed that Section 4 of the SC/ST Act pertains to punishing public servants who neglect their duties, including failing to register FIRs or investigate adequately. Similarly, Rule 5 defines the procedure for police to register FIRs.

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2. Advises Judicial Magistrates in U.P. to make a reference for initiating contempt of court proceedings if they face any intimidation from police officers.

Sandeep Audichya Vs. State of U.P. and Ors.
Criminal Misc. Writ Petition No. 1332 of 2026
Date of Decision – 09.03.2026

Hon'ble Allahabad High Court noted that superior police officers sometimes resort to measures to 'browbeat' Magistrates when orders directing investigation of particularly 'uncomfortable' cases are passed by them.

A bench of **Hon'ble Mr. Justice JJ Munir and Hon'ble Mr. Justice Vinai Kumar Dwivedi** firmly advised Magistrates that if any such embarrassment or pressure is faced from any police officer, it is always open to them to make a contempt reference to the High Court.

The Hon'ble Court ruled that the Magistrate also should not feel hesitant in passing necessary orders, merely because at some point of time, a highhanded police officer has caused some inconvenience to the Magistrate. If, in fact, any kind of embarrassment or pressure from any police officer is faced by the Magistrate, it is always open to him/her to make a contempt reference to this Court.

The observation came from the bench while summarily dismissing a Criminal Writ Petition in a matter concerning the registration of an FIR in the Farrukhabad district of Uttar Pradesh. Essentially, the petitioner sought a

direction to the Superintendent of Police, Farrukhabad, to decide his representation dated August 19, 2025, (for lodging of an FIR) in a time-bound manner.

Expressing its displeasure over such requests, the Court observed that prayers seeking directions to authorities to decide representations render the Court "virtually powerless", as authorities assume the Court can only ask them to take decisions instead of deciding the lis itself.

The Bench noted that this leads to a "deluge of writ petitions" in which the Court is not required to decide anything.

The Court noted that in those cases, where the officer-in-charge of a police station refuses to record an information relating to the commission of a cognisable offence under Section 173 (4) BNSS, it is open to the informant to send substance of the information in writing and by post to the Superintendent of Police concerned.

The bench added that the SP is obliged, upon receipt of such information, if it discloses the commission of a cognizable offence, either to investigate the offence himself/herself or direct investigation to be undertaken by any police officer subordinate to him in the manner prescribed under the BNSS.

The division bench further clarified that if the SP is also derelict in the sense that he/she does not pass orders on an application under Section 173 BNSS, the remedy is before the Judicial Magistrate under Section 175 (3) BNSS.

The Court clarified that the Judicial Magistrate may, if he receives an application supported by an affidavit under Section 173(4) BNSS, after making such inquiry as he/she thinks necessary and after the submission of a report by the police officer, order an investigation by the Police.

In such circumstances, the Court concluded that the remedy for the petitioner in the present case is to move the Judicial Magistrate concerned through an application under Section 174(3) BNSS.

Importantly, the Bench acknowledged that in some cases, it so happens that when such applications are made to Magistrates and investigations are ordered, particularly uncomfortable ones, it leads to "frowns by what are called 'superior officers of the Police' who resort to measures to browbeat Magistrates.

The Court further advised the Magistrates not to hesitate in passing necessary orders, "merely because at some point in time, a highhanded police officer has

caused some inconvenience" to the Magistrate, and to make a contempt reference to the HC, if needed.

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3. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules made thereunder cannot be invoked to title and ownership disputes between third parties who are not related to the senior citizens

Magghu Ram Vs. State of U.P. Thru. Prin. Secy. (Revenue Deptt.) Lko. and 5 Ors.

WRIT - C No. 1779 of 2026

Date of Decision – 09.03.2026

Hon'ble Allahabad High Court has reiterated that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules made thereunder cannot be invoked to title and ownership disputes between third parties who are not related to the senior citizens.

The Act of 2007 is for the maintenance and protection of senior citizens by those who will inherit their property, not for deciding the title and ownership of the property which can only be done after examination of evidence in civil proceedings.

The protection of property of senior citizens would not extend to deciding rival claims regarding title of immovable property, which can only be done by a Competent Civil/Revenue Court in a regular suit where the parties are given opportunity to lead evidence in support of their respective claims which opportunity is not available before the authorities performing duties under the Maintenance Act.

The Court further held that Section 22 of the Act which empowers the State Government to appoint authorities and make rules for providing protection of life and property of senior citizens, also does not empower the authorities to decide property ownership disputes between parties.

Though Section 27 bars any suit with respect to matters covered under the Senior Citizen Act, the Court held that such bar would not apply to property ownership disputes between unrelated parties. It held that only competent Civil Court/ Revenue Court can adjudicate and decide such issues.

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4. Order 41 Rule 27 C.P.C., is not applicable in appeals against order of temporary injunction by the Trial Court

Kusum Mishra and Anr. Vs. U.P. Avas Evam Vikas Parishad Thru. Executive Engineer Lko. and 5 Ors.

Matters under Article 227 No. 610 of 2026

Date of Decision – 10.03.2026

Hon'ble Allahabad High Court has held that Order XLI Rule 27 C.P.C., which restricts parties from adducing additional evidence before appellate Courts, is not applicable in appeals against order of temporary injunction by the Trial Court.

Referring to Order 41 Rule 27 C.P.C, **Hon'ble Mr. Justice Subhash Vidyarthi** held that the aforesaid Rule applies to filing of additional evidence in appeal, after the parties have availed the opportunity to adduce evidence before the trial Court. In the present case, evidence is yet to be produced before the trial Court. Therefore, the provisions of Order XLI Rule 27 C.P.C. will not apply to filing documents before the appellate Court while challenging the validity of an order of temporary injunction.

The Hon'ble Court observed that while deciding an appeal under Order 43 Rule 1(r) and examining the validity of an order of temporary injunction, the appellate Court can examine whether the trial Court has exercised its discretion by ignoring the settled principles of law regulating grant or refusal of interlocutory injunctions. It is a settled principle of law regulating grant or refusal of interlocutory injunctions that the Court has to satisfy itself regarding existence of a prima facie case, balance of convenience and apprehension of irreparable loss and injury to the plaintiff.

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5. Registrar and Sub-Registrar under the Registration Act are not Court and therefore, Section 5 of the Limitation Act will not be applicable to proceedings under the Registration Act, 1908

Mohd. Yaqoob and Anr. Vs. District Registrar/A.D.M. Fandr Bahraich and 2 Ors.

WRIT - C No. 1000572 of 2015

Date of Decision – 10.03.2026

Hon'ble Allahabad High Court has held that the registrar and Sub-Registrar under the Registration Act are not Court and therefore, Section 5 of the Limitation Act will not be applicable to proceedings under the Registration Act.

Hon'ble Mr. Justice Irshad Ali ruled that the office of Registrar, Additional Registrar or the Sub Registrar may not be treated as a Court. Accordingly the provision contained in Section 5 of the Limitation Act shall not be applicable in a proceeding under the Registration Act. Section 5 of the Limitation Act categorically extends the power for extension of period beyond the date of limitation provided by the Limitation Act or statute to a Court and not to other authorities..

The Hon'ble Court held that the Sub-Registrars and Registrars are appointed by the Government under the Registration Act. It noted that Section 84 of the Act provides that every Registering Officer shall deem to be a public servant but not a Judge or Judicial Officer.

It is not necessary that every public servant should be a Judge or Judicial Officer, though a Judicial Officer or a Judge shall be a public servant. A person holding the post of Judicial Officer or a Judge is supposed to engage only to provide justice to the people. Such officer may not have responsibility which is being bore by ordinary Government servants.

Holding that the provisions of the Limitation Act were inapplicable to the registration of a sale deed and an appeal from it, the Court quashed the impugned order which directed registration of the sale deed.

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6. Court has suo moto powers to extend the time limit for disciplinary proceedings fixed by an earlier Court to ensure that serious misconduct does not go unpunished.

State of U.P. Thru. Addl. Chief Secy. Tax and Registration Deptt. U.P. Govt. Lko and Anr. Vs. Anshul Jagannath
WRIT – A No. 9798 of 2023
Date of Decision – 10.03.2026

Hon'ble Allahabad High Court has recently held that the Court has suo moto powers to extend the time limit for disciplinary proceedings fixed by an earlier Court to ensure that serious misconduct does not go unpunished.

Referring to the decision of the Full Bench of the Allahabad High Court in **Abhishek Prabhakar Awasthi Vs. New India Assurance Company Limited and Others** which was affirmed by the Apex Court in **U.P. through Principal Secretary, Department of Panchayati Raj, Lucknow Vs. Ram Prakash Singh**, the bench of **Hon'ble Mrs. Justice Sangeeta Chandra** and **Hon'ble Mr. Justice Amitabh Kumar Rai** held that in an appropriate case where the employer has not approached the Court for extension of the timeline for completing the disciplinary proceedings, the Court concerned, while adjudicating the validity of the orders passed in the disciplinary proceedings, should also take into consideration the factors due to which the proceedings could not be completed. The Court may then exercise its suo motu power to extend the time limit so as to ensure that a serious charge of misconduct does not go unpunished, thereby preventing serious detriment to the public interest.

In **Abhishek Prabhakar Awasthi case**, the Hon'ble Allahabad High Court had held that the Court can suo moto extend timeline for disciplinary inquiry in appropriate cases to make sure that serious misconduct does not go unpunished.

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7. State cannot seize property under the UP Gangster and Anti-Social Activities (Prevention) Act, 1986, based on "mere bald allegations" or simply because an individual is related to a known gangster.

Mansoor Ansari Vs. State of U.P.
Criminal Appeal No. 8752 of 2025
Date of Decision – 12.03.2026

Hon'ble Allahabad High Court set aside the attachment of immovable property belonging to one Mansoor Ansari, the cousin of gangster Mukhtar Ansari, as it observed that the State failed to establish any nexus between the commission of any offence and the construction of the building/shops in question.

A bench of **Hon'ble Mr. Justice Raj Beer Singh** clarified that the State cannot seize property under the **UP Gangster and Anti-Social Activities (Prevention) Act, 1986**, based on "mere bald allegations" or simply because an individual is related to a known gangster.

The bench thus allowed a criminal appeal filed by Mansoor Ansari against an order passed by the Special Judge (Gangster Act), Ghazipur, upholding the District Magistrate's order attaching his properties.

For context, the Special Judge had previously upheld the DM's decision to attach Ansari's shops and building, valued at Rs. 26,18,025/-, on the allegation in a police report that the same were 'benami' assets of late-Mukhtar Ansari.

The bench observed that there must be a nexus between his criminal act and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property, as it is necessary to find out whether his acquisition of property was a result of commission of any offence enumerated in the Gangster Act being a gangster.

The Court further clarified that the expression “**reason to believe**” appearing under Section 14 is a higher level of state of mind and cannot be equated to mere suspicion or doubt and that it but contemplates an objective determination based on intelligent care and deliberation.

The Court ruled that except mere bald allegation made by the police in its report, there was no material to show that disputed property was constructed or acquired by the appellant from the financial resources acquired by commission of offences. The impugned order is based on surmises and conjectures. The impugned order of attachment passed by the learned District Magistrate is not based on proper satisfaction and the same is wholly arbitrary.

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8. There can be no embargo on prayers, religious functions being conducted within the private premises of a person. Article 25 of the Constitution protects the right to congregate for worship to every religious denomination in this country, but the same does not accord protection to incitement of one faith by the other in the garb of prayer.

Munazir Khan Vs. State of U.P. and 4 Others

WRIT - C No. 5996 of 2026

Date of Decision – 16.03.2026

Hon’ble Allahabad High Court held that Article 25 of the Constitution of India protects the right to congregate for worship for every religious denomination in the country, but it does not accord protection to incitement of one faith by another in the garb of prayer.

At the same time, the Court made it clear that there can be no impediment or embargo with regard to prayers or religious functions being conducted within

the private premises of a person, irrespective of the denomination of faith he belongs to.

The Division Bench of **Hon'ble Mr. Justice Atul Sreedharan and Hon'ble Mr. Justice Siddharth Nandan** held that Article 25 protects the right to congregate for worship to every religious denomination in this country but the same does not protect such acts and utterances which are devoid of the primary purpose of the congregation, which is prayer. By no stretch of imagination does article 25 accord protection to incitement of one faith by the other in the garb of prayer and that must be borne in mind by the adherents of all faiths/religions.

The Bench ruled that the glory of this republic of 1.4 billion of the earth's humanity lies in her resilience and strength, arising from her historical, religious, cultural and linguistic diversity, like no other nation state on this planet with every major religion, culture and varied languages having co-existed for centuries in peace, harmony and mutual respect, formalised by Article 25 of the Constitution of India after the same came into force.

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9. An ex-parte divorce decree cannot be set aside after spouse's death.

Smt. Geeta Rani and 2 Ors. Vs. Smt. Maya Devi and 4 Ors.

First Appeal No. 969 of 2025

Date of Decision – 16.03.2026

Hon'ble Allahabad High Court has held that an ex-parte divorce decree cannot be set aside after spouse's death.

The bench of **Hon'ble Mr. Justice Arindam Sinha and Hon'ble Mr. Justice Satya Veer Singh** relied on **Smt. Yallawwa vs. Smt. Shantavva (1997)** where the Supreme Court gave directions regarding maintainability of the application for setting aside the ex-parte decree in the matrimonial case against a deceased spouse

In the case at hand, Respondent no.1's marriage with her husband stood dissolved by ex-parte judgment dated 13th November, 1991. Thereafter, the husband remarried and had a separate family. He died in April 2023. His second wife-appellant no.1 approached the employer as his widow and was granted the benefits. Subsequently, the first wife also approached the employer seeking benefits which were denied on grounds that they were already granted to his lawful widow.

Thereafter, the first wife approached the Family Court for setting aside of the ex-parte decree. In October 2025, the delay was condoned and the ex-parte decree was set aside. The matrimonial dispute was restored to its original file and number. This order was challenged in appeal by the second wife and her children before the High Court.

The first wife pleaded non-issuance of summons of the divorce proceedings to her for setting aside the ex-parte order.

Accordingly, the Hon'ble High Court framed the question of law that the short point to be answered is whether a judgment decreeing a matrimonial suit can be set aside under rule 13 order IX, Code of Civil Procedure, 1908, where on the date of application the decree holder was dead and the right to sue of appellants (no.1) seeking setting aside the judgment dissolving the marriage, does not survive."

The Hon'ble Court observed that the application for setting aside the ex-parte divorce decree was made more than 30 years after the second marriage of the deceased and just a month after his death.

Holding that the respondent could not prove her case regarding summons not being issued to her in the divorce proceedings, the Hon'ble Court held that restoration of the original matrimonial case in such circumstances renders respondent no. 1 to have status of widow, thereby displacing respondent no. 1 completely, without her being able to say anything in respect of the allegations on questions of fact regarding service of the summons nor the substituted service.

The Hon'ble Court held that since the marriage of the appellant was solemnized after the divorce decree of the deceased and the respondent was passed, the marriage was legal.

In **Smt. Yallawwa (supra)**, the Supreme Court had held that the proceedings of divorce would stand abated upon the death of either party to the marriage and cannot be continued at the behest of the legal heirs.

Respondents have not been otherwise able to answer in the affirmative, the question of law we framed. In our view the answer is in the negative. The application of respondent no. 1 for setting aside the ex-parte judgment and decree dated 13th November, 1991, with purpose of thereby erasing the second marriage solemnized on 31st December, 1991, the application filed more than 30 years after date of the decree but soon after death of the deceased, was not maintainable.

The Hon'ble High Court observed that the even though the first wife claimed that her husband was residing with her till he died, the argument regarding fraud being played on her by the deceased cannot be accepted especially since she filed the recall application a month after his death.

Accordingly, the appeal by the second wife was allowed and the order of the Family Court was set aside.

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10. A woman is the absolute owner of her 'streedhan' property and a legally wedded wife can't face a criminal trial for alleged breach of trust under Section 406 IPC for allegedly taking it away

Anamika Tiwari and 4 Ors. Vs. State of U.P. and Anr.
Application U/S 482 No. 37453 of 2024
Date of Decision – 16.03.2026

Hon'ble Allahabad High Court has observed that a woman is the absolute owner of her 'streedhan' property and a legally wedded wife can't face a criminal trial for alleged breach of trust under Section 406 IPC for allegedly taking it away.

A bench of **Hon'ble Mr. Justice Chawan Prakash** observed that properties given to a woman before, at the time of, or after marriage constitute her 'streedhan' and do not become the joint property of the husband and wife.

The Hon'ble Court further ruled that a wife has all rights to dispose of this property at her own pleasure. It added that while a husband may use it during times of distress, he has a moral obligation to restore the property or its value, and neither he nor other in-laws have any control over the 'streedhan'.

Hon'ble Bench examined Sections 405 and 406 IPC to note that if any property is entrusted to someone and that person dishonestly misappropriates or converts the same to his own use, then an offence of criminal breach of trust is made out.

The Hon'ble Court noted that since the wife is the absolute owner of her 'streedhan', no offence under Section 406 IPC would be made out against the applicant for allegedly taking away her ornaments.

So far as the remaining Sections 323, 504 against the other applicants were concerned, the Court found the allegations to be general in nature.

The Hon'ble Bench also remarked that the impugned order had been passed in a very casual manner, as the Magistrate had not taken into consideration the definition of Criminal Breach of Trust. Thus, the summoning order was set aside, and the entire proceedings against the wife and her relatives were quashed.

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11. There is no indefeasible right to force the State to conclude the examination process when papers leaked may have benefited the candidates

Km. Lakshmi and 10 Ors. Vs. State of U.P. and Ors.
WRIT - A No. 1760 of 2026
Date of Decision – 17.03.2026

Hon'ble Allahabad High Court ruled that in a case of leaked paper and cancelled examination, there is no indefeasible right to force the State to conclude the examination process when papers leaked may have benefited the candidates.

While dealing with cancellation of written examinations conducted by U.P. Education Service Selection Commission in which paper was leaked, **Hon'ble Mr. Justice Saurabh Shyam Shamshery** ruled that a candidate has no indefeasible right to be selected or to force the State to conclude an examination process which was tainted since papers of written examination were leaked and candidates were benefited also. It is the fairness which is the utmost object to conduct any examination and under no circumstance it can be permitted to compromise.

Written examination was conducted for 910 posts of Assistant Professors in different aided non-Government Post Graduate Colleges. Petitioners also participated in the same and allege that they were a part of the merit list published. However, due to paper being leaked, FIRs were registered after the examination and after detailed inquiry, the result was cancelled and fresh schedule for written examination was published.

Against the cancellation of the result, petitioners approached the High Court on grounds that there was no reason to cancel the entire examination result no material existed to show systemic irregularities. Since the inquiry report only mentioned 19 candidates who had benefited directly from the paper leak, the entire result ought not to have been cancelled, it was argued.

Relying on the decision of the Apex Court in **State of West Bengal vs. Baishakhi Bhattacharyya (Chatterjee) and Ors.**, the Hon'ble Court held that

the examination was only conducted in the State of UP and was liable to be quashed if any irregularities were found.

Noting that chargesheets under Sections 112, 308(5) and 318(4) of Bhartiya Nyay Sanhita, i.e., for offence of “petty organized crime”; “extortion by putting a person in fear of death or grievous hurt”; and, “cheating”, had already been filed and there was other supporting material on record, the Court observed that it was a case of systematic irregularities. It observed that the question papers were leaked and sold to different candidates.

Observing that though tainted and untainted candidates can be segregated, the Court held that the standard of inquiry should be fair investigation. It is not necessary that malpractice is required to be proved beyond a reasonable doubt. Whereas, as referred above, in the present case, not only two First Information Reports were lodged but after investigation two charge sheets were filed that atleast 19 candidates were got benefited. A possibility is not ruled out that papers were leaked to other candidates also and that they may also get benefit of it, to be included in select list. Impugned decision is, therefore, justified by probability test also.

Noting that the number of posts were 910 which was not very high and only 224 petitioners had approached the High Court, the Court held that State had rightly cancelled the examination since its integrity had been compromised.

Refusing the interfere in the order of re-examination, the Court disposed of the writ petition.

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12. Referred to a larger bench the question as to whether an anticipatory bail application is maintainable after an accused is summoned in a complaint case involving a non-bailable offence

Brajpal @ Birju @ Bijendra and Anr. Vs. State of U.P. and Anr.
Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 1205 of 2026
Date of Decision – 18.03.2026

Hon’ble Allahabad High Court has referred to a larger bench the question as to whether an anticipatory bail application is maintainable after an accused is summoned in a complaint case involving a non-bailable offence.

A bench of **Hon’ble Mr. Justice Rajiv Lochan Shukla** expressed disagreement with a 2025 coordinate bench ruling in **Asheesh Kumar Vs. State of U.P. and Another, (2025)**, wherein it was held that anticipatory bail under Section 482 BNSS is not maintainable upon the mere issuance of a summons as there is no apprehension of arrest by the police without a warrant.

Justice Shukla was essentially hearing a batch of anticipatory bail applications arising from various complaint cases when he observed that the reasoning in *Asheesh Kumar* (supra) is not in consonance with the law laid down by the Supreme Court.

The Court noted that the earlier judgment failed to account for statutory provisions [Sections 208 and 209 CrPC/Sections 231 and 232 BNSS] which require remanding an accused to custody in Sessions-triable offences.

In **Asheesh Kumar case**, the High Court ruled that once a Court summons an accused in a complaint case, **he does not suffer from any apprehension of arrest, and thus** anticipatory bail would not lie.

In that case, the single judge had opined that if 'custody' is taken by the court upon appearance in response to a summons, it cannot be equated with an 'arrest' by the police, and hence, anticipatory bail is not attracted in such a case.

Justice Shukla in the present case differed from the ratio of the 2025 judgment as he noted that even as per the Supreme Court's ruling in the case of **Directorate of Enforcement Vs. Deepak Mahajan 1994**, the 'arrest' of a person is a condition precedent to taking them into 'judicial custody'.

The HC also relied on the Supreme Court's **2003 ruling in Bharat Chaudhary and Another Vs State of Bihar and Another**, wherein it was held that anticipatory bail isn't barred when a court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet.

It may be noted that this ruling was recently referred to in the recent case of **Sumit Vs. State of U.P. and Anr, (2026)**

Against this backdrop, stressing that the apprehension of arrest must be treated as distinct from actual arrest, the Court opined that the law laid down in *Asheesh Kumar* (supra) is not in consonance with the law laid down by the Supreme Court in *Bharat Chaudhary and another* (supra) and *Directorate of Enforcement vs Deepak Mahajan and another* (supra).

In view of the above, considering the larger issue involved, the bench referred the matter to be considered by a Larger Bench on the following question of law:

"Whether the judgment of this Court in *Asheesh Kumar* (supra) holding that an anticipatory bail is not maintainable in a complaint case involving accusation of a non-bailable offence, upon issuance of a summons, as there is no apprehension of arrest by the police without warrant, lays down the correct law?"

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13. Sec. 482 Cr.P.C. plea is not maintainable against NIA Court's refusal to discharge even if state police probed scheduled offence. Remedy lies in statutory appeal

Mohd. Faizan and 2 Ors. Vs. State of U.P. Thru. Addl. Chief Secy./Prin. Secy. Home Lko. and Anr.

Application U/S 482 No. 734 of 2026

Date of Decision – 20.03.2026

Since the order of refusal to discharge has been passed by the Special Judge NIA, an appeal lies under Section 21(1) of the NIA Act, 2008, the Hon'ble Allahabad High Court (Lucknow Bench), in a significant ruling held that an application under Section 482 of the Code of Criminal Procedure (CrPC) or Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) is not maintainable against an order passed by a Special NIA Court refusing discharge.

A single-judge bench of **Hon'ble Mr. Justice Brij Raj Singh** observed that since the National Investigation Agency (NIA) Act, 2008 provides a specific statutory remedy under Section 21(1) for appealing any order of a Special Court that is not interlocutory, the inherent powers of the High Court cannot be invoked to bypass this mandate. The Court emphasized that a refusal to discharge affects substantial rights and thus qualifies for a statutory appeal rather than a petition under Section 482 CrPC.

Examining the statutory framework, the Hon'ble Court noted that Section 21(1) of the NIA Act contains a non-obstante clause, stipulating that an appeal shall lie from any judgment, sentence, or order—provided it is not an interlocutory order—of a Special Court to the High Court on both facts and law.

The bench referred to the precedent in **Ravindra Kumar vs. State of U.P.**, which clarified that orders substantially affecting the rights of the parties, such as the refusal of bail or discharge, cannot be categorized as purely interlocutory. The Court highlighted that the legislative intent was to provide a specific appellate route for orders passed by Special Courts constituted under the NIA Act. **"Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law."**

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14. An individual who is already married and has a living spouse cannot legally be permitted to enter into a live-in relationship with a third person without seeking a divorce from the earlier spouse.

Anju and Anr. Vs. State of U.P. and 3 Ors.

WRIT - C No. 10593 of 2026

Date of Decision – 20.03.2026

Hon'ble Allahabad High Court ruled that an individual who is already married and has a living spouse cannot legally be permitted to enter into a live-in relationship with a third person without seeking a divorce from the earlier spouse.

A bench of **Hon'ble Mr. Justice Vivek Kumar Singh** made this observation while disposing of a writ petition filed by a couple (both married to different partners) seeking mandamus directing the respondents not to interfere with their peaceful life and to provide protection.

Hon'ble Court ruled that in a marriage or live-in relationship, there must be two consenting adult human beings, and the concepts of gotra, caste, and religion are left behind. No one, not even parents, has the right to interfere in the personal liberty of two adults.

The right to freedom or right to personal liberty is not an absolute or unfettered right and that the freedom of one person ceases where another person's statutory right begins.

A spouse has a statutory right to the company of their counterpart, and that right cannot be deprived for the sake of personal liberty. The freedom of one person cannot encroach on or outweigh the legal right of another person.

"If the petitioners are already married and have their spouse alive, he/she cannot be legally permitted to enter into live-in relationship with a third person without seeking divorce from the earlier spouse. He/she first has to obtain the decree of divorce from the court of competent jurisdiction before solemnizing marriage or entering into living in a relationship out of their legal marriage.

The Court opined that the petitioners have no legal right to protection on the facts of the present case inasmuch as the protection sought may amount to protection against the commission of an offence under Section 494/495 IPC.

It is well settled law that writ of mandamus cannot be issued contrary to law or to defeat a statutory provision including penal provision. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus...this Court is not inclined to issue any writ, order or direction in the nature of mandamus for protection to the petitioners who are in a live-in relationship without obtaining decree of divorce from competent court as mentioned above.

The Court further ruled that if the petitioners are subjected to violence, they may approach the Superintendent of Police with a detailed application.

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15. Committing a person to a civil prison for default in paying maintenance to his wife or children does not absolve him of his legal liability to pay further monthly maintenance arrears.

Smt. Hasina Khatoon Vs. State of U.P. and Anr.

Application U/s 482 No. 7721 of 2023

Date of Decision – 24.03.2026

Hon'ble Allahabad High Court has categorically held that committing a person to a civil prison for default in paying maintenance to his wife or children does not absolve him of his legal liability to pay further monthly maintenance arrears.

A bench of **Hon'ble Mr. Justice Praveen Kumar Giri** clarified that the doctrine of double jeopardy under Section 300 CrPC is entirely inapplicable to the execution of maintenance orders under the Protection of Women from Domestic Violence Act, 2005.

The Hon'ble Bench added that maintenance proceedings result in neither a conviction nor an acquittal, and hence, the court refusing to execute an award of maintenance amount by invoking a plea under Section 300 CrPC would be contrary to the law.

Hon'ble Judge ruled that Section 300 CrPC is not applicable to proceedings under the DV Act as the proceedings result in neither a conviction nor an acquittal. Refusing to execute the awarded maintenance amount under the Domestic Violence Act, by invoking a plea under Section 300 Cr.P.C. appears to be contrary to the law and indicates a non-application of judicial mind by the concerned learned Judicial Magistrate.

The Hon'ble Bench relied on the Apex court's ruling in **Rina Kumari Vs. Dinesh Kumar Mahto, 2025** to highlight that even if non-compliance with a maintenance order entails penal consequences, the proceedings do not constitute criminal proceedings.

The Court added that merely committing a defaulter to civil prison does not absolve him of the liability to pay monthly maintenance to the aggrieved wife.

If a Magistrate, after applying his judicial mind to the supplementary report, arrives at a conclusion contrary to his earlier decision of taking cognizance on the charge sheet (primary report), the recording of such a contrary opinion will not amount to a review or recall of his earlier order.

Magistrates often face a dilemma in such situations, perceiving that once they have taken cognizance on the primary/initial report, they are now functus officio and cannot pass a contrary order due to the bar on review under Section 362 CrPC.

However, the bench dismissed this logic as being "against the canon of law", as it clarified that the prohibition on review applies only when a court has "disposed of a case" by signing a judgment or final order.

Taking cognizance on a primary report does not dispose of the case. Rather, the Magistrate's judicial duty is 'continual', and they must apply their judicial mind to each report submitted by the police.

If a Magistrate arrives at a conclusion contrary to their earlier decision based on a supplementary report, "the recording of such a contrary opinion will not amount to a review or recall of his earlier order" but is merely a response to emergent facts.

Just as the Investigation Officer must continue their investigation until a final logical conclusion is reached, the Magistrate's obligation persists until the police submits their final conclusive report. Consequently, the Magistrate is duty-bound to exercise judicial mind and consider all police reports submitted during the investigation of a single case.

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16. Granted anticipatory bail to Swami Avimukteshwaranand Saraswati in the Prayagraj POCSO Case

Swami Avimukteshwaranand Saraswati Jagatguru Shankaracharya Jyotishpeethadheeshwar and Anr. Vs. State of U.P. and 5 Ors.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 2198 of 2026

Date of Decision – 25.03.2026

Hon'ble Allahabad High Court granted anticipatory bail to Swami Avimukteshwaranand Saraswati and his disciple in a case registered under the POCSO Act over the alleged sexual abuse of minors.

In a detailed 22-page order, a bench of Hon'ble Justice Jitendra Kumar Sinha questioned the 'unusual' conduct of the minor victims in confiding about the alleged offence in a stranger, the first informant (Ashutosh Brahmachari), rather than in their natural guardians.

The Hon'ble Court ruled that the reason for confiding to the first informant as given by the victims is that the first informant used to visit the applicant no.1 and used to garland him and touch his feet, therefore, he was a right person to be informed about the commission of the offence. The above reasoning given by the victims also appears to be unusual and not consistent with a normal course of human conduct.

The Hon'ble Court also rejected the state's submission that there is a statutory presumption of guilt under Section 29 of the POCSO Act against the accused, as it noted that the presumption cannot be invoked before the framing of charges at the pre-arrest stage.

The Hon'ble Court also rejected the State's argument challenging the maintainability of the anticipatory bail plea on the ground that the applicants should have approached the Sessions Court first.

Justice Sinha stated that since the FIR had been lodged on the specific directions of the Special Judge (POCSO)/Additional Sessions Judge, Prayagraj, on an application filed by the informant under Section 173(4) of the BNSS, there existed "special/extra-ordinary circumstances" to directly approach the HC.

Examining the facts, the High Court flagged another glaring inconsistency: the victims allegedly informed the first informant on January 18, 2026, yet the police were only notified six days later.

When queried as to why this delay had occurred, the informant claimed he was engaged in "Pooja/Yagya". The Court, however, noted that prior to this, on January 21, the informant had filed a separate application relating to an alleged incident involving the commission of an offence under Section 109 and other Sections of the BNS.

The Hon'ble Court further highlighted material improvements in the victims' statements. It noted that while the FIR stated the incidents occurred between January 2025 and February 2026 at the Mahakumbh and Magh Mela in Prayagraj, one victim later claimed the assault occurred in June 2024 at an ashram in Madhya Pradesh.

The Hon'ble Court also noted that educational certificates revealed the victims were institutional students in Hardoi, not ashram residents. Moreover, the medical examination found no external injuries on the victims, and the doctor only gave an inconclusive opinion that sexual assault "cannot be ruled out".

During the proceedings, the Additional Advocate General and the first informant heavily contested the applicant's credentials, submitting a 796-page Division Bench judgment and Supreme Court proceedings to argue that his claim to be the Shankaracharya of Jyotishpeeth is disputed.

Dismissing this argument, the Hon'ble Court firmly clarified that it is not tasked with the duty to adjudicate whether the applicant no.1 is the real Shankaracharya or the disputed Shankaracharya of Jyotishpeeth.

The Hon'ble Court also took strong exception to the fact that after the lodging of the FIR, the statements of the victims were recorded and the victims were interviewed by various Hindi News Channels, "in violation of the established procedure of POCSO and Juvenile Justice Act".

The Hon'ble Court also added that since the date the first informant received information regarding the commission of the offence from the victims and the dispute that arose between the applicant no.1 and the administration regarding taking a bath in Sangam on the holy occasion of Mauni Amavasya is the same (i.e., 18.01.2026), therefore, the facts are required to be "looked into with greater care and caution".

Against this backdrop, the Hon'ble Court directed the release of the applicants on anticipatory bail upon furnishing a personal bond of Rs. 50,000.

Among other conditions, the bench has also directed the applicants, victims and the first informant not to give any interview to the media regarding the present case during the pendency of the investigation/trial.

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17. There is no offence if a married man stays with an adult in a live-in relationship with the consent of the other person.

**Anamika and Anr. Vs. State of U.P. and Ors.
Criminal Misc. Writ Petition No. 3799 of 2026
Date of Decision – 25.03.2026**

Hon'ble Allahabad High Court has observed that there is no offence if a married man stays with an adult in a live-in relationship with the consent of the other person.

Stressing that morality and law must remain separate, a bench comprising **Hon'ble Mr. Justice JJ Munir and Hon'ble Mr. Justice Tarun Saxena** stated that social opinions and moral views will not dictate the Court's actions when protecting citizens' rights.

The observation was made while hearing a petition seeking protection of a live-in couple allegedly facing threats from the woman's family.

The first and the second petitioner, who are adults, have been staying together in a live-in relationship. As per the First Information Report lodged by the mother of the woman, she is admittedly a major. However, the informant had stated that the first petitioner was taken away by blandishment by the second petitioner (a married man).

The Hon'ble Bench ruled that there is no offence of the kind where a married man, staying with an adult in a live-in relationship, by consent of the other person, can be prosecuted for any offence, whatsoever. Morality and law have to be kept apart. If there is no offence under the law made out, social opinions and morality will not guide the action of the Court for protecting the rights of citizens.

The Hon'ble Bench reminded the state authorities that it is the fundamental duty of the police to protect two adults living together. Finding that a prima facie case was made out, the Court admitted the petition and issued notices to the respondents. It granted the state counsel two weeks' time to file a counter-affidavit.

Granting immediate interim relief, the bench directed that until further orders, the petitioners shall not be arrested in the criminal case registered under Section 87 BNS at Police Station Jaitipur in Shahjahanpur district.

To ensure their protection, the Court also restrained the informant and all members of the woman's family from causing any harm to the parties in life or limb.

The bench further directed that they shall not enter the parties' matrimonial home or contact them directly or through any electronic means of communication or through the agency of others.

The Superintendent of Police, Shahjahanpur, shall be personally responsible for ensuring the safety and security of the petitioners, the bench added.

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18. Persons governed by Muslim personal law are not precluded from seeking custody of a minor under the Guardians and Wards Act, 1890

Smt. Rizwana and 2 Ors. Vs. State of U.P. and 3 Ors.
Habeas Corpus Writ Petition No. 835 of 2025
Date of Decision – 25.03.2026

Hon'ble Allahabad High Court ruled that persons governed by Muslim personal law are not precluded from seeking custody of a minor under the Guardians and Wards Act, 1890.

A bench of **Hon'ble Mr. Justice Anil Kumar-X** said that while personal law may guide the Court in determining the rights of parties; however, the paramount consideration is always the welfare of the minor, which overrides all other considerations.

The Hon'ble Bench ruled that Section 6 of the Guardians and Wards Act does not bar any class of persons from approaching the Court; rather, it operates in the context of recognizing certain categories of guardians. The term 'guardian' is of wide import and encompasses the concept of "custody". It held that even where the parties are governed by Muslim personal law, the Court's jurisdiction under the Guardians and Wards Act remains intact.

Furthermore, the Court noted that clause (g) of the Explanation to Section 7 of the Family Courts Act, 1984, specifically confers jurisdiction upon the Family Court to adjudicate disputes relating to guardianship and custody of any minor. Even in cases where custody of a minor is sought, including between parties governed by personal laws such as Muslim law, the Family Court is duly empowered to entertain and decide such matters. Custody of a minor child cannot be determined in a mechanical manner without arriving at a definite conclusion regarding the welfare of the child, which is the paramount consideration

Such an exercise is not feasible in proceedings under a writ of habeas corpus, which are summary in nature and not intended for detailed adjudication of disputed questions relating to custody.

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19. A judicial order passed by a criminal court cannot be challenged by filing a writ petition under Article 226 of the Constitution.

Smt. Archana Mishra Vs. State of U.P. Thru. Prin. Secy. Deptt. of Home Lko. and Anr.

Criminal Misc. Writ Petition No. 2574 of 2026

Date of Decision – 26.03.2026

Hon'ble Allahabad High Court has observed that a judicial order passed by a criminal court cannot be challenged by filing a writ petition under Article 226 of the Constitution of India.

Relying on the Supreme Court's judgment in **Neeta Singh and Ors. Vs. State of U.P. and Ors. (2024)**, a bench of **Hon'ble Mr. Justice Subhash Vidyarthi** dismissed a plea filed seeking the quashing of a February 2026 order passed by the Special Chief Judicial Magistrate (Custom), Lucknow.

The Hon'ble Court noted that the Supreme Court in the **Radhey Shyam and Ors. Vs. Chhabi Nath and Ors. (2015) 5 SCC 423** case did not follow or approve that older principle for judicial orders.

After referring to the aforesaid judgment in the case of **T.C. Basappa v. T. Nagappa; AIR 1954 SC 440**, the Hon'ble Supreme Court referred to numerous other subsequent judgments and concluded that the judicial orders of civil courts are not amenable to a writ of certiorari under Article 226 of the Constitution of India and jurisdiction under Article 227 of the Constitution of India is distinct from the jurisdiction under Article 226 of the Constitution of India

Further, relying on the Neeta Singh case, the Hon'ble Bench stated that the High Courts "stand disabled" from entertaining a writ petition seeking the issuance of a writ of certiorari and thereby examining the validity of a judicial order under Article 226 of the Constitution of India.

Accordingly, the Writ Petition was dismissed as not maintainable at the admission stage. The bench, however, added that the petitioner shall have liberty to file a fresh petition under Article 227 of the Constitution of India.

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8. Study Material-G.K.

JAINISM

Jainism in India is one of the ancient religions that emphasizes non-violence, truth, and asceticism as the path to spiritual liberation. Its significance lies in its profound impact on Indian culture, philosophy, and ethical practices, influencing various aspects of life, including art, architecture, and trade.

About Jainism

- Jainism, one of the world's oldest religions, originated in India around the 6th century BCE, with roots tracing back even earlier.
- Founded by Vardhamana Mahavira, the 24th Tirthankara, it emphasizes nonviolence (ahimsa), asceticism, and self-discipline as means to spiritual liberation.
- Central to Jain philosophy is the belief in the soul's eternal nature and the importance of karma in shaping one's destiny.
- Its rigorous ethical code, its emphasis on non-violence in thought, word, and deed, and its strict asceticism have profoundly influenced Indian culture and spirituality.

Jain Tirthankaras

- According to Jain tradition, there were 24 Tirthankaras (literally ford makers, across the stream of existence), the first being Rishabhadeva/Adinatha and the last being Mahavira.
- The names of two Jain Tirthankaras – Rishabha and Arishtanemi – are found in the Rig Veda.

S. No.	Name	Symbol
1.	Rishabha	Bull
2.	Ajitnath	Elephant
3.	Sambhavanath	Horse
4.	Abhinandannath	Monkey
5.	Sumatinath	Curlew
6.	Padmaprabhu	Red Lotus
7.	Suparswanath	Swastik
8.	Chandraji Prabhu	Moon
9.	Suvidhinath	Crocodile
10.	Shitalnath	Srivatsa
11.	Shreyanasanath	Rhinoceros

12.	Vasupujya	Buffalo
13.	Vimalnath	Boar
14.	Anantnath	Falcon
15.	Dharmanath	Vajra
16.	Shantinath	Deer
17.	Kuntunath	He – Goat
18.	Arnath	Fish
19.	Mallinath	Water pot
20.	Muniswasth	Tortoise
21.	Neminath	Blue Lotus
22.	Arishtanemi	Conch Shell
23.	Parshwanath	Serpent
24.	Mahavira	Lion

1st Tirthankar (Rishabha)



Rishabha

- Symbol: Bull
- Born: Ayodhya
- Moksha: Mount Kailash
- Spouse: Sunanda and Sumangala
- Parents: Nabhi (father); Marudevi (mother)

23rd Tirthankar (Parshwanath)



Parshwanath

- Symbol: Serpent

- Born: 9th – 7th century (Varanasi)
- Died: 8th or 7th century (Shikharji); Parshwanath (Parasnath) hill, Giridih, Jharkhand.
- Spouse: Prabhavati or Never married.
- Parents: Ashvasena (father); Vamadevi (mother)
- His four central teachings (Chaturthi) were:
 - Ahimsa (non-injury)
 - Satya (non-lying)
 - Asteya (non-stealing)
 - Aparigraha (non-possession)
- Mahavira adopted all these four teachings and added one more which is Brahmacharya (chastity), to it.

24th Tirthankar (Vardhamana Mahavira)



Vardhamana Mahavira

- Symbol: Lion
- Born: 540 BC in Kundgrama near Vaishali (Bihar)
- Died: Pavapuri, Bihar; 468 BC
- Spouse: Yashoda
- Parents: Siddhartha (father; head of Jnathrika Kshatriya clan); Trishala (mother)
- He married Yashoda (daughter of Samarvira king) and had a daughter, Priyadarsena, whose husband Jamali became his first disciple.
- At the age of 30, after his father's death, he renounced his family, became an ascetic and set out in a quest for truth.
- He was accompanied by Makkhali Gosala, but later, due to some differences, Gosala left him and founded the Ajivika sect.
- At the age of 42, under a sal tree at Jambhikagrama on the bank of the river Rijupalika, Mahavira attained Kaivalya, or supreme knowledge.
- Through Kaivalya, he conquered misery and happiness.

- From now onwards, he was called Mahavira (the brave), Jitendriya (one who conquered his senses), Kevalin (perfect learned), Nigantha (free from all bonds), and Arihant (blessed one), and his followers were named Jain.
- He delivered his first sermon at Pava to his disciples, known as Gandgharas, and founded a Jain Sangha there.

Teachings of Vardhamana Mahavira

- **Belief in God:** He rejected the authority of Vedas and did not believe in the existence of God. He denied the power of the almighty as the creator.
- **Ahimsa:** He believed every object possesses a soul, so he professed strict non-violence. Because of this, many of the Jains walk on foot, filter water before drinking and even tie a band of cloth around their mouth so they may not kill small insects.
- **Attainment of Salvation:** He stressed the attainment of salvation by believing in penance and dying of starvation. Salvation can be achieved by following the three Jewels or Triratna, i.e., right faith, right knowledge, and right conduct.
- **No Faith in Caste System:** He focused on universal brotherhood and equality and non-belief in the caste system.
- **Karma:** He believed in karma and the transmigration of the soul.

Note: According to Mahavira, a person is born in a high or in a lower Varna as a consequence of the sins or the virtues acquired by him in the previous birth. Mahavira looks for human values even in a Chandala. In his opinion, members of the lower castes can attain liberation through pure and meritorious life.

Doctrines of Jainism

The five doctrines of Jainism are:

- Do not commit violence (Ahimsa)
- Don't speak a lie (Satya)
- Don't steal (Asteya)
- Don't acquire property (Aparigraha)
- Observe continence (Brahmacharya)

Important Points to Remember

- Jainism attached the utmost importance to ahimsa or non-injury to living beings.
- It acknowledged the existence of the gods but placed them lower than the Jina.

- It didn't condemn the Varna system as Buddhism did.
- It forbade its followers from engaging in war and even agriculture, as both practices involve the harm or killing of living beings. Hence, they confined themselves to trade and merchants' activities.
- It primarily aims at the attainment of freedom from worldly bonds. No ritual is required for such liberation.

Triratnas of Jainism

The three jewels, or triratnas of Jainism, are the core principles guiding a follower towards spiritual liberation (moksha):

- **Right Knowledge (Samyak Jnana):** This involves having a true understanding of the nature of reality, the self, and the universe. It means recognising the fundamental truths about the soul, karma, and the cycle of birth and rebirth.
- **Right Faith (Samyak Darshana):** Right faith refers to a deep belief in and trust in Jainism's teachings. It involves a clear, unwavering conviction in the principles of truth and the path laid out by the Tirthankaras.
- **Right Conduct (Samyak Charitra):** This is about ethical discipline and moral purity. It includes following the five vows (ahimsa, or nonviolence; satya, or truthfulness; asteya, or nonstealing; brahmacharya, or chastity; and aparigraha, or nonattachment) to purify the soul and reduce karmic bondage.

Two Sects of Jainism

- Shvetambaras are those who put on white dress, and Digambaras are those who keep themselves naked.

Difference between Shvetambaras and Digambaras

1. Digambaras stress the practice of nudity as an absolute pre-requisite to the mendicant's path and to the attainment of salvation. However, the Shvetambaras assert that the practice of complete nudity is not essential to attain liberation.
2. Digambaras believe that a woman lacks the adamant body and rigid will, which are necessary to attain moksha. Shvetambaras, on the other hand, hold the contrary view and maintain that women are capable in the present lifetime

3. According to the Digambaras, once a saint becomes a kevalar or Jnana, that is, omniscient, he needs no morsel of food. But the Shvetambaras do not accept this view.

4. The Shvetambaras use the term 'Charitra', and the Digambaras use the term 'Purana' for the biographies of great teachers.

5. The Shvetambaras believe in the validity and sacredness of canonical literature i.e. the twelve Angas and sutras, as they exist now. The Digambaras, on the other hand, hold that the original texts were lost long ago. The Digambaras also refuse to accept the achievements of the first council, which was convened under the leadership of Acharya Sthulabhadra, and consequently, the recasting of the Angas.

Main Followers of Jainism

- Bimbisara (c. 558–491 BCE), Ajatshatru (c. 492–460 BCE), and Udayin (c. 460-440 BCE) of the Haryanka dynasty as a patron.
- In south India, the Ganga dynasty, Kadamba dynasty, Amoghavarsha (Rashtrakuta dynasty).
- Karnataka (Chandragupta Maurya).

Jain Councils

Councils	1st Jain Council (300 BC)	2nd Jain Council (512 AD)
Location	Pataliputra	Vallabhi
Chairman	Sthulabhadra	Devridhigani Kshmasramana
Royal Patron	Chandragupta Maurya	–
Outcomes	Compilation of 12 Angas to replace 14 Purvas	Final compilation of 12 Angas and 12 Upangas

Jain Literature

- The sacred literature of Jain was written in the Ardhamagadhi form of Prakrit. These texts were finally compiled in the sixth century A.D. in Gujarat at Valabhi, a great centre of education.

- The Jainas' adoption of Prakrit helped the growth of this language and its literature: 12 Angas, 12 Upangas, 10 Parikarnas, 6 Chehedasutras, 4 Mulasutras, and 2 Sutra Granthas.
- Purvas/Parvas are part of 12 Angas and the oldest text of Mahavira's preachings.
- Kalpasutra (Sanskrit) by Bhadrabahu contains the biographies of the Jain Tirthankaras, most notably Parshvanath and Mahavira, including the latter's Nirvana.
- Bhadrabahu Charita by Ratnanandi of about 1450 A.D.
- Parishishta Parvan (an appendix of Trishashtishalaka Purush) by Hemchandra.

Spread of Jainism

- Unlike Buddhism, Jainism was confined mainly to India. It spread into south and west India, where the Brahmanical religion was weak.
- According to a late tradition, Chandragupta Maurya (322-298 B.C.) is credited with spreading it in Karnataka.
- It is said that 200 years after Mahavira's death, a great famine took place in Magadha, which lasted for twelve years.
- In order to protect themselves from the famine, many Jainas went to the south under the leadership of Bhadrabahu, but the rest stayed back in Magadha under the leadership of Sthalabahu.
- Jainism spread to Kalinga in Orissa in the 4th century B.C.
- In the first century B.C., it enjoyed the patronage of the Kalinga king Kharavela, who had defeated the princes of Magadha and Andhra.
- In the second and first centuries B.C., it also has reached the southern districts of Tamil Nadu.
- In later centuries, it penetrated Malwa, Rajasthan, and Gujarat.
- Even now, these areas have a large number of Jainas who are mainly engaged in trade and commerce.

Contributions of Jainism to Indian Languages

- Many regional languages emerged and developed out of Prakrit languages, particularly Shauraseni, which grew the Marathi language.
- The Jainas composed the earliest essential works in Apabhramsha and prepared its first grammar.
- A large portion of Jaina writing is still in manuscript form, which has not been published and is found in the Jaina shrines of Rajasthan and Gujarat.
- During early medieval period, the Jainas also made good use of Sanskrit and wrote many Sanskrit texts.

- They also contributed to the growth of Kannada, and they wrote extensively about it.

Jain Architecture

Jaina art in ancient times is not as rich as Buddhist art, but Jainism contributed substantially to art and architecture in medieval times. A few examples are listed below:

- **Caves or Gumphas:** Hathigumpha, Baghagumpha, etc. Udaygiri (Bhubaneswar) and Khandagiri (Orissa), Kharavela.
- **Temples:** Nearly 90 percent of Jaina temples are the gifts of single wealthy individuals. They are distinguished for their elaborate details and exquisite finishes.
- **Dilwara temples:** Vimalavasahi temple, Tejapala Temple—Mount Abu (Rajasthan), Girnar and Palitana (Gujarat), Pavapuri temple, and Rajagriha temple (Bihar).
- **Statue of Gomateshwar/Bahubali:** Shravanbelgola (Karnataka)
- **Jain Tower:** The Jain Tower within the fort of Chittor is another remarkable example of architectural engineering.
- Numerous palm leaf manuscripts were inscribed, some even adorned with gold dust. This tradition led to a new artistic style known as the “Western Indian School” of painting.

Contribution to Trade of Jainism

- Jainism prohibited the practice of war and even agriculture on its followers because both involved the killing of living beings.
- Hence, they confined themselves to trade and merchant’ activities.
- The profits generated through trade enabled them to function as bankers, money changers, etc.
- The profits were again ploughed back into commercial pursuits, contributing to their material prosperity and economic and political clout.
- The Jains have been famous traders since ancient times. In medieval times, they persisted in the profession and prospered. Jagdu of Gujarat was the most renowned Jain trader of the thirteenth century in Gujarat.
- The Jains, like other Indian traders, profited from this expansion of trading activities. This explains their strong presence in Agra, the entire point of north Indian trade. Besides, they were well-represented in two other important trade marts of north India: Lahore and Multan.
- They became money lenders, advancing huge sums to traders, rulers, and officers of the state.

- Since European trading companies in the seventeenth century were generally short of liquid capital, they turned to Indian money-lenders, among them the Jains, to finance their purchases on Indian soil.
- This brought additional profits to Jains and other Indian merchants.

Causes of Limited Spread of Jainism

- The five principles of Jainism were responsible for its limited spread due to their hardships.
- Jainism preached strict rules and stringent methods of life. Most of the time is inadaptably worldwide.
- It never propagated with a missionary zeal.
- Jainas concepts of vegetarianism and non-violence were among one of the factors to its limited spread.
- In Jainism, even the cultivation of crops is considered as violence. So, Jains could not practise agriculture.
- Obviously, Jainism was less popular in ancient agrarian societies and in India, where huge masses were associated with agriculture.

Causes of Decline of Jainism

- **Lack of royal patronage:** Great rulers like Bimbisara, Ajatshatru, Udayin, and Kharavela extended royal patronage to Jainism. But later, due to Buddhism rulers like Asoka, Kanishka, and Harsavardhan, who had embraced Buddhism, Jainism was outshadowed.
- **Lack of efforts:** Jain followers were not enthusiastic about spreading the religion in villages and towns.
- **Severity of Jainism:** The Jains practised rigorous asceticism and self-mortification, which was disliked by the people, and they alienated themselves from it.
- **Factionalism in Jainism:** The followers of Bhadrabahu advocated following the teachings of Mahavira, while the followers of Sthulabhadra wanted to tone down the severity of Jainism, which led to a division among the Jainas.
- **Unintelligible Philosophy:** The concepts of Jeeva, Ajeeva, Pudgala, Syadbala, etc., could not be understood properly by the people. Many could not accept the view that earth, water, stone, or tree had a soul of their own.
- **Spread of Buddhism:** Buddha was opposed to extreme hardship and prescribed a 'middle path,' which simplified Buddhism.

Conclusion

Jainism, with its profound emphasis on non-violence, self-discipline, and the pursuit of spiritual liberation, has significantly shaped the religious and cultural landscapes of India. Despite its rigorous principles and limited spread beyond the subcontinent, Jainism has left an indelible mark on Indian philosophy, art, architecture, and trade. Its influence continues to resonate through its contributions to language, literature, and ethical practices. While Jainism may not have achieved widespread global prominence, its enduring legacy within India stands as a testament to its spiritual and cultural significance.

9. Study Material-Language

PRECIS WRITING

Precis writing is one of the most important skills that you can learn as a student. It can help you summarize large chunks of information quickly and efficiently, which is essential when you are studying for exams or completing assignments.

What is Precis Writing?

Precis writing is a type of summary writing that focuses on the main points of a text. It is typically used to summarize articles, essays, or other long pieces of writing. Precis writing can be helpful for students who need to learn how to synthesize information, and it can also be useful for professionals who want to quickly get a sense of the main points of a document.

The goal of precis writing is to create a concise and accurate summary of a text.

Characteristics of Precis Writing

Precis writing is all about summarizing a passage or paragraph but in fewer words. It involves the main idea of the passage or paragraph and restrains you from adding your views and opinions on it. Precise writing needs to be short and crisp so that it conveys everything within as few words as possible, unlike a regular summary that is usually longer.

When writing a precis, you should keep the following in mind:

- Stick to the main points of the passage or paragraph. Do not add any of your views or opinions
- Keep it short and crisp; conveying everything within as few words as possible
- Make sure that the precis is an accurate summary of the original text

Some common mistakes while writing a precis:

- Making the summary longer than the original text. This defeats the purpose of writing a precis
- Trying to include every little detail in the passage or paragraph. You should only focus on the most important points and leave out the rest

How to write a Precis

The following are some steps that can help you write a good precis:

- Read through and understand the passage or paragraph completely before writing down your precis
- Note down the main points of the passage or paragraph. This will help you summarize it easily
- Write a draft of your precis and see if you can make it shorter by excluding some unnecessary details from your summary. However, be careful not to miss out on any important points while doing so!

Do's and Don'ts of Precis Writing

DO:

- Read the text carefully and identify the main points
- Focus on the main points of the text and avoid including any irrelevant information
- Write a concise summary that accurately reflects the main points of the text

DON'T:

- Include your own opinion or analysis in the summary
- Re-write or summarize the entire text
- Include any superfluous details

When writing a precis summary, it is important to read the text carefully and identify its main points.

The next step is to focus on the main points of the text while avoiding including any irrelevant information. In a precis, you need to write a concise summary that accurately reflects the main points of the text.

Always avoid re-writing or summarizing the entire text, and ensure that you include only necessary details in your precise summary.

Tips for Good English Precis Writing

Do's

- Use your own words as much as possible. Do not simply copy the original text word for word
- Make sure that your summary is accurate and faithful to the original text
- Try to capture the main points of the original text, without including any unnecessary details

Don'ts

- Use a lot of direct quotes from the original text, or copy too many words and phrases directly from the original text without changing them. (This will make it difficult for you to avoid plagiarism)

Conclusion

The goal of precis writing is to summarize a text in about 100 words. This technique can be used for any type of text, whether it's an article or book chapter. With the help of this blog post, you should now have all the tools you need to write your excellent precis.

10. Current Affairs

MARCH 2026

1. India launches CBDC-based food subsidy pilot under PMGKAY in Puducherry for direct digital transfers.
2. UIDAI collaborates with Google Maps to display over 60,000 verified Aadhaar centres across India.
3. Pakistan launches Operation Ghazab lil-Haq, escalating tensions with Afghanistan after alleged cross-border firing.
4. Saudi Arabia bans poultry and egg imports from 40 countries including India and Bangladesh due to public health risks.
5. Baroruchi Mishra appointed as new CEO of Hindustan Oil Exploration Company effective April 1, 2026.
6. CBIC to launch SWIFT 2.0 and revamped Atithi App on International Customs Day 2026 to simplify trade and customs processes.
7. India pays tribute to freedom fighter Chandra Shekhar Azad on his 95th martyrdom day.
8. International Polar Bear Day 2026 raises awareness about climate threats and conservation of Arctic polar bears.
9. World NGO Day 2026 highlights the contributions of NGOs in social change and encourages volunteering and partnerships.
10. Haryana to launch CM Shri Schools following the PM Shri model, promoting modern infrastructure and inclusive education.
11. 12th-century Mandir-style pillar fragments discovered in Hinganghat reflect Hemadpanti architecture and highlight the region's medieval cultural significance.
12. Oldest known hand stencil dated 67,800 years discovered in Sulawesi cave, highlighting early human symbolic expression.
13. US and Israel launch coordinated strikes on Iran, targeting top leadership, escalating tensions in West Asia.
14. NSV Kaundinya completes maiden Oman voyage and returns to Mumbai, highlighting India's maritime heritage.
15. Mangaluru Airport wins ASQ 'Best Airport at Arrivals' award for the second consecutive year.
16. UAE launches world's first sovereign financial cloud, SFCSI, offering AI-driven secure digital infrastructure for financial institutions.
17. India enters advanced memory manufacturing as Micron's Sanand ATMP facility begins DRAM and NAND production with \$2.7 billion investment.

18. Assam distributes land pattas to over one lakh families under Mission Basundhara 3.0, enhancing legal ownership and governance.
19. Tripura launches its first State Innovation Mission with T-NEST hub, promoting startups, AI policy, and inclusive innovation.
20. Varanasi sets a Guinness record by planting over 2.5 lakh saplings in one hour using Miyawaki method under Namoo Van urban forest project.
21. Droupadi Murmu launched four women-centric schemes in Delhi, including the Pink National Common Mobility Card and financial support initiatives, to enhance women's mobility, safety and economic empowerment.
22. ANVESH-2026 concluded at NIFTEM-Kundli, showcasing global innovations in sustainable and healthy foods.
23. Shri Jyotiraditya M. Scindia to lead India's participation at Mobile World Congress 2026 in Barcelona.
24. A 14th-century Singapore shipwreck revealed Yuan Dynasty blue-and-white porcelain, highlighting Mongol-era maritime trade.
25. FPIs invested ₹22,615 crore in Indian equities in February 2026, the highest in 17 months.
26. Jammu & Kashmir won their first-ever Ranji Trophy, defeating Karnataka with dominant performances by Qamran Iqbal and Sahil Lotra.
27. Deepak Gupta assumed charge as CMD of GAIL India, tenure until 2029.
28. Late actress Catherine O'Hara posthumously won the SAG Award for her performance in "The Studio."
29. Vice President C. P. Radhakrishnan laid the foundation stone of Chetana Ganashram in Thrissur, Kerala.
30. West Bengal signed an MoU with GIZ and SMCG for basin-based masterplans for Ichhamati and Jalangi rivers.
31. Scotland became the first UK country to legalise water cremation, also known as alkaline hydrolysis, with first cremations expected by summer 2026 in the biggest funeral law reform since 1902.
32. Finland's President Alexander Stubb arrived in India on March 4, 2026, for a four-day official visit, serving as Chief Guest at the 11th Raisina Dialogue and holding bilateral talks with PM Modi on trade, technology and education.
33. Saba Shamlal was appointed Superintendent of Central Jail Srinagar, becoming the first Kashmiri woman to head the high-security facility under Government Order No. 145-Home of 2026.
34. Eminent journalist and former diplomat H K Dua passed away on March 4, 2026, at 88 in New Delhi, having led Hindustan Times, Indian Express and The Tribune and received the Padma Bhushan.

35. Veteran Congress leader and six-time Lok Sabha MP K P Unnikrishnan passed away at 89 in Kozhikode, Kerala, leaving behind a legacy of six decades in journalism, activism and parliamentary politics.
36. World Obesity Day 2026 was observed on March 4 under the theme "8 Billion Reasons to Act on Obesity," highlighting obesity as a complex chronic disease requiring collective global action.
37. India observed the 55th National Safety Day on March 4, 2026, under the theme "Engage, Educate and Empower People to Enhance Safety," now expanded into a full National Safety Month throughout March.
38. The United Nations observes International Day for Disarmament and Non-Proliferation Awareness on March 5 every year, proclaimed through UN General Assembly Resolution A/RES/77/51 to promote global arms control awareness.
39. Tamil Nadu recorded 57 deceased organ donors in the first two months of 2026, reaffirming its position as India's top state in deceased organ donation under Transtan's oversight.
40. Tamil Nadu inaugurated its first Dark Sky Park at Ariyur Shola Reserve Forest in Kolli Hills, Namakkal district, featuring three telescopes and solar-powered infrastructure to promote astro-tourism.
41. Researchers discovered two new freshwater fish species — Glyptothorax sentimereni and Oreichthys elianae — from tributaries of the Brahmaputra River in Nagaland's Mokokchung district, published in the journal Zootaxa.
42. The inaugural Khelo India Tribal Games (KITG) will be held from 25 March to 6 April in Raipur, Jagdalpur and Sarguja in Chhattisgarh, featuring seven medal sports to promote tribal sporting talent across India.
43. India placed naval assets under Operation Sankalp on standby for humanitarian assistance amid rising West Asia tensions, with PM Modi chairing a Cabinet Committee on Security meeting on 1 March 2026 to assess implications.
44. President Droupadi Murmu announced a major gubernatorial reshuffle appointing Shiv Pratap Shukla as Telangana Governor, R.N. Ravi as West Bengal Governor, and Taranjit Singh Sandhu as Lieutenant Governor of Delhi.
45. RM Nachammai has become the first woman to head operations of a functional nuclear power plant in India, appointed as Chief Superintendent of Kaiga Generating Station Units 3 and 4 in Karnataka, effective 15 March 2026.
46. Sabrina Wittmann, 34, became the first woman to manage a professional men's football team in Germany after securing the

- permanent head coach role at FC Ingolstadt 04 following her interim appointment in 2024.
47. Veteran Telugu actor Chiranjeevi was honoured with the NTR National Film Award at the Gaddar Telangana Film Awards 2025 in recognition of his remarkable contribution to Indian cinema over more than four decades.
 48. American actor Corey Parker, known for his role as Josh in Will & Grace, passed away on 5 March 2026 in Memphis, Tennessee, at the age of 60 after battling stage-4 metastatic cancer.
 49. IBM inaugurated the Sangam Infrastructure Innovation Centre at its India Systems Development Lab (ISDL) campus to strengthen India's role in advanced AI infrastructure engineering for Indian enterprises and global markets.
 50. Tamil Nadu Chief Minister M.K. Stalin launched the Tamil Nadu Women Entrepreneur Empowerment Scheme (TWEES) to encourage one lakh women to take up entrepreneurship over the next five years through training and financial support.
 51. The Ministry of Panchayati Raj has launched the 'Say No To Proxy Sarpanch' campaign to empower women and curb the 'Sarpanch Pati' practice.
 52. PM Modi will inaugurate and lay the foundation stones for development projects worth ₹16,450 crore in Kerala and Tamil Nadu on March 11, 2026.
 53. State Bank of India (SBI) has launched a \$500 million syndicated social loan facility dedicated to women's economic empowerment.
 54. According to the SIPRI Report 2021–25, India remains the world's second-largest arms importer, accounting for 8.2% of global imports.
 55. The 11th edition of the India-Seychelles joint military exercise 'Lamitiye 2026' is being held at the Seychelles Defence Academy from March 9 to 20.
 56. Mojtaba Khamenei has been appointed as the new Supreme Leader of Iran by the Assembly of Experts following the death of his father.
 57. Actress Rashmika Mandanna has been honored with the Best Actress award for the film 'The Girlfriend' at the Telangana Gaddar Film Awards.
 58. Vir Chakra awardee and 1965 war hero Lance Havildar KG George passed away at the age of 95 in Kottayam, Kerala.
 59. The Central Industrial Security Force (CISF) is celebrating its 57th Raising Day on March 10, 2026, marking its establishment in 1969.
 60. Researchers from Berhampur University have discovered a rare amphipod species, 'Stenothoe lowryi,' for the first time in Indian waters at Ganjam, Odisha.

61. Gyan Bharatam, a flagship Ministry of Culture initiative with a budget of Rs. 491.66 crore (2025–2031), aims to survey, conserve, and digitize India's vast manuscript heritage.
62. NABARD, along with the Gates Foundation and Dalberg Advisors, launched the National Climate Stack Innovation Challenge to strengthen climate resilience for India's rural and agricultural sectors.
63. The International Malaria Conference (IMC) 2026, held from March 7–9 in New Delhi, concluded with a global commitment to accelerate malaria elimination efforts.
64. Japan approved the world's first iPS cell-based therapy 'Amchepry' for Parkinson's disease, marking a historic milestone in regenerative medicine.
65. Delhi Lieutenant Governor Vinai Kumar Saxena has been appointed as the new Lieutenant Governor of Ladakh, replacing Kavinder Gupta who has been reassigned as Governor of Himachal Pradesh.
66. IndiGo co-founder Rahul Bhatia has taken charge as interim CEO of India's largest airline following the resignation of Pieter Elbers.
67. Veteran actor Amol Palekar will be honoured with the Lifetime Achievement Award at the 21st Mahindra Excellence in Theatre Awards (META) 2026, to be held in New Delhi from March 19–25.
68. No Smoking Day 2026 is observed on March 11, urging people worldwide to quit tobacco and embrace a healthier, smoke-free life.
69. The Union Cabinet chaired by PM Narendra Modi approved the declaration of Madurai Airport in Tamil Nadu as an International Airport to boost regional connectivity and economic growth.
70. PPVFRA has officially registered 'Nagauri Paan Methi' (*Trigonella corniculata* L.) as a Community Farmers' Variety, granting legal protection to farmers of Nagaur district, Rajasthan.
71. The Ministry of Panchayati Raj organised a national conference of Women Elected Representatives under the Sashakt Panchayat-Netri Abhiyan in New Delhi.
72. NATO launched its biennial Arctic military exercise “Cold Response” involving about 25,000 troops from 14 countries.
73. Union Minister Piyush Goyal inaugurated the 40th AAHAR International Food and Hospitality Fair in New Delhi.
74. Gujarat Titans appointed former Indian wicketkeeper Vijay Dahiya as assistant coach for the 2026 season of the Indian Premier League.
75. Veteran Tamil filmmaker, producer and actor Thakkali Srinivasan passed away in Bengaluru at the age of 72.
76. Hermann Kulke, a German-born Indologist and historian known for his research on Odisha's history and culture, passed away at the age of 87.
77. Deloitte launched “ConnectSafe”, India's first cybersecurity facility focused on operational technology ecosystems, in Bengaluru.

78. Tata Advanced Systems and Ramco Systems partnered to build the digital backbone for the Indian Air Force's C-130J Super Hercules MRO facility.
79. Indian Council of Agricultural Research is hosting the Global Conference on Women in Agri-Food Systems (GCWAS-2026) from 12–14 March 2026 at NASC Complex, New Delhi.
80. Gujarat launched the “Lake and Air Watch” initiative under the Gujarat Urban Development Mission to monitor lake health and air quality in cities in real time.
81. NITI Aayog released the second edition of the Fiscal Health Index 2026 to assess the fiscal performance of Indian states.
82. Scientists from the Zoological Survey of India discovered two new lichen moth species named *Caulocera hollowayi* and *Asura buxa* in the Eastern Himalayas.
83. India became the largest supplier of cotton products to the United States in 2025, surpassing China for the first time in recent years.
84. Scientists discovered a new pterosaur species named *Bakiribu waridza* from a 100-million-year-old fossilised dinosaur vomit in Araripe Basin.
85. The WHO Foundation and Novo Nordisk partnered to address childhood obesity in India through school-based health programmes.
86. Meta acquired the experimental AI social networking platform Moltbook as part of the global AI talent race.
87. The Delhi Cantonment Board launched the SMART digital governance platform to improve sanitation monitoring and civic services.
88. Razorpay launched the AI-powered payment platform Agent Studio built on Claude AI technology.
89. The world's first Autonomous Maritime Shipbuilding and Systems Centre was established in Nellore to develop advanced unmanned maritime technologies.
90. Assam exported its GI-tagged Joha rice to the United Kingdom and Italy for the first time.
91. The Department of Telecommunications inaugurated 'Samriddhi Kendra', an integrated phygital service centre, in Guna district of Madhya Pradesh.
92. The Supreme Court ruled that parental income alone cannot determine OBC creamy layer status, requiring consideration of occupation and social position.
93. The International Rail Coach Expo 2026 was inaugurated at the Integral Coach Factory in Chennai to showcase sustainable railway coach designs.

94. The Ministry of AYUSH partnered with quick-commerce platform Zepto to launch a dedicated storefront for traditional wellness products.
95. Prime Minister Modi released the 22nd installment of the PM-KISAN scheme, transferring ₹18,600 crore to over 9 crore farmers from Guwahati.
96. Para-athlete Shailesh Kumar won the gold medal in the men's high jump T63 category at the World Para Athletics Grand Prix in New Delhi.
97. KSRTC's 'Dhwani Spandana', an audio-navigation tool for visually impaired passengers, won the 12th Governance Now PSU National Award.
98. The BHASHINI platform integrated Sarvam AI models to process 15 million daily inferences across 36 text and 23 voice languages.
99. World Kidney Day 2026 was observed on March 12 with the theme "Kidney Health for All — Caring for People, Protecting the Planet.
100. Andhra Pradesh launched 'Araku Kouni', India's first tribal millet-based food menu, to promote tribal culinary traditions and food tourism.
101. Union Minister Jyotiraditya Scindia inaugurated the Samriddhi Kendra in Guna district, Madhya Pradesh, under the DoT's Samriddh Gram Phygital Services Pilot Initiative to enhance rural service delivery.
102. Gauhati University botanists discovered a new plant species, "Osbeckia zubeengargiana," in Manas National Park, Assam, naming it after renowned Assamese singer Zubeen Garg.
103. India won five medals — one gold, three silver and one bronze — at the World Boxing Futures Cup 2026 in Bangkok, with Chandrika Pujari clinching the gold in the women's 51 kg category.
104. Karnataka's KSRTC has won the Governance Now 12th PSU National Award for its "Dhwani Spandana" initiative, which provides audio-based bus identification assistance for visually impaired passengers.
105. Renowned Tamil poet and lyricist R. Vairamuthu has been selected for the 60th Jnanpith Award for 2025, becoming the third Tamil writer to receive India's highest literary honour.
106. Netflix's "KPop Demon Hunters," directed by Maggie Kang, won the Best Animated Feature at the 98th Academy Awards held at the Dolby Theatre, Los Angeles.
107. Veteran Hindi film actress Madhu Malhotra, known for her role in Subhash Ghai's "Hero" (1983) and the song "Lamhi Judaai," passed away at the age of 71 in Mumbai.

108. Phil Campbell, legendary guitarist and longest-serving member of rock band Motörhead, passed away at the age of 64 following complications from a major surgery.
109. Pi Day is celebrated globally on March 14 every year to honour the mathematical constant π , first organised in 1988 at San Francisco's Exploratorium by physicist Larry Shaw.
110. The Musi Riverfront Development Corporation Limited has unveiled a heritage concept map integrating monuments like Charminar and Golconda Fort into a 55-km cultural tourism corridor along the Musi River in Hyderabad.
111. The Ministry of Education and IIT Kanpur launched the AI-powered SATHEE app to provide free exam preparation for competitive tests like JEE and NEET.
112. Indian-origin entrepreneur Surya Midha became one of the world's youngest billionaires through his AI hiring startup, Mercor.
113. The World Bank approved a USD 300 million loan to support the Uttar Pradesh Clean Air Management Program targeting pollution across multiple sectors.
114. 19-year-old Kimi Antonelli secured his maiden F1 victory at the 2026 Chinese Grand Prix, leading a Mercedes 1-2 finish.
115. Assam Police officer Dr. Partha Sarathi Mahanta won the Best Director award at the New York Short Animation Festival 2026 for his film CHYIMI.
116. Indian-origin filmmaker Alexandre Singh won the Oscar for Best Live-Action Short Film for Two People Exchanging Saliva at the 98th Academy Awards.
117. Jessie Buckley won Best Actress for Hamnet, while Michael B. Jordan secured his first Best Actor Oscar for Sinners at the 98th Academy Awards.
118. The Sahitya Akademi announced 2025 awards for 24 languages, honoring Navtej Sarna (English) and Mamta Kalia (Hindi) among others.
119. Ahmedabad-based Omspace Rocket and Exploration successfully launched Gujarat's first private sounding rocket near Dholera.
120. PM Modi inaugurated the 120 MW Lower Kopili Hydroelectric Project in Assam, a run-of-river project funded by the Asian Development Bank.
121. Odisha topped the NITI Aayog Fiscal Health Index 2026 for its excellent revenue management, followed by Goa and Jharkhand.
122. Kusunpur is set to become Odisha's first "Smart Village" through CSIR-led scientific innovations in agriculture and renewable energy.
123. Ancient petroglyphs resembling prehistoric rock art have been uncovered near the Beerappa Temple in Manchirevula, Telangana.

124. Researchers discovered a rare "Vela carli" freshwater crab possessing both male and female traits in Kerala's Silent Valley National Park.
125. ITDC and the Ministry of Tribal Affairs launched a hospitality training program and manual for tribal homestay owners in New Delhi.
126. Evidence of a 125,000-year-old Neanderthal "factory" for fat extraction was discovered in Neumark-Nord, Germany, showing advanced cognitive skills.
127. The National Para Athletics Championship 2026 begins tomorrow at Kalinga Stadium, Bhubaneswar, featuring 1,460 athletes as a selection trial for the Asian Para Games.
128. The Indian Navy's P-8I aircraft is participating in "Exercise Sea Dragon 2026," a multi-national anti-submarine warfare drill in Guam, USA.
129. Japanese retailer Uniqlo has appointed Indian fast bowler Jasprit Bumrah as its brand ambassador for the "LifeWear" campaign.
130. IIT Guwahati has developed a dual-purpose MXene material for highly efficient hydrogen production and solar-powered seawater desalination.
131. India became the world's third-largest metro network with over 1,143 km operational lines.
132. The Supreme Court granted equal maternity leave to adoptive mothers, removing age restrictions.
133. ITDC launched the Tribal Homestay Capacity Building Program 2026 to promote sustainable tourism.
134. Bharat Electricity Summit 2026 began in New Delhi with global participation focusing on clean energy and innovation.
135. Bhumika Shrestha became Nepal's first transgender woman Member of Parliament.
136. Scientists discovered a 289-million-year-old reptile skin fossil in Oklahoma, the oldest known example.
137. Algeria offers the cheapest LPG globally due to abundant gas reserves and subsidies.
138. The Indian Navy launched the IOS SAGAR Initiative 2026 to boost maritime cooperation in the Indian Ocean Region.
139. William Dalrymple won the Mark Lynton History Prize 2026 for his book "The Golden Road."
140. OpenAI introduced GPT-5.4 mini and nano models for faster, cost-efficient AI performance.
141. Vice-President C. P. Radhakrishnan inaugurated the Golden Jubilee Building of Modern School, Vasant Vihar, emphasizing education's role in Viksit Bharat @ 2047.

142. Agriculture Insurance Company of India launched the 'Krishi Sakhi' initiative to empower women farmers with crop insurance and financial literacy in 2026.
143. The Geological Survey of India designated Uttar Pradesh's Kalinjar Fort as a National Geo-Heritage Site due to its rare Eparchaeon Unconformity.
144. India's DGTR initiated an anti-dumping probe into imports of ethyl chloroformate from China to protect the domestic pharmaceutical and agrochemical industries.
145. India remains the world's largest sugar consumer at 30–32 million metric tonnes, while Brazil leads in global production.
146. The Union Cabinet approved a ₹2,584 crore Small Hydro Power scheme to add 1,500 MW capacity, focusing on Himalayan and North Eastern regions.
147. India and Vietnam signed a Memorandum of Cooperation to enhance bilateral ties in tribal and ethnic community development and cultural preservation.
148. India evaluates joining Europe's FCAS or GCAP to boost 6th-gen fighter capabilities alongside its indigenous AMCA project.
149. UN official Kaveh Madani, aged 44, has become the youngest recipient of the 2026 Stockholm Water Prize for his work on "water bankruptcy."
150. The 2026 International Day of Happiness was observed on March 20, focusing on well-being and life satisfaction in the digital age.
151. The 110th NPG meeting approved six major infrastructure projects across rail, metro, and road sectors under the PM GatiShakti plan.
152. The Indian government launched the RELIEF scheme with a ₹497 crore outlay to support exporters facing high logistics and insurance costs.
153. The Ministry of Ayush launched the "Yoga 365" initiative to encourage daily yoga practice through digital platforms and guided sessions.
154. India and Bhutan signed a landmark MoU to integrate UPI with the UPU system for efficient cross-border postal remittances.
155. The 2026 Hurun Report highlights a record 150 self-made women billionaires globally, driven largely by the AI and semiconductor sectors.
156. India will host the 2028 World Indoor Athletics Championships for the first time at the Kalinga Stadium in Bhubaneswar, Odisha.
157. Wipro has launched an AI-powered fintech hub at GIFT City, Gandhinagar, to provide advanced financial solutions for global BFSI clients.

158. Pune will host 'Gau-Tech 2026' to showcase innovations in cow-based industries and promote the rural economy and organic farming.
159. IIT Jodhpur is developing flexible semiconductor sensors using OECT technology for real-time health monitoring and defense applications.
160. Tamil Nadu has become India's top textile exporter for 2024-25, contributing nearly 22% to the country's total textile trade.
161. The National Productivity Council (NPC) has been designated as the Environment Audit Designated Agency to monitor industrial compliance.
162. The Indian government launched the PRARAMBH 2026 campaign to educate citizens about the new Income Tax Act, 2025, effective from April 1.
163. A new wild kiwi species, *Actinidia indica*, was discovered by the Botanical Survey of India in the Ziro Valley of Arunachal Pradesh.
164. Pakistan ranked first in the Global Terrorism Index 2026 due to rising violence, while India stood at the 13th position.
165. The Prakriti 2026 conference in New Delhi introduced the Indian Carbon Market Portal to streamline carbon trading and climate action.
166. Scientists identified the desert moss *Syntrichia caninervis* as a potential pioneer for Mars colonization due to its extreme resilience.
167. World Water Day 2026 was observed on March 22 with the theme "Water and Gender" to promote equitable access and management.
168. The Madras High Court issued directives for the systematic removal of the invasive plant species *Prosopis juliflora* to restore Tamil Nadu's ecology.
169. The traditional Kelbai 'Peth' Festival is being celebrated in Mulgao, Goa, featuring a sacred ritual journey of the deity to Mayem village.
170. The Telangana government launched the Indiramma Family Life Insurance Scheme providing ₹5 lakh coverage to 1.15 crore families starting June 2, 2026.
171. The Delhi government and IIT Madras are testing "smog-eating" titanium dioxide coatings on roads to combat urban air pollution.
172. Scientists in Pune discovered a new cockroach species, *Neoloboptera peninsularis*, using advanced DNA-based taxonomy.
173. Japan discovered a massive rare earth element deposit of over 16 million tonnes in the Pacific Ocean near Minamitorishima island.
174. Sikkim is set to host the 49th Yonex Sunrise Junior National Badminton Championship for the first time in November 2026.
175. 19-year-old para-athlete Ria Solanki won the gold medal in shot put at the National Para-Athletics Championship in Bhubaneswar.

176. LeBron James broke the NBA record for most regular-season games played, appearing in his 1,612th match on March 22, 2026.
177. Indian pacer Arundhati Reddy won the ICC Women's Player of the Month for February 2026 for her stellar performance against Australia.
178. Pakistan's Sahibzada Farhan was named ICC Men's Player of the Month for February 2026 after a record-breaking T20 World Cup.
179. World TB Day is observed on March 24, 2026, with the theme "Yes! We Can End TB: Led by Countries, Powered by People."
180. The Telangana government announced the 'Indiramma Family Life Insurance Scheme' providing ₹5 lakh coverage to 1.15 crore families.
181. Ayush Ministry and DBT launched a joint study to use Ayurveda as supportive therapy in TB treatment.
182. The Lok Sabha passed the Transgender Rights Amendment Bill 2026, introducing medical-based identity certification amid criticism over self-identification rights.
183. The World Air Quality Report 2025 ranked Pakistan as the most polluted country, with India at sixth position.
184. The Philippines declared a national energy emergency due to West Asia tensions affecting oil supply and prices.
185. Anahat Singh defended her JSW Indian Open title while Abhay Singh won the men's squash title.
186. Iran appointed Mohammad Bagher Zolghadr as security council chief after Ali Larijani's death amid regional conflict.
187. Kalpana Soren received the Women Empowerment Trailblazer Award at BRICS CCI WE Summit 2026.
188. IVRI produced Sahiwal calves using advanced OPU-IVF-ET technology to boost indigenous cattle productivity.
189. Elon Musk announced the Terafab semiconductor project to produce advanced chips for AI, robotics, and space technology.
190. International Day of the Unborn Child was observed on March 25 to promote awareness about life before birth.
191. Lok Sabha passed the Transgender Persons (Protection of Rights) Amendment Bill, 2026 on March 24, 2026.
192. Qatar Airways ranked as the top full-service airline in 2026, followed by Cathay Pacific and Singapore Airlines.
193. First National Indoor Athletics Championships 2026 began on March 24 at Kalinga Stadium in Bhubaneswar, Odisha.
194. Puneet Gupta, COO of Times Internet, was appointed Chairperson of Digital News Publishers Association (DNPA) on March 24, 2026.
195. OpenAI appointed Kiran Mani as Managing Director for Asia-Pacific on March 25, 2026.

196. Government of India appointed Kompella Venkata Ramana Murty as SEBI Whole-Time Member for three years on March 25, 2026.
197. Karnataka Grameena Bank won the National Award for Outstanding Performance in SHG Bank Linkage for 2024-25.
198. The United Nations observes International Day of Solidarity with Detained and Missing Staff Members annually on March 25.
199. Gujarat Assembly passed the Uniform Civil Code (UCC) Bill 2026 on March 24, making it the second state after Uttarakhand to enact UCC.
200. Gujarat CM Bhupendra Patel launched 'Sugam Digital Gujarat' initiative on March 24, 2026, digitising 20 high-demand public services across five departments.
201. DPIIT signed an MoU with KRAFTON India to boost startups in online gaming, esports, digital entertainment and AI technologies through mentorship, hackathons and innovation challenges.
202. The Ministry of Road Transport and Highways launched PRISM-SG Portal to fast-track approvals and inspections for Road Over Bridges and steel girder fabrication.
203. IIM Kozhikode entered the global top 100 in QS World University Rankings by Subject 2026 for the first time, highlighting India's rising academic strength.
204. The US Treasury announced new currency notes bearing President Donald Trump's signature will be introduced from June 2026, the first time a sitting president's signature appears on American money.
205. NHB launched Gruh Sugam Portal on March 26, 2026 to provide easy online home loans to defence, paramilitary and government personnel without visiting banks.
206. Indian Railways approved ₹1,236 crore projects to expand optical fibre network and deploy indigenous Kavach train protection system for enhanced safety and communication.
207. Former Google executive Matt Brittin was appointed as the new Director-General of BBC, effective from May 18, 2026.
208. Veteran Telugu actor Nandamuri Balakrishna received Lifetime Achievement Award at International Film Festival of Delhi (IFFD) 2026 for his five-decade contribution to cinema.
209. Veteran Malayalam actor and director E.A. Rajendran passed away at the age of 71 in Kollam after prolonged illness.
210. The Rajasthan government launched the Industrial Park Promotion Policy 2026 to attract investment, create jobs and develop world-class industrial parks with green incentives.
211. Mission Saksham Anganwadi and Poshan 2.0 is strengthening nutrition delivery through upgraded Anganwadi centres and digital monitoring.

212. Telangana government has started relocation of tribal families from Amrabad Tiger Reserve for wildlife conservation and development.
213. The Union Cabinet approved continuation of IVFRT Scheme till 2031 to modernise India's immigration and visa processes.
214. 9th PharmaMed 2026 conference will be held on 27 March 2026 in New Delhi focusing on healthcare equity and value-driven pharma growth.
215. India hosted the first BRICS Youth Coordination Meeting on 25 March 2026 under its 2026 Chairship in virtual format.
216. WTO's 14th Ministerial Conference began on 26 March 2026 in Yaounde, Cameroon, with focus on reforms and fisheries subsidies.
217. The IOC has banned transgender women and most DSD athletes from competing in female categories at the Olympics from 2028, introducing a mandatory one-time SRY gene test to ensure fairness.
218. Renowned orangutan expert Birute Galdikas passed away at 79 on 25 March 2026 in Los Angeles.
219. Parliamentary panel noted significant improvement in fund utilisation by the Department of Biotechnology in 2025-26.
220. World Theatre Day 2026 is being celebrated on 27 March with the theme 'Theatre and a Culture of Peace'.
221. A new butterfly species named *Euthalia zubeengargi* has been discovered in Arunachal Pradesh, further enriching the biodiversity of Northeast India.
222. The 16th India Probiotic Symposium was held in New Delhi, focusing on the role of gut microbiome and probiotics in health from cradle to centenarians.
223. Prime Minister Narendra Modi inaugurated Phase I of Noida International Airport at Jewar on 28 March 2026, set to become the second international airport serving Delhi-NCR.
224. Scientists documented two rare keelback snake species in Northeast India's protected areas, underscoring the region's rich biodiversity and need for conservation.
225. Scientists discovered a new night frog species named *Nyctibatrachus kali* in Karnataka's Kali Tiger Reserve, highlighting the rich amphibian biodiversity of the Western Ghats.
226. Japan launched the world's first freight-only Shinkansen, a modified high-speed bullet train capable of carrying cargo at speeds up to 275 kmph.
227. The IndiaSkills National Competition 2025-26 began in Greater Noida with over 650 skilled youth competing in 63 categories to represent India at WorldSkills 2026.
228. Jammu and Kashmir created history by winning its maiden Ranji Trophy title after nearly 70 years, with Prime Minister Narendra Modi praising the team in 'Mann Ki Baat'.

229. India successfully hosted the IONS Maritime Exercise (IMEX) TTX 2026 in Kochi on 27 March 2026, assuming the IONS Chairmanship for 2026-2028 after 16 years and focusing on maritime security challenges in the Indian Ocean Region.
230. A shigellosis outbreak has been reported in Kerala, raising concerns over the highly contagious bacterial infection spread through contaminated food and water.