2023:AHC:212021-FB

Chief Justice's Court

Case :- APPLICATION U/S 482 No. - 28574 of 2019
Applicant :- Chandrapal Singh
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Prashant Shukla, Rajrshi Gupta, Sudhanshu Kumar
Counsel for Opposite Party :- G.A.,Rohit Shukla,Shashi Kant Shukla

Hon'ble Pritinker Diwaker, Chief Justice
Hon'ble Ashwani Kumar Mishra,J.
Hon'ble Ajay Bhanot,J.

[Per: Hon'ble Ajay Bhanot,J.]

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

I	Facts, Applications and Submissions of learned counsels
II	Asian Resurfacing: **A** — Asian Resurfacing I,II,III&IV **:** Fazalullah Khan Vs M. Akbar Contractor **B** — Implementing Asian Resurfacing **:** Consequences and Complications
III	Fixation of time limits by courts to conclude criminal/judicial proceedings **:** Whether Asian Resurfacing (supra) runs contrary to the law laid down in A.R. Antulay and P. Ramachandra Rao ?
IV	Interim Orders : Grant, Alteration & Vacation
V	High Court: **A** — Pre-Constitution Phase to the Constitution **:** Articles 215, 226 & 227 **B** — Inherent Powers **C** — Basic Structure
VI	Supreme Court: **A** — Article 141: **I** — Article 141 & Asian Resurfacing **B** — Article 142: **II** — Article 142 & Asian Resurfacing **C** — High Court & Supreme Court: Relationship
VII	Article 132 & Substantial questions of law as to interpretation of the Constitution of India
VIII	Orders on Applications & grant of certificate for appeal to the Supreme Court

I. FACTS, APPLICATIONS AND SUBMISSIONS OF LEARNED COUNSELS

I(A). FACTS:

2. An interim order was granted by this Court on 25.07.2019 in favour of the applicant in application under Section 482 Cr.P.C No. 28574 of 2019 (Chandrapal Singh Vs State of U.P. and another) staying the criminal trial. The informant did not file a counter affidavit nor did he enter appearance through counsels in the aforesaid proceedings before this Court. The State Government too did not file a counter affidavit in the said case.

3. The matter was listed on several occasions but could not be taken up for hearing due to paucity of time and large docket size of the Court. The first informant moved the learned trial court on the footing that the stay order granted by this Court stood vacated by operation of the judgment of the Supreme Court in *Asian Resurfacing of Road Agency Private Limited and Another Vs Central Bureau of Investigation*[1]. The trial court commenced the criminal trial proceedings in compliance of the directions in *Asian Resurfacing (supra).* Non bailable warrants were issued against the applicant by the trial court, leading to his arrest. He was granted bail subsequently by this Court.

4. According to the applicant's counsel, the interim order in the applicant's favour was automatically vacated and the applicant suffered imprisonment for no

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1. 2018 (16) SCC 299

fault of his. The applicant now faces a vexatious prosecution.

5. The section 482 Cr.P.C. application as well as the bail application were later connected and heard together by a Single Judge Bench of which one of us (Ajay Bhanot, J.) was a member.

6. A number of counsels, and the Allahabad High Court Bar Association appeared before the Court and advanced various submissions. The intervention application of the Bar was allowed. The complications arising from the compliance of the directions in *Asian Resurfacing (supra),* were brought to the notice of the Court.

7. The Single Judge Bench framed the following questions for consideration:

> "(i) Whether the Single Judge of this Court or the High Court can consider and interpret the judgment of the Supreme Court rendered in Asian Resurfacing (supra)?
>
> (ii) Whether this issue is liable to be referred to a Full Bench, if yes, the relevant provisions and authorities of law?
>
> (iii) Whether the High Court can interpret the Asian Resurfacing (supra) and pass orders in regard to its implementation in the wake of Asian Resurfacing-IV(*sic.*) rendered on 25.04.2022?
>
> (iv) Whether the issue raises substantial questions relating to interpretation of Constitution of India?"

8. In view of the constitutional importance of the matter and the wide ranging consequences in the State of U.P. resulting from the directions in *Asian Resurfacing*

(supra), this Full Bench has been constituted to decide the controversy. Applications made by various parties before the Full Bench have been heard.

I(B). APPLICATIONS:

APPLICATION FILED BY HIGH COURT BAR ASSOCIATION, ALLAHABAD

9. The application filed on behalf of the High Court Bar Association, Allahabad has meticulously highlighted the widespread complications caused by the implementation of the directions issued in *Asian Resurfacing (supra)* in the State of U.P. The application on behalf of the Bar Association is filed by Shri Ashok Kumar Singh, its President and Sri Nitin Sharma, its Secretary. The application has been argued by Shri Nitin Sharma, learned counsel.

10. According to the applicant matters are often not taken up for hearing due to paucity of time in the Court. Parties whose conduct cannot be faulted suffer due to the automatic vacation of interim orders by operation of the directions in *Asian Resurfacing (supra).* Interim orders extended by the High Court citing paucity of time are being disregarded by the trial courts. Pursuant to the automatic vacation of stay orders criminal and civil proceedings are set on foot before the trial courts and tribunals alike and the parties suffer imprisonment and/or other civil and criminal consequences.

11. On earlier occasions the High Court Bar Association, Allahabad had filed applications before the

Registry of Allahabad High Court, drawing attention to the plight of the litigants and the learned counsels in these matters.

12. The illustrative cases cited in the application depict that the litigants virtually before all courts and tribunals, irrespective of jurisdictions or the nature of lis are being adversely impacted by the implementation of the directions in *Asian Resurfacing (supra).*

13. Some of the paragraphs of the application are being extracted in full to demonstrate the extent of the grievances of the litigants and the counsels alike:

> *"9. That the members of the Bar submitted that the automatic vacation of stay orders/interim relief leads to resumption of numerous litigations/trials which had been stayed by this Hon'ble Court through its respective orders after due application of judicial mind after expending precious judicial time. As a natural concomitant, this had engendered a novel branch of legal practice viz. 'stay-extension' wherein litigants face immense financial and mental strain for no fault of theirs.*
>
> *14. That the applicant HCBA would like to place on record the hardships being faced by the litigants due to automatic vacation of interim orders. The applicant humbly submits that the hardships have arisen not only due to direct application of the decision of Asian Resurfacing, but also due to its misinterpretation whereby all interim reliefs granted by the High Court are treated as vacated by the district courts. A few such instances are illustratively listed herein below:*
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> > *i. Proceedings instituted with patent lack of jurisdiction where the exclusive jurisdiction vests with specialized courts/tribunals viz. family court, commercial court, DRT, NCLT etc., stay granted by High Court got vacated, proceedings were resumed and culminated into a final*

decision. Final decision becomes a nullity due to inherent lack of jurisdiction but a lit of time & money is spent by both parties pursuing the lis.

ii. Proceedings of an eviction suit stayed on account of presence of arbitration clause in the tenancy agreement, stay got vacated and proceedings got resumed without jurisdiction and against the provisions of the contract between the parties. This renders the arbitration agreement between the parties otiose.

iii. Stay got vacated in a trademark suit, permitting the offending party to pass off the registered trademark freely while applications for stay extension are being decided.

iv. Second appeal admitted on substantial question of law can be exclusively decided by the Hon'ble High Court where the lower appellate court had passed decree for mandatory injunction ordering demolition, stay got vacated and execution proceeded resulting in demolition of the property. Thus, despite having his appeal admitted on a substantial question of law, the subject matter of suit get destroyed in execution of the decree frustrating the admission of second appeal, besides inhibiting development of jurisprudence on the admitted point of law.

v. Similarly, the litigants are also misusing the direction of the Hon'ble Supreme Court by not contesting the admitted appeals and after lapse of six months are creating third party rights or making irreversible changes to the suit property.

vi. Conditional stay granted in eviction cases, matrimonial cases etc. after paying considerable amount of arrears of rent/maintenance getting vacated after six months, execution proceedings resuming to the detriment of the party having showed its bona fide by complying with the directions of the Hon'ble High Court.

vii. Proceedings of a criminal case arising out of commercial/matrimonial dispute stayed after compromise

between the parties on payment of considerable amount for money. Stay gets vacated while the verification process is undergoing or balance amount is being paid, enabling the complainant to extort more money for closing the criminal case.

viii. Proceedings of criminal case stayed on account of refusal of court below to permit some essential evidence under S. 311 Cr.P.C, Trial proceeds without the same, hampering effective adjudication of the case, which eventually may equally prejudice both the accused and the complainant.

ix. Stay over proceedings of a criminal case got vacated after lapse of six months, the accused was unaware of the same and got arrested n compliance of NBW isued by the trial court. The bail application was heard by the Hon'ble High Court along with the quashing application. Both the applications were allowed and the proceedings were quashed. The applicant/accused remained in jail for more than a month in case which was eventually quashed by this Hon'ble Court.

x. Although the law doesn't permit, the parties to a divorce proceeding are misusing the direction of the Hon'ble Supreme Court. Where the appeal against divorce decree is pending adjudication and six months lapse after grant of stay order, the respondents are solemnising second marriage.

xi. Order refusing juvenility stayed by this Hon'ble Court which gets vacated due to lapse of six months, now a juvenile is made to face a regular trial without the especially delineated procedure prescribed for dealing with child in conflict with law.

xii. A frivolous case under Section 498-A IPC and Section 3/4 Dowry Prohibition Act. Even the Hon'ble Supreme Court has taken judicial notice of the growing tendency to falsely implicate all the family members including aged parents. The High Court may initially stay proceedings

against the parents till the next date of listing of the case. The stay gets vacated after 6-months exposing the aged parents to NBW and consequent arrest.

xiii. A landlord-tenant dispute where the order is stayed upon the condition of tenant depositing the entire decretal amount. However, with automatic vacation of such orders, the landlord's institute execution proceedings against the tenant resulting in their dispossession/eviction.

15. That a unique practical difficulty has arisen by the operation of the directives issued in the Asian Resurfacing Case. Thus, as an unintended result of the operation of Asian Resurfacing(supra), the interim orders get vacated exposing the litigants to Non-Bailable Warrants (in criminal cases) and eviction, dispossession, and demolition in civil cases without any fault of theirs. In fact, without any express change in circumstances, the litigant faces adverse consequences having detrimental effect on his fundamental rights.

20. That, therefore, without there being any laxity on the part of the litigant or his/her counsel or the Registry, the interim orders do not get extended within the time-frame of six months, thereby leading to their cessation in view of the directions made by the Hon'ble Court in Asian Resurfacing (supra).

24. That with respect to orders falling in Category (i) it is submitted that the Hon'ble Court grants interim relief intending it to last the lifetime of the petition. That natural interference which can be drawn is that this Hon'ble Court while entertaining the matter found it fit enough for its intervention to protect the interest of the litigant. However, in view of the order passed by the Hon'ble Supreme Court in Asian Resurfacing Case the respondent/ Opposite party in the petition now strategically avoids filing any stay vacation application/counter affidavit before the Hon'ble Court and does not even contest the petition on its merits. They simply wait for the period of 6-months to lapse whereupon proceedings before the courts below resume.

30. That it has been routinely observed that the opposite party simply awaits the expiry of six months whereafter the interim

relief granted by the Hon'ble Court becomes ineffective. This constrains the petitioner/applicant to move either a stay extension application or seek extension of interim relief by oral mentioning. As has been indicated above, owing to an overflowing docket of such stay extension cases, the interim relief does not get extended due to paucity of time. Thus, for no fault of his, and despite having a prima facie case on merits, a litigant is compelled to face proceedings before the courts below.

34. That however due to heavy docket of stay extension cases, on the subsequent date the matter may not get heard which would result in the vacation of the interim order. On some occasions the Hon'ble Court has been pleased to extend interim orders citing paucity of time. However, even these orders by which the interim order is extended citing paucity of time is not being acknowledged by the trial court. Thus, the decision of the Hon'ble Supreme Court has created an unintended consequence under which the courts below have been constrained to disregard the orders passed by the High Court.

35. That it is humbly submitted that once stay has been granted by this Hon'ble Court by means of a speaking order, it continues until the court holds otherwise by means of another speaking order. Therefore, a stay order extended due to paucity of time remains a speaking order unless this Hon'ble Court reflects otherwise by another order. Therefore, the term speaking order is being interpreted wrongly by the courts below resultin in an unsavoury situation where subordinate courts are sitting over judgment of this Hon'ble Court's orders.

44. That it is also noteworthy to state here that the existing situation is being exploited by respondents. They stand to gain an unenviable advantage without even contesting the case on merits. The applicant herein (HCBA) has no doubt in its mind that the Hon'ble Supreme Court clearly did not intend to reward such unscrupulous respondents.

46. That the operation of the decision of the Supreme Court is already resulting in large number of petitions being rendered infructuous. As more and more respondents decide against filing

counter affidavit, automatic vacation of interim orders results in virtual decision on the merits of the case.

49. That the HCBA faces situations regularly on working days where the members of the Bar approach and request for intervening in their matters and get their grievances redressed by the Registry of the Hon'ble High Court or before the Hon'ble Judge where the matter is listed or is on board but could not be taken up or considered which ultimately results in non-passing of any order on the stay extension application.

50. That the HCBA twice a week transmits hundreds of stay extension applications details to the registry requesting for posting of the stay extension application before the appropriate Hon'ble Court as early as possible. This exercise is also getting frustrated and the earnest requests are also not proving very fruitful because the applications are not being heard on time. Copies of such applications are being attached as Annexure No. 1 to this affidavit.

51. That in the meantime, either non-bailable warrants are issued or the litigant gets arrested and sent to judicial custody in criminal matters and in civil matters the litigants face eviction, dispossession and demolition or loss of a rightful claim. As such, the applicant is constrained to seek the following reliefs from the court. The applicant is cognisant of the fact that the directions of the Supreme Court must be obeyed at any cost. At the same time, the applicant holds an earnest belief that some relief would be given to the litigants and the lawyers alike."

14. Various prayers have been made by the High Court Bar Association, Allahabad in the application which is supported by an affidavit. The aforesaid prayers in effect seek clarifications of the directions issued by the Supreme Court in paras 34, 36, 37 in *Asian Resurfacing (supra).*

APPLICATION FILED IN APPLICATION U/S 482 Cr.P.C. No. 36085 OF 2019 (RAJU AGRAWAL VS STATE OF U.P. AND ANOTHER

15. An interim order was granted in favour of the applicant on 30.09.2019 in Criminal Misc. 482 Application No. 36085 of 2019 (Raju Agrawal Vs State of UP and another). By operation of *Asian Resurfacing (supra)* after lapse of the prescribed period of time the interim order was automatically vacated. Vacation of the interim order happened due to excessive work load before this Court, and failure of the Registry to list the matter and for no fault of the applicant. It is contended that devoid of interim protection the applicant faces a threat to his liberty, and his remedy before this Court will be rendered futile in case the application is not allowed.

16. The application in effect seeks modification/clarification of the directions issued by the Supreme Court in *Asian Resurfacing (supra).*

APPLICATION IN APPLICATION UNDER SECTION 482 Cr.P.C. No. 28574 OF 2019

17. The applicant in the instant case has also filed a similar application before us (Criminal Misc. Application No. 28574 of 2023 (Chandrapal Singh Vs State of U.P. and another) seeking modification of the directions in *Asian Resurfacing (supra).* In the absence of such modifications the applicant will continue to face the harassment of a frivolous criminal case.

I(C). <u>SUBMISSIONS OF LEARNED COUNSELS:</u>

18. Heard Shri Gaurav Mehrotra, learned counsel assisted by Shri Akbar Khan, learned counsel, Ms. Maria Fatima, learned counsel, Ms. Alina, learned counsel, Shri Swapnil Kumar, learned counsel, Shri Sushil Shukla, learned counsel, Shri Nitin Sharma, learned counsel, Shri Rahul Agarwal, learned counsel, Shri Imranullah, learned counsel, Shri Rajrshi Gupta, learned counsel, Shri Kunal Shah, learned counsel, Ms. Gunjan Jadwani, learned counsel, Shri Ram Kaushik, learned counsel and Shri Saurabh Pandey, learned counsel, Shri Vishnu Behari Tewari, learned counsel, Shri Tarun Agrawal, learned counsel, Shri Nadeem Murtaza, learned counsel has appeared through video conferencing from Lucknow. Shri Manish Goyal, learned Additional Advocate General assisted by Shri Rupak Chaubey, learned A.G.A.-I have appeared for the State of Uttar Pradesh. Ms. Anjali Goklani, learned counsel has also assisted the learned Additional Advocate General.

19. The following submissions were made by the learned counsels:

I. The directions of the Supreme Court contained in *Asian Resurfacing of Road Agency Private Limited and another v. Central Bureau of Investigation*[2] in Paras 34, 36, 37 do not constitute the ratio and are not binding precedent within the meaning of Article 141 of the Constitution of India.

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2 2018 (16) SCC 299

II. The directions rendered in *Asian Resurfacing (supra)* by a Division Bench consisting of three Hon'ble Judges have been made without consideration of the judgment rendered by a five Judge Bench of the Supreme Court in *Abdul Rehman Antulay v. R.S. Nayak*[3] and a seven Judge Bench judgment of the Supreme Court in *P. Ramachandra Rao v. State of Karnataka*[4]. Non consideration of the previous precedents in point render the said directions in *Asian Resurfacing (supra)* per incuriam and the same cease to be binding precedent.

III. The directions in Paras 34, 36 and 37 in *Asian Resurfacing (supra)* are contrary to the law expounded by the Supreme Court in *A. R. Antulay (supra)* and *P. Ramchandra Rao (supra)*. The High Court in a situation of conflict between two judgments is bound to follow the law laid down by a judgment of larger Bench strength.

IV. The Supreme Court in *DCIT Vs. Pepsi Foods Ltd.*[5] has read down the legislative provision (Section 254-A of the Income Tax Act) which was in the likeness to the directions in Paras 34, 36 and 37 in *Asian Resurfacing (supra)* in form, substance and effect. Section 254-A of the I.T. Act was found to be violative of Article 14 of the Constitution of India in *Pepsico (supra).*

V. The directions in Paras 34, 36, 37 of *Asian Resurfacing (supra)* amount to 'judicial legislation'.

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3 1992 (1) SCC 225
4 2002 (4) SCC 578
5 (2021) 7 SCC 413

They have to be interpreted consistently with Part III of the Constitution of India and the doctrine of proportionality.

VI. The powers under Articles 226 and 227 of the Constitution of India are part of the Basic Structure of the Constitution of India. The directions in *Asian Resurfacing (supra)* abridge the aforesaid powers and damage the Basic Structure of the Constitution.

VII. There is a disarray in the administration of justice in the State due to large scale vacation of stay orders upon lapse of time in compliance of *Asian Resurfacing (supra)* causing the imprisonment of many litigants for no fault of theirs. Similarly, a large number of litigants also face civil consequences despite diligently prosecuting their cases before this Court. In most cases the matters cannot be heard due to paucity of time and large docket size of the High Court. The High Court is liable to provide necessary clarifications in the matter as the litigants cannot be left remediless.

VIII. Orders extending interim protection passed by the High Court are being disregarded by the trial courts in many instances after the directions in *Asian Resurfacing (supra).*

IX. Lastly, it is submitted in the alternative that in case the High Court rejects their applications, prayers have been made for grant of certificate for appeal to the Supreme Court under Articles 132 read with Article

134-A of the Constitution contending that the directions in *Asian Resurfacing (supra)* raise substantial questions as to interpretation of the Constitution.

20. Shri Manish Goyal, learned Additional Advocate General has appeared on behalf of the State. Shri Manish Goyal, learned Additional Advocate General has contended that the State is committed to ensuring fair and equal justice to all citizens. The State cannot support a situation where the interim orders granted in favour of litigant are getting vacated without opportunity of hearing and for no fault of their. According to the learned Additional Advocate General the High Court cannot redress the grievances of the said litigants. However, the directions in Paras 34, 36, 37 of *Asian Resurfacing (supra)* raise substantial questions relating to interpretation of the Constitution which have to be framed and addressed promptly in view of the prevailing situation in the State. The learned Additional Advocate General has lastly reserved the right of the State to make applications in specific cases for expediting proceedings in the interest of justice and as per law.

21. Shri Vishnu Behari Tewari, learned counsel and Shri Tarun Agrawal, learned counsel to the contrary have contended that no substantial questions as to interpretation of the Constitution can arise as law laid down by the Supreme Court is final.

II A. Asian Resurfacing I,II,III &IV : Fazalullah Khan Vs M. Akbar Contractor

22. The Bench of three Hon'ble Judges of the Supreme Court in *Asian Resurfacing of Road Agency Private Limited and Another Vs Central Bureau of Investigation*[6] at the outset reproduced the order of the learned Bench of two Judges of the Supreme Court which defined the issue for consideration:

> "A.K. GOEL, J. (*for himself and Navin Sinha, J.; Nariman, J., concurring*)—These appeals have been put up before this Bench of three Judges in pursuance of the order of the Bench of two Judges dated 9-9-2013 [*Asian Resurfacing of Road Agency* v. *CBI*, Criminal Appeal No. 1375 of 2013, order dated 9-9-2013 (SC)] as follows:
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> "Leave granted. The learned counsel for the parties are agreed that there is considerable difference of opinion amongst different Benches of this Court as well as all the High Courts. Mr Ram Jethmalani, learned Senior Counsel appearing for the petitioner in criminal appeal arising out of Special Leave Petition (Criminal) No. 6470 of 2012 submits that the subsequent decisions rendered by the two-Judge Benches are per incuriam, and in conflict with the ratio of law laid down in the Constitution Bench decision in *Mohanlal Maganlal Thakkar* v. *State of Gujarat* [*Mohanlal Maganlal Thakkar* v. *State of Gujarat*, (1968) 2 SCR 685 : AIR 1968 SC 733 : 1968 Cri LJ 876] .
>
> In this view of the matter, we are of the opinion that it would be appropriate if the matters are referred to and heard by a larger Bench. Office is directed to place the matters before the Hon'ble the Chief Justice of India for appropriate orders.
>
> In the meantime, further proceedings before the trial court shall remain stayed."

23. The Supreme Court in *Asian Resurfacing (supra)* thereafter enlarged the scope of the issues under examination and considered a further question as to the approach adopted by the High Court in dealing with the challenge to the order framing charge:

> "2. **Since the question of law to be determined is identical in all cases, we have taken up for consideration this matter.** In the light of the answer to the referred question, this as well as all other

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6. 2018 (16) SCC 299

matters may be considered for disposal on merits by the appropriate Bench.

(emphasis supplied)

18**.** We have given due considerations to the rival submissions and perused the decisions of this Court. **Though the question referred relates to the issue whether order framing charges is an interlocutory order, we have considered further question as to the approach to be adopted by the High Court in dealing with the challenge to the order framing charge.** As already noted in para 11, the impugned order also considered the said question. The learned counsel for the parties have also addressed the Court on this question."

(emphasis supplied)

24. Following observations as regards delays in criminal trials and its "deleterious effect" on the administration of justice were made in *Asian Resurfacing (supra):*

"30. It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be an incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability. [*Siliguri Municipality* v. *Amalendu Das*, (1984) 2 SCC 436, para 4 : 1984 SCC (Tax) 133; *CCE* v. *Dunlop India Ltd.*, (1985) 1 SCC 260, para 5 : 1985 SCC (Tax) 75; *State (UT of Pondicherry)* v. *P.V. Suresh*, (1994) 2 SCC 70, para 15 and *State of W.B.* v. *Calcutta Hardware Stores*, (1986) 2 SCC 203, para 5]

31. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned, and concluded within two-three months."

25. Finally the Supreme Court in *Asian Resurfacing (supra)* extended the mandate of speedy justice to all civil and criminal cases, pending before all High Courts in which interim orders staying civil suits and criminal trials were granted and issued the following directions:

"34. If contrary to the above law, at the stage of charge, the High Court adopts the approach of weighing probabilities and reappreciating the material, it may be certainly a time-consuming exercise. The legislative policy of expeditious final disposal of the trial is thus, hampered. Thus, even while reiterating the view that

there is no bar to jurisdiction of the High Court to consider a challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction, exercise of such jurisdiction has to be limited to the rarest of rare cases. Even if a challenge to order framing charge is entertained, decision of such a petition should not be delayed. Though no mandatory time-limit can be fixed, normally it should not exceed two-three months. If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. **Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.**

(emphasis supplied)

36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. **In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.**

(emphasis supplied)

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained

> and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. **Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced."**
>
> (emphasis supplied)

26. It needs to be mentioned that *Asian Resurfacing (supra)* decided the issue as regards nature of order of framing of the charge and remedies against it by holding thus:

> "Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered."

27. The issue of compliance of the directions (paras 34, 36, 37) in *Asian Resurfacing (supra) arose in Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation*[7], (hereinafter referred to as "*Asian Resurfacing-II*"), wherein the aforesaid directions were emphatically reiterated:

> "1. Having heard Mr Dilip Annasaheb Taur, learned counsel for the applicant and Mr S.V. Raju, learned ASG for the respondent, we are constrained to point out that in our directions contained in the judgment delivered in *Asian Resurfacing of Road Agency (P) Ltd.* v. *CBI* [*Asian Resurfacing of Road Agency (P) Ltd.* v. *CBI*, (2018) 16 SCC 299 : (2020) 1 SCC (Cri) 686] and, in particular, para 35, it is stated thus : (SCC p. 324)

7. 2022 (10) SCC 592

> "*35*. … In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."
> 2. The learned Additional Chief Judicial Magistrate, Pune, by his order dated 4-12-2019, has instead of following our judgment in letter as well as spirit, stated that the complainant should move an application before the High Court to resume the trial. The Magistrate goes on to say:"The lower court cannot pass any order which has been stayed by the Hon'ble High Court, Bombay with due respect of ratio of the judgment in *Asian Resurfacing of Road Agency (P) Ltd.* [*Asian Resurfacing of Road Agency (P) Ltd.* v. *CBI*, (2018) 16 SCC 299 : (2020) 1 SCC (Cri) 686]". **We must remind the Magistrates all over the country that in our pyramidical structure under the Constitution of India, the Supreme Court is at the apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially. This kind of orders fly in the face of para 36 of our judgment.**
>
> (emphasis supplied)
>
> 3**. We expect that the Magistrates all over the country will follow our order in letter and spirit. Whatever stay has been granted by any court including the High Court *automatically* expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same.**
>
> (emphasis supplied)
>
> 4. With this observation, the order dated 4-12-2019 is set aside with a direction to the learned Additional Chief Judicial Magistrate, Pune to set down the case for hearing immediately."

28. Similarly the need to comply the said directions was restated in *Asian Resurfacing of Road Agency Private Limited Vs. Central Bureau of Investigation*[8] *(hereinafter referred to as the Asian Resurfacing-III)*.

29. In Misc. Application No. 1577 of 2020 in Criminal Appeals Nos. 1375-1376 of 2013 seeking clarification of in *Asian Resurfacing (supra)* the following order was passed on 25.04.2022[9]:

> "In the application for clarification, we pass the following order:
>
> The applicant seeks clarification that the order passed by this Court in Asian Resurfacing of Road Agency Private Limited and Another

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8 Misc. Application No. 706 of 2022
9 The order dated 25.04.2022 shall be referred to as Asian Resurfacing-IV

v. Central Bureau of Investigation (2018) 16 SCC 299 would apply to the facts of the applicant's case. It must be noted that the applicant is writ petitioner before the High Court. Learned Single Judge has disposed of the writ petition. The said judgment is challenged before the Division Bench in a Letter Patent Appeal. In the LPA, an interim order was passed granting 1 MA No. 706/2022 in MA 1577/2020 in Crl.A. No. 1375-1376/2013 stay on 06.02.2015:

> "One of the contention raised is that the respondent-Engineering College remained functional for hardly 2-3 years and is lying closed since the year 2013 and all the students who were admitted in that college have been migrated to other recognized Engineering Colleges.
>
> Let notice of motion be issued to respondent No. 1 only for 21.05.2015.
>
> Meanwhile, operation of the order passed by the learned Single Judge shall remain stayed.

Relying upon the judgment in Asian Resurfacing of Road Agency Private Limited and Another (supra), a clarification is sought that in the fact situation projected by the applicant, the principle enunciated by this Court will apply. We must notice that the direction issued in Asian Resurfacing of Road Agency Private Limited and Another (supra) arose out of the factual and legal matrix present therein. The case revolved around the questions arising out of the pendency of civil and criminal cases, i.e., of trial being halted and the tendency towards procrastination on the strength of the orders of stay granted. The result was that cases were not being taken to their logical conclusion with the speed with which they should have been done. We may notice the following :

> "36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this 2 MA No. 706/2022 in MA 1577/2020 in Crl.A. No. 1375-1376/2013 situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."

We are afraid that the attempt of the applicant to draw inspiration from the above directions as referred to above cannot succeed in view that this Court cannot be understood as having intended to apply the principle to the fact situation which is presented in this case. Accordingly, the miscellaneous application for clarification is

> disposed of by clarifying that the order of stay granted by the Division Bench in the High Court cannot be treated as having no force. However, we leave it open to the applicant to seek early disposal of the case."

30. The aforesaid order does not have any bearing on the proceedings before this Court inasmuch as the proceedings in the clarification application arose out of a judgment rendered by a Single Judge disposing of a writ petition which was assailed before a Division Bench in letters patent appeal.

31. Lastly it is noteworthy that the Supreme Court in *Fazalullah Khan Vs M. Akbar Contractor (D) by Lrs. And others*[10] clarified that the directions issued in *Asian Resurfacing (supra)* shall not be applicable to similar proceedings pending before the Supreme Court. The relevant part of the judgment is extracted hereunder:

> "5. We are constrained to pen down a more detailed order as the judgment of this Court in Asian Resurfacing of Road Agency's case (supra) is sought to be relied upon by difference courts even in respect of interim orders granted by this Court where the period of 6 months has expired. Such a course of action is not permissible and if the interim order granted by this Court is not vacated and continues beyond a period of 6 months by reason of pendency of the appeal, it cannot be said that the interim order would automatically stand vacated.
>
> 6. Thus, the interim order granted by this Court on 20th March, 2009 must continue to be in force till the appeal is decided.
>
> 7. The aforesaid observation made by us should be kept in mind by both the trial Court and the High Court while dealing with this aspect.
>
> 8. The application accordingly stands disposed of."

IIB. Implementation of Asian Resurfacing(supra) : Consequences & Complications

32. The details provided by the Registry of Allahabad High Court, reproduced hereinafter, clearly disclose that strict adherence to the timeline of six months prescribed

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10. 2019 SCC Online SC 1513

in paras 34, 36, 37 of *Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation*[11] is practically unfeasible. The report submitted by the Registry in this regard is extracted hereinunder:

> "The average daily docket size of the respective Benches of this Hon'ble Court in the following determinations for the past two years:
>
> | **Sr. No.** | **Determination** | **Total cases listed before each Hon'ble Court on a daily basis** |
> |---|---|---|
> | **1.** | Article 227 | 150 |
> | **2.** | Article 226 (Criminal Writs) | 207 |
> | **3.** | Section 482 Cr.P.C. | 215 |
> | **4.** | Criminal Revision | 186 |
> | **5.** | F.A.F.O. | 129 |
> | **6.** | Second Appeal | 50 |
>
> There are multiple Benches taking up/hearing aforementioned determinations."

33. Large docket sizes which include fresh and listed cases, the need to give fair hearing and render speaking orders as well as other requirements of fairness in judicial proceedings, limitations of time, infrastructure availability and other relevant factors determine the capacity of the High Court to decide cases in any given time frame. The facts and figures on the relevant parameters presented by the Allahabad High Court Registry and other germane criteria regarding the capacity of the High Court to decide cases in the time frame stipulated in *Asian Resurfacing (supra)* have been examined by this Bench.

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11 2018 (16) SCC 299 (Pr. 34,36,37)

34. The High Court has granted interim orders staying criminal trials or civil suits while exercising powers under different nomenclatures namely Article 226, Article 227, Section 482 Cr.P.C. and even under revisional jurisdictions. Upon consideration of the said relevant factors and available figures we conclude that it is practically unfeasible for this Court to decide all civil and criminal cases in which interim orders staying trials/suits have been granted, or to extend the interim orders after returning the findings within the prescribed period of six months and in the manner stipulated in the directions contained in paras 34, 36, 37 of *Asian Resurfacing (supra).* On many occasions all listed matters are not taken up or heard on merits due to paucity of time before the court. Further, listing of matters is restricted owing to the size of the docket.

35. Consequently interim orders so granted by the High Court are automatically vacated after lapse of six months in most of the said category of cases by operation of directions in *Asian Resurfacing (supra)*. The criminal trials and civil suits and proceedings before tribunals which were stayed by High Court are ipso facto set in motion in compliance of *Asian Resurfacing (supra)*. Interim protection granted by the High Court is thus being withdrawn on a large scale without any fault of the parties which are adversely affected. Thus devoid of protection of the interim orders vast numbers of litigants suffer arrest and imprisonment

or face vexatious litigation or are visited by civil consequences.

36. The opposite parties adopt unscrupulous tactics. They fail to enter appearance before the court or do not file counter affidavits. The opposite parties avoid adjudication on merits, and simply wait out the period of six months for the interim orders to be vacated automatically. There is a de-facto termination of proceedings without adjudication of substantive rights by this Court after the stay orders are vacated and the parties suffer the consequences.

37. The compliance of the directions in *Asian Resurfacing (supra)* by the courts in Uttar Pradesh has spawned multiplicity of litigation and duplication of efforts. The parties whose interim orders have been vacated and face imminent threat of arrest file fresh petitions on the same cause of action.

38. It is also urged that there is a large scale explosion of the dockets on account of increase in the stay extension applications, as well as fresh petitions under Section 482 Cr.P.C., Article 227 petition etc. which is also putting pressure on the time of the court. Besides in many instances, contempt proceedings have been drawn against judicial officers who have disobeyed the stay extension orders passed by this Court on the footing that the said orders are in the teeth of *Asian Resurfacing (supra)* and *Asian Resurfacing II (supra)* and *Asian Resurfacing III(supra).*

39. The learned members of the Bar contended that there are numerous instances of miscarriages of justice in the State by the implementation of the directions in paras 34, 36, 37 of *Asian Resurfacing (supra)*. Few of such cases cited at the Bar are being referenced by way of exemplars.

40. The facts in Application U/s 482 No. 2856 of 2021 (Smt. Lalita Chauhan and 2 others Vs State of U.P. and another) are these. The three applicants namely Smt. Lalita Chauhan, Vishakha Chauhan, Yogendra Chauhan had assailed the criminal proceedings registered against them as Criminal Case No. 13789 of 2019 (arising out of Case Crime No. 459 of 2018) under Section 420 I.P.C., by instituting the above mentioned application under Section 482 Cr.P.C. contending that the proceedings were an abuse of the process of law. Finding prima facie substance in such contention an interim order was granted by this Court on 10.02.2021 staying the criminal trial proceedings. The informant did not appear before this Court despite notices, and no counter affidavit was filed by the State Government either. The matter was listed several times. However it could not be taken up for hearing due to paucity of time with the court and large docket size. The applicants also filed a stay extension application. No order could be passed on the stay extension application by this Court for the same reasons. In the meantime the interim order granted by this Court was vacated automatically by operation of the directions in *Asian Resurfacing*

(supra). Trial proceedings commenced. The trial court took out coercive measures by issuing non-bailable warrants leading to the arrest of applicant no. 2. The applicant no. 2 Ms. Vishakha Chauhan was a bright student who had been offered admission in Niagara College, Toronto, Canada. According to Sri Sushil Shukla, learned counsel the imprisonment cast an indelible stigma on her. It is noteworthy that the said application U/s 482 was finally allowed by this Court vide judgment dated 18.10.2022, and the criminal proceedings against the applicants including Ms. Vishakha Chauhan were quashed.

41. Another instance cited at the bar arose out of a civil suit registered as S.C.C. Suit No. 20 of 2005. The judgment and decree dated 31.10.2013 rendered by the learned trial court in the SCC Suit No. 20 of 2005 and the judgment of the revising court handed down in SCC Revision No. 11 of 2014 on 10.10.2019 were assailed in Matters Under Article 227 No. 134 of 2020 (Late Mohammad Yunus Qureshi (Deceased) and 8 others Vs Mohammad Yunus Qureshi) by the applicant before this Court. An interim order was passed by this Court directing stay of the judgments and decrees dated 31.10.2013 and 10.10.2019 passed by the trial and revisional courts respectively.

42. The matter could not be taken up for hearing on many occasions due to paucity of time and large docket size. The interim order was vacated in view of *Asian Resurfacing (supra)* for no fault of the applicant. The

court below commenced execution proceedings after recording that the same is in compliance of the directions of the Supreme Court in *Asian Resurfacing (supra)*.

43. In the aforesaid case, the judgment debtor was dispossessed on orders of the learned court below despite the interim order granted by this Court. Subsequently contempt proceedings were registered against the judicial officer by registering Civil Contempt Application No. 5178 of 2022 (Late Mohammad Yunus Qureshi and 8 others Vs Lovely Jaiswal, Civil Judge (Senior Division) First, Hapur and another) for violating the orders passed by this Court.

44. It has been contended that the judgment of this Court in *Dharam Vir Sood Vs Savitri Devi and others*[12], has distinguished the directions in *Asian Resurfacing (supra)* and held that the same are not applicable to execution proceedings. However, the trial courts are disregarding the judgment of this Court in *Dharam Vir Sood (supra)* in view of the directions of the Supreme Court in *Asian Resurfacing-II and III.*

45. Trial courts have also declined to comply with stay extension orders passed by the High Court on the footing that they are not consistent with *Asian Resurfacing (supra).* Consequently contempt proceedings have also been instituted against the judicial officers. One such instance is Contempt

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12. 2019 SCC Online All 6990

Application No. 6688 of 2019 *(Satpal Singh and 2 others Vs Piyush Verma, Civil Judge (J.D.) and another)*. Relevant parts of the order of this Court dated 14.12.2018 are extracted below:

> **"<u>The applicant/plaintiffs filed the stay order before the trial court, but, the trial court vide order dated 26.11.2018 relying upon the decision of the Supreme Court rendered in Asian Resurfacing of Road Agency v. Central Bureau of Investigation, 2018 (Suppl) ADJ 209, declined to stay the suit proceedings for the reason that the order passed by this Court extending the interim order is not a speaking order in terms of Asian Resurfacing (supra). In the opinion of the trial court the interim order passed by this Court staying the suit proceedings stands vacated</u>**, consequently, the trial court by order dated 26.11.2018 has posted the suit for evidence.
>
> Learned counsel for the applicant submits that it is not open for the trial court to bypass the order/direction of this Court or decline to obey the order staying the proceedings of the trial court. The conduct of the judicial officer tantamounts to judicial impropriety and contempt of court. This Court while extending the interim order noted that the matter arising out of original suit proceeding was not cognizable by the Bench, consequently, the interim order was extended till the next date of listing which is sufficient reason.
>
> Learned counsel appearing for the High Court submits that it is not open for the subordinate court to disobey any order or direction passed by this Court even if in the opinion of the trial court such an order is a non-speaking order. The plea that the order is not a speaking order would not be a ground to defy the order of the superior court. If such a situation is permitted to prevail, the judicial officers on the pretext of the Supreme Court judgment would ignore and bypass the High Court. Such a situation would lead to judicial choas and indiscipline, and the litigant would loose faith in the administration of justice.
>
> The mandate in Asian Resurfacing (supra) is binding on the Courts. **<u>This Court has been extending the interim orders due to paucity of time. The order is a non-speaking order but in any case it is an order of this Court which binds the court below. Non compliance of the order of the High Court for whatever reason does not augment well with the litigant and embarrasses the superior Court in the administration of justice. The situation needs to be remedied.</u>**"
>
> (emphasis supplied)

46. However, the High Court cannot remedy the situation prevailing in the trial courts in view of the directions in *Asian Resurfacing (supra)* which were also emphatically reiterated in *Asian Resurfacing-II & III(supra).* Though it needs to be clarified unequivocally

that this Court is complying with the directions in paras 34, 36, 37 in *Asian Resurfacing (supra)* in letter and spirit. Pursuant to the said directions of the Supreme Court, the Registry of Allahabad High Court vide circular dated 26.04.2018 has directed all trial courts to follow the said judgment of the Supreme Court scrupulously.

47. Implementation of the directions in paras 34, 36, and 37 of *Asian Resurfacing (supra)* has raised several complications. It is not an exaggeration to say that the Allahabad High Court faces a challenge of epic scale. The status of the High Court as a Constitutional Court founded to achieve the preambled resolve of securing justice to all citizens and to uphold the laws and liberties is being called in question on a daily basis. The superintending jurisdiction of the High Court over the trial courts and tribunals is being undermined regularly. The administration of justice in the State has been severely impaired. This is the unvarnished truth of the matter. We say with responsibility and not in rhetoric that the Allahabad High Court faces a constitutional crisis.

48. The problem of arrears is among the most critical challenges being faced not only by Allahabad High Court but the judiciary in the country. This Court is conscious of the pressing need to decide cases expeditiously. To this end, the Court has bent all its energies and has spared no efforts. The problem of arrears is also being examined and addressed by this

Court on the administrative side by a committee of seven Judges constituted exclusively for this task. However in view of both the magnitude and complexity of the problem no easy solutions are in sight. Unremitting endeavours, constant institutional thought and concerted action of all stakeholders would ultimately pave the way for a solution.

III. Fixation of time limits by courts to conclude criminal/judicial proceedings: Whether Asian Resurfacing (supra) runs contrary to the law laid down in A. R. Antulay(supra) and P. Ramachandra Rao(supra)?

49. After acknowledging the mandate for speedy trials emanating both from constitutional guarantees and provisions of Code of Criminal Procedure the Supreme Court in *A. R. Antulay (supra)* reflected upon various complex and inter related causes for delays in trials:

> "82.The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains unpleasant as it is, that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.
>
> 83. But then speedy trial or other expressions conveying the said concept — are necessarily relative in nature. One may ask — speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. For example, take the very case in which Ranjan Dwivedi (petitioner in Writ Petition No. 268 of 1987) is the accused. 151 witnesses have been examined by the prosecution over a period of five years. Examination of some of the witnesses runs into more than 100 typed pages each. The oral evidence adduced by the prosecution so far runs into, we are told,

> 4000 pages. Even though, it was proposed to go on with the case five days of a week and week after week, it was not possible for various reasons viz., non-availability of the counsel, non-availability of accused, interlocutory proceedings and other systemic delays. A murder case may be a simple one involving say a dozen witnesses which can be concluded in a week while another case may involve a large number of witnesses, and may take several weeks. Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the workload in each court, district, region and State varies. This fact is too well known to merit illustration at our hands. In many places, requisite number of courts are not available. In some places, frequent strikes by members of the bar interferes with the work schedules. In short, it is not possible in the very nature of things and present day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go. Even in the USA, the Supreme Court has refused to draw such a line. Except for the Patna Full Bench decision under appeal, no other decision of any High Court in this country taking such a view has been brought to our notice. Nor, to our knowledge, in United Kingdom. Wherever a complaint of infringement of right to speedy trial is made the court has to consider all the circumstances of the case including those mentioned above and arrive at a decision whether in fact the proceedings have been pending for an unjustifiably long period. In many cases, the accused may himself have been responsible for the delay. In such cases, he cannot be allowed to take advantage of his own wrong. In some cases, delays may occur for which neither the prosecution nor the accused can be blamed but the system itself. Such delays too cannot be treated as unjustifiable — broadly speaking. Of course, if it is a minor offence — not being an economic offence — and the delay is too long, not caused by the accused, different considerations may arise. Each case must be left to be decided on its own facts having regard to the principles enunciated hereinafter. For all the above reasons, we are of the opinion that it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory."

50. Thereafter the Supreme Court in *A. R. Antulay (supra)* clearly set its face against the fixing of outer time limits for trial of offences as a solution for such delays. *A. R. Antulay (supra)* cautioned against frivolous litigation, but also made a categorical pronouncement that proceedings taken out by either

party to vindicate their rights and interests, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay by holding thus:

> "86. (4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? **Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.**
>
> (emphasis supplied)
>
> (5) **While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays.** It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.
>
> (emphasis supplied)
>
> (10) **It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one.** Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. **The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial**."
>
> (emphasis supplied)

51. It is equally noteworthy that despite the aforesaid holdings in *A. R. Antulay (supra)*, directions were issued by the Supreme Court in subsequent cases prescribing limitation for concluding trials and other criminal proceedings.

52. In *Common Cause Vs Union of India-I*[13], *Common Cause Vs Union of India-II*[14], *Raj Deo Sharma Vs State of Bihar-I*[15], *Raj Deo Sharma Vs State of Bihar-II*[16], strict time limits to conclude trials and other criminal proceedings were prescribed by the Supreme Court.

53. One such case depicts the anomalies which arose from the aforesaid directions and was quoted in *P. Ramachandra Rao (supra):*

> "2. In Criminal Appeal No. 535 of 2000, the appellant was working as an Electrical Superintendent in Mangalore City Corporation. For the check period 1-5-1961 to 25-8-1987, he was found to have amassed assets disproportionate to his known sources of income. Charge-sheet accusing him of offences under Section 13(1)(*e*) read with Section 13(2) of the Prevention of Corruption Act, 1988 was filed on 15-3-1994. The accused appeared before the Special Court and was enlarged on bail on 6-6-1994. **Charges were framed on 10-8-1994 and the case proceeded for trial on 8-11-1994. However, the trial did not commence. On 23-2-1999, the learned Special Judge who was seized of the trial directed the accused to be acquitted as the trial had not commenced till then and the period of two years had elapsed which obliged him to acquit the accused in terms of the directions of this Court in *Raj Deo Sharma* v. *State of Bihar* [(1998) 7 SCC 507**: 1998 SCC (Cri) 1692] [hereinafter *Raj Deo Sharma (I)*]."
>
> (emphasis supplied)

54. Complications resulting from the aforesaid directions were squarely brought to the notice of the Supreme Court. When the said appeals came up for hearing the Supreme Court found that apart from the

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13 1996 (4) SCC 33
14 1996 (6) SCC 775
15 1998 (7) SCC 507
16 1999 (7) SCC 604

merits, questions in the said appeals which would have relevance in many more to follow.

55. In this view of the matter a Bench of three Judges of the Supreme Court in *P. Ramachandra Rao Vs State of Karnataka*[17], passed the following order on 19.09.2000:

> "3. The appeals came up for hearing before a Bench of three learned Judges who noticed the common ground that the appeals in the High Court were allowed by the learned Judge thereat without issuing notice to the accused and upon this ground alone, of want of notice, the appeals hereat could be allowed and the appeals before the High Court restored to file for fresh disposal after notice to the accused but it was felt that a question arose in these appeals which was likely to arise in many more and therefore the appeals should be heard on their merits. In the order dated 19-9-2000 [*P. Ramachandra Rao* v. *State of Karnataka*, (2002) 4 SCC 607] , the Bench of three learned Judges stated:
>
> > "The question is whether the earlier judgments of this Court, principally, in '*Common Cause*' *A Registered Society* v. *Union of India* [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , '*Common Cause*' *A Registered Society* v. *Union of India* [(1996) 6 SCC 775 : 1997 SCC (Cri) 42] , *Raj Deo Sharma* v. *State of Bihar* [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and *Raj Deo Sharma (II)* v. *State of Bihar* [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] would apply to prosecutions under the Prevention of Corruption Act and other economic offences.
> >
> > Having perused the judgments aforementioned, we are of the view that these appeals should be heard by a Constitution Bench. We take this view because we think that it may be necessary to synthesise the various guidelines and directions issued in these judgments. We are also of the view that a Constitution Bench should consider whether time-limits of the nature mentioned in some of these judgments can, under the law, be laid down."

56. The Constitution Bench so constituted heard the appeals. During the hearing an issue clearly arose that the directions made in Common Cause I & II and Raj Deo Sharma I & II ran counter to the Constitution Bench in *A. R. Antulay (supra).* In the opinion of the Constitution Bench the appeals were liable to be heard

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17. 2002 (4) SCC 578

by a Bench of seven Hon'ble Judges. The relevant part of the order is extracted below:

> "4. On 25-4-2001 [*P. Ramachandra Rao* v. *State of Karnataka*, (2001) 4 Scale 226(2)] , the appeals were heard by the Constitution Bench and during the course of hearing, attention of the Constitution Bench was invited to the decision of an earlier Constitution Bench in *Abdul Rehman Antulay* v. *R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and the four judgments referred to in the order of reference dated 19-9-2000 by the Bench of three learned Judges. It appears that the learned Judges of the Constitution Bench were of the opinion that the directions made in the two *Common Cause cases* and the two *Raj Deo Sharma cases* ran counter to the Constitution Bench directions in *Abdul Rehman Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] the latter being a five-Judge Bench decision, the appeals deserved to be heard by a Bench of seven learned Judges. The relevant part of the order dated 25-4-2001 [*P. Ramachandra Rao* v. *State of Karnataka*, (2001) 4 Scale 226(2)] reads as under:
>
> **"The Constitution Bench judgment in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] holds that 'it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings'. Even so, the four judgments aforementioned lay down such time-limits. Two of them also lay down to which class of criminal proceedings such time-limits should apply and to which class they should not.**
>
> We think, in these circumstances, that a Bench of seven learned Judges should consider whether the dictum aforementioned in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] still holds the field; if not, whether the general directions of the kind given in these judgments are permissible in law and should be upheld.
>
> Having regard to what is to be considered by the Bench of seven learned Judges, notice shall issue to the Attorney-General and to the Advocates-General of the States.
>
> The papers shall be placed before the Hon'ble the Chief Justice for appropriate directions. Having regard to the importance of the matter, the Bench may be constituted at an early date."
>
> (emphasis supplied)

57. The seven Judges Constitution Bench in *P. Ramachandra Rao (supra)* began its consideration in the backdrop of various landmark judgments including *Hussainara Khatoon (I) Vs Home Secretary State of*

Bihar[18], *Maneka Gandhi Vs Union of India*[19] *& A. R. Antulay (supra)*:

> "8. The width of vision cast on Article 21, so as to perceive its broad sweep and content, by the seven-Judge Bench of this Court in *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248] inspired a declaration of law, made on 12-2-1979 in *Hussainara Khatoon (I)* v. *Home Secy., State of Bihar* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. The Court said (SCC p. 89, para 5)—
>
> "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."
>
> Many accused persons tormented by unduly lengthy trial or criminal proceedings, in any forum whatsoever were enabled, by *Hussainara Khatoon (I)* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] statement of law, in successfully maintaining petitions for quashing of charges, criminal proceedings and/or conviction, on making out a case of violation of Article 21 of the Constitution. Right to speedy trial and fair procedure has passed through several milestones on the path of constitutional jurisprudence. In *Maneka Gandhi* [(1978) 1 SCC 248] this Court held that the several fundamental rights guaranteed by Part III required to be read as components of one integral whole and not as separate channels. The reasonableness of law and procedure, to withstand the test of Articles 21, 19 and 14, must be right and just and fair and not arbitrary, fanciful or oppressive, meaning thereby that speedy trial must be reasonably expeditious trial as an integral and essential part of the fundamental right of life and liberty under Article 21. Several cases marking the trend and development of law applying *Maneka Gandhi* [(1978) 1 SCC 248] and *Hussainara Khatoon (I)* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] principles to myriad situations came up for the consideration of this Court by a Constitution Bench in *Abdul Rehman Antulay* v. *R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] (*A.R. Antulay* for short). The proponents of right to speedy trial strongly urged before this Court for taking one step forward in the direction and prescribing time-limits beyond which no criminal proceeding should be allowed to go on, advocating that unless this was done, *Maneka Gandhi* [(1978) 1 SCC 248] and *Hussainara Khatoon (I)* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] exposition of Article 21 would remain a mere illusion and a platitude. Invoking of the constitutional jurisdiction of this Court so as to judicially forge two termini and lay down periods of limitation applicable like a

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18. 1980 (1) SCC 81
19. 1978 (1) SCC 248

> mathematical formula, beyond which a trial or criminal proceeding shall not proceed, was resisted by the opponents submitting that the right to speedy trial was an amorphous one, something less than other fundamental rights guaranteed by the Constitution. The submissions made by proponents included that the right to speedy trial flowing from Article 21 to be meaningful, enforceable and effective ought to be accompanied by an outer limit beyond which continuance of the proceedings will be violative of Article 21. It was submitted that Section 468 of the Code of Criminal Procedure applied only to minor offences but the court should extend the same principle to major offences as well. It was also urged that a period of 10 years calculated from the date of registration of crime should be placed as an outer limit wherein shall be counted the time taken by the investigation."

58. *P. Ramachandra Rao (supra)* after considering the impact of the time lines to conclude trials laid down in *Common Cause (I) (II) (supra)* and *Raj Deo Sharma (I) (II) (supra)* noticed the dissenting judgment of M.B. Shah, J. at length which was rendered in *Raj Deo Sharma-I (supra):*

> "17. M.B. Shah, J. in his dissenting judgment noted the most usual causes for delay in delivery of criminal justice as discernible from several reported cases travelling up to this Court and held that the remedy for the causes of delay in disposal of criminal cases lies in effective steps being taken by the judiciary, the legislature and the State Governments, all the three. The dangers behind constructing time-limit barriers by judicial dictum beyond which a criminal trial or proceedings could not proceed, in the opinion of M.B. Shah, J., are (*i*) it would affect the smooth functioning of the society in accordance with law and finally the Constitution. The victims left without any remedy would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the society would also feel unsafe and insecure and their confidence in the judicial system would be shaken. Law would lose its deterrent effect on criminals; (*ii*) with the present strength of Judges and infrastructure available with criminal courts it would be almost impossible for the available criminal courts to dispose of the cases within the prescribed time-limit; (*iii*) prescribing such time-limits may run counter to the law specifically laid down by the Constitution Bench in *Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . In the fore-quoted thinking of M.B. Shah, J., we hear the echo of what the Constitution Bench spoke in *Kartar Singh* v. *State of Punjab* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] vide SCC p. 707, para 351:
>
> "*351*. No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not

> only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution."

59. The concept of "judicial legislation" was discussed in *P. Ramachandra Rao (supra)* in the context of cases where the courts prescribe various periods of limitation by stating:

> "22. **Legislation is that source of law which consists in the declaration of legal rules by a competent authority. When Judges by judicial decisions lay down a new principle of general application of the nature specifically reserved for the legislature they may be said to have legislated, and not merely declared the law.** *Salmond on Principles of Jurisprudence* (12th Edn.) goes on to say—
>
> > "we must distinguish law-making by legislators from law-making by the courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator." (page 115).
>
> (emphasis supplied)
>
> It is not difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law — the field exclusively reserved for the legislature. **We are concerned here to determine whether in prescribing various periods of limitation, adverted to above, the Court transgressed the limit of judicial legislation.**
>
> (emphasis supplied)
>
> 24. In a monograph "*Judicial Activism and Constitutional Democracy in India*", commended by Professor Sir William Wade, Q.C. as a "small book devoted to a big subject", the learned author, while recording appreciation of judicial activism, sounds a note of caution—
>
> > "it is plain that the judiciary is the least competent to function as a legislative or the administrative agency. For one thing, courts lack the facilities to gather detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge or research it is bound to be selective and subjective. Courts also have no means for effectively supervising and implementing the aftermath of their orders, schemes and mandates. Moreover, since courts

> mandate for isolated cases, their decrees make no allowance for the differing and varying situations which administrators will encounter in applying the mandates to other cases. Courts have also no method to reverse their orders if they are found unworkable or requiring modification".

Highlighting the difficulties which the courts are likely to encounter if embarking in the fields of legislation or administration, the learned author advises

"the Supreme Court could have well left the decision-making to the other branches of government after directing their attention to the problems rather than itself entering the remedial field".

60. The seven Judges Constitution Bench of the Supreme Court in *P. Ramachandra Rao (supra)* was conscious of the menace of delays in our legal system, but acknowledged the "greater problems" caused by judicial directives creating bars of limitation as a solution to the said problem by holding as follows:

> "23. **Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons we hold such bars of limitation uncalled for and impermissible : first, because it tantamounts to impermissible legislation — an activity beyond the power which the Constitution confers on the judiciary, and secondly, because such bars of limitation fly in the face of law laid down by the Constitution Bench in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and, therefore, run counter to the doctrine of precedents and their binding efficacy.**
>
> (emphasis supplied)
>
> 27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate

> directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973."

61. Before issuing directions the Supreme Court in *P. Ramachandra Rao (supra)* reiterated the principle of law of precedents which contemplates that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and that the bar of limitation enacted in *Common Cause (I) & (II) (supra)* and *Raj Deo Sharma (I) & II (supra)* cannot be sustained after noticing that *A.R. Antulay (supra)* had declined the plea to lay down time limits beyond which a criminal proceeding or trial could not proceed:

> "28. **The other reason why the bars of limitation enacted in *Common Cause* *(I)*** [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , *Common Cause (II)* [(1996) 6 SCC 775 : 1997 SCC (Cri) 42] and *Raj Deo Sharma (I)* [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and *Raj Deo Sharma (II)* [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] **cannot be sustained is that these decisions, though two-or three-Judge Bench decisions, run counter to that extent to the dictum of the Constitution Bench in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well-settled principle of precedents which has crystallised into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom. We have in the earlier part of this judgment extracted and reproduced passages from *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceeding or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of offences.** Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an

> individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in *A.R. Antulay* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] ."
>
> (emphasis supplied)

62. Finally the Supreme Court in *P. Ramachandra Rao (supra)* overruled the directions in *Common Cause Vs Union of India-I, Common Cause Vs Union of India-II, Raj Deo Sharma Vs State of Bihar-I & Raj Deo Sharma Vs State of Bihar-II* which prescribed the limitation for conclusion of trials and categorically held that it was not judicially permissible to prescribe periods of limitation or an outer time limit for conclusion of all criminal proceedings or trials. In conclusion after reaffirming *A.R. Antulay (supra),* and *P. Ramachandra Rao (supra)* laid down the red lines in law as follows:

> "29. …."(*1*) **The dictum in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field**.
>
> (emphasis supplied)
>
> (*2*) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.
>
> (*3*) The guidelines laid down in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made**.**
>
> **(*4*) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in *Common Cause (I)* [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , *Raj Deo Sharma (I)* [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and *Raj Deo Sharma (II)* [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] could not have been so prescribed or drawn and**

> **are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in** *Common Cause case (I)* [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , *Raj Deo Sharma case (I)* [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and *(II)* [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] . At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.
>
> (emphasis supplied)
>
> (*5*) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.
>
> (*6*) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively — by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.
>
> We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the abovesaid terms."

63. *P. Ramachandra Rao (supra)* after holding that the bars of limitation created by "judicial legislation" ran counter to the doctrine of binding precedents, did not extend the said restrictions on powers under Article 141, 142, 32 to other subject matters like PILs and social action litigations:

> "33. **Thirdly, we are deleting the bars of limitation on the twin grounds that it amounts to judicial legislation, which is not permissible, and because they run counter to the doctrine of binding precedents.** The larger question of powers of this Court to pass orders and issue directions in public interest or in social action litigations, specially by reference to Articles 32, 141, 142 and 144 of the Constitution, is not the subject-matter of the reference before

> us and this judgment should not be read as an interpretation of those articles of the Constitution and laying down, defining or limiting the scope of the powers exercisable thereunder by this Court."
>
> (emphasis supplied)

64. At this stage it would be apposite to reflect on observations made in *P. Ramachandra Rao (supra)* regarding the persisting problems of delays in judicial system. The Supreme Court declined to take a simplistic view of the problem and instead embarked on a global consideration of the issue:

> "19**.** A perception of the cause for delay at the trial and in conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population ratio. The Law Commission of India in its 120th Report on Manpower Planning in Judiciary (July 1987), based on its survey, regretted that in spite of Article 39-A being added as a major directive principle in the Constitution by the Forty-second Amendment (1976), obliging the State to secure such operation of legal system as promotes justice and to ensure that opportunities for securing justice are not denied to any citizen, several reorganisation proposals in the field of administration of justice in India have been basically patchwork, ad hoc and unsystematic solutions to the problem. The judge-population ratio in India (based on the 1971 census) was only 10.5 Judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in United States. The Law Commission suggested that India required 107 judges per million of the Indian population; however, to begin with, the judge strength needed to be raised to fivefold i.e. 50 judges per million population in a period of five years but in any case, not going beyond ten years. Touch of sad sarcasm is difficult to hide when the Law Commission observed (in its 120th Report, *ibid*.) that adequate reorganisation of the Indian judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern. There are other factors contributing to the delay at the trial. In *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] vide para 83, the Constitution Bench has noted that in spite of having proposed to go on with the trial of a case, five days a week and week after week, it may not be possible to conclude the trial for reasons viz. (*1*) non-availability of the counsel, (*2*) non-availability of the accused, (*3*) interlocutory proceedings, and (*4*) other systemic delays. In addition, the Court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. In *Kartar Singh* v. *State of Punjab* [(1994) 3 SCC

569 : 1994 SCC (Cri) 899] another Constitution Bench opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as (*i*) delay in investigation on account of the widespread ramifications of the crime and its designed network either nationally or internationally, (*ii*) the deliberate absence of witness or witnesses, (*iii*) crowded dockets on the file of the court etc. In *Raj Deo Sharma (II)* [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] in the dissenting opinion of M.B. Shah, J., the reasons for delay have been summarized as, (*1*) dilatory proceedings; (*2*) absence of effective steps towards radical simplification and streamlining of criminal procedure; (*3*) multitier appeals/revision applications and diversion to disposal of interlocutory matters; (*4*) heavy dockets, mounting arrears, delayed service of process; and (*5*) judiciary, starved by executive by neglect of basic necessities and amenities, enabling smooth functioning.

20. Several cases coming to our notice while hearing appeals, petitions and miscellaneous petitions (such as for bail and quashing of proceedings) reveal, apart from inadequate judge strength, other factors contributing to the delay at the trial. Generally speaking, these are : (*i*) absence of, or delay in appointment of, Public Prosecutors proportionate with the number of courts/cases; (*ii*) absence of or belated service of summons and warrants on the accused/witnesses; (*iii*) non-production of undertrial prisoners in the court; (*iv*) presiding Judges proceeding on leave, though the cases are fixed for trial; (*v*) strikes by members of the Bar; and (*vi*) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. It is common knowledge that appointments of Public Prosecutors are politicized. By convention, Government Advocates and Public Prosecutors were appointed by the executive on the recommendation of or in consultation with the head of the judicial administration at the relevant level but gradually the executive has started bypassing the merit-based recommendations of, or process of consultation with, District and Sessions Judges. For non-service of summons/orders and non-production of undertrial prisoners, the usual reasons assigned are shortage of police personnel and police people being busy in VIP duties or law and order duties. These can hardly be valid reasons for not making the requisite police personnel available for assisting the courts in expediting the trial. The members of the Bar shall also have to realize and remind themselves of their professional obligation — legal and ethical, that having accepted a brief for an accused, they have no justification to decline or avoid appearing at the trial when the case is taken up for hearing by the court. All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result-oriented collective thinking and action on the part of the legislature, the judiciary, the executive and representative bodies of members of the Bar."

65. The judgments of the Supreme Court in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)*

explicitly propound the law that judicial directions or "judicial legislation" by the Supreme Court cannot prescribe an outer time limit for conclusion of "all criminal proceedings" or 'trials' which clearly includes criminal proceedings and interim applications pending therein before the High Courts under various jurisdictions (i.e. Article 226, Article 227, Section 482 Cr.P.C., Section 397 Cr.P.C.).

66. The "encroaching nature[20]" of plenary powers was checked by the Supreme Court when it forbade exercise of powers under Article 142 to create judicial legislation in the said fields.

67. The directions made by the two Judge Bench of Supreme Court in *Imtiyaz Ahmad Vs State of U.P.*[21] also related to delays in judicial proceedings. The Supreme Court in *Imtiyaz Ahmad (supra)* issued directions to Registrars General/Registrars of all the High Courts in the country to furnish data as regards pending cases in which criminal proceedings had been stayed at various stages. Upon consideration of the aforesaid data the Supreme Court in *Imtiyaz Ahmad (supra)* examined the remit of the Law Commission to suggest solutions to tackle problems of arrears in courts. The following directions were given to the High Court in *Imtiyaz Ahmad (supra)* for maintenance of the rule of law and better administration of justice:

> "55. Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice:

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20 The Federalist Papers – Madison

21 2012 (2) SCC 688

> While analysing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:
>
> (*i*) Such an extraordinary power has to be exercised with due caution and circumspection.
>
> (*ii*) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.
>
> (*iii*) The High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued."

68. *Imtiyaz Ahmad (supra)* while iterating that the constitutional scheme did not give power of superintendence to the Supreme Court over the High Court as the High Court has over District Courts stated:

> "56. It is true that this Court has no power of superintendence over the High Court as the High Court has over District Courts under Article 227 of the Constitution. Like this Court, the High Court is equally a superior court of record with plenary jurisdiction. Under our Constitution the High Court is not a court subordinate to this Court. This Court, however, enjoys appellate powers over the High Court as also some other incidental powers. But as the last court and in exercise of this Court's power to do complete justice which includes within it the power to improve the administration of justice in public interest, this Court gives the aforesaid guidelines for sustaining common man's faith in the rule of law and the justice delivery system, both being inextricably linked."

69. A detailed analysis of submissions of the learned counsels on the impact of the directions made in Asian Resurfacing (supra) which run counters to *A.R. Antulay (supra) and P. Ramachandra Rao (supra)* shall be made in the subsequent part of the judgement in light of the interpretations of Articles 141 and 142 of the Constitution of India.

IV. Interim Orders : Grant, Alteration & Vacation

70. Interim orders are granted by courts in aid of final relief. Interim orders are passed by Courts to protect fundamental liberties, secure the nature of the disputed property, to prevent the situation from being altered irremediably, and like ends. The importance of grant, alteration or vacation of interim orders is an important part of legal proceedings is self evident and needs little elaboration. Interim orders are granted altered and vacated in exercise of inherent powers vested in the Court or powers endowed by statutes. Interim orders have a direct bearing on the substantive rights of a party and efficacy of the legal remedy.

71. The Supreme Court in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*[22] affirmed the exercise of inherent jurisdiction of High Courts constituted under Charters to issue an injunction by holding:

> "42. It is true that the High Courts constituted under Charters and exercising ordinary original jurisdiction do exercise inherent jurisdiction to issue an injunction to restrain parties in a suit before them from proceeding with a suit in another court, but that is because the Chartered High Courts claim to have inherited this jurisdiction from the Supreme Courts of which they were successors. This jurisdiction would be saved by Section 9 of the Charter Act (24 and 25 Vict. c. 104) of 1861 and in the Code of Civil Procedure, 1908 it is so expressly provided by Section 4. But the power of the civil courts other than the Chartered High Courts must be found within Section 94 and Order 39 Rules 1 and 2 of the Civil Procedure Code."

72. Interim orders are sourced to inherent powers vested in superior courts. The Supreme Court in *Girish Kumar Suneja Vs CBI*[23] after referencing cases in point held

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22 AIR 1962 SC 527

23. 2017 (14) SCC 809

that the High Court has an inherent power to grant stay of proceedings:

> "55. The penultimate submission of the learned counsel for the appellants was that the High Court has an inherent power to stay proceedings in a criminal case. Reliance was placed on *ITO* v. *M.K. Mohammed Kunhi* [*ITO* v. *M.K. Mohammed Kunhi*, AIR 1969 SC 430] wherein it was categorically held by this Court that the Income Tax Appellate Tribunal must be held to have the power to grant a stay as incidental or ancillary to its appellate jurisdiction. Reference was also made to *Satish Mehra* v. *State (NCT of Delhi)* [*Satish Mehra* v. *State (NCT of Delhi)*, (2012) 13 SCC 614 : (2012) 4 SCC (Cri) 354] . **There is no doubt that a High Court has an inherent power to grant a stay of proceedings and it is not necessary to labour any further on this issue."**
>
> (emphasis supplied)

73. The Supreme Court in Income Tax Officer, Cannanore *v. M.K. Mohammed Kunhi*[24] opined that when a legislature vests jurisdiction upon the tribunal to decide the case, it impliedly grants the power of stay:

> "8. Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. **It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.**
>
> (emphasis supplied)

74. In *In re, Powers, Privileges and Immunities of State Legislatures*[25] the Supreme Court propounded that if the Court under Article 226 of the Constitution of India had

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24. AIR 1969 SC 430

25. AIR 1965 SC 745

jurisdiction to deal with matter, it is a given that the Court also possessed the power to grant interim relief:

> "137. In the course of his arguments, Mr Seervai laid considerable emphasis on the fact that in habeas corpus proceedings, the High Court had no jurisdiction to grant interim bail. It may be conceded that in England it appears to be recognised that in regard to habeas corpus proceedings commenced against orders of commitment passed by the House of Commons on the ground of contempt, bail is not granted by courts. As a matter of course, during the last century and more in such habeas corpus proceedings returns are made according to law by the House of Commons, but "the general rule is that the parties who stand committed for contempt cannot be admitted to bail" But it is difficult to accept the argument that in India the position is exactly the same in this matter. **If Article 226 confers jurisdiction on the Court to deal with the validity of the order of commitment ever though the commitment has been ordered by the House, how can it be said that the Court has no jurisdiction to make an interim order in such proceedings?** As has been held by this Court in *State of Orissa* v. *Madan Gopal Rungta* [1951 SCC 1024 : 1952 SCR 28] , **an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding.** Indeed, as Maxwell has observed, when an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution [*Maxwell on Interpretation of Statutes*, 11th Edn., p. 350] . That being so, the argument based on the relevant provisions of the Criminal Procedure Code and the decision of the Privy Council in *Lala Jairam Das* v. *King Emperor* [72 IA 120] is of no assistance."

(emphasis supplied)

75. While examining the scope of grant of interim orders and the power to alter or vacate the same, the Supreme Court in *Empire Industries Ltd. v. Union of India*[26] expounded thus:

> "59. Good deal of arguments were canvassed before us for variation or vacation of the interim orders passed in these cases. Different courts sometimes pass different interim orders as the courts think fit. It is a matter of common knowledge that the interim orders passed by particular courts on certain considerations are not precedents for other cases which may be on similar facts. An argument is being built up nowadays that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there be any variation with that kind of interim order

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26. (1985) 3 SCC 314

> passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. **Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in the matter of interim orders**.
>
> (emphasis supplied)

76. At this juncture we may also refer to Article 226(3) of the Constitution of India:

> **"Article 226(3) in The Constitution Of India 1949**
>
> (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without
>
> (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
>
> (b)giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated**."**

77. The constitutional provision was interpreted by various High Courts. There was a cleavage of judicial opinions on this issue. One line of authorities in point held that the provision was mandatory and the interim order was deemed to be vacated upon expiry of the period of 14 days after the application for stay vacation was made and if the same was not decided. This line of opinions included a Division Bench judgment of this

Court in *R.C. Chaudhary Vs Vice Chancellor, Dr. Bhim Rao Ambedkar University, Agra*[27].

78. The other view was best depicted in the judgment rendered by a learned Single Judge of the Madras High Court in *Dr. T. Gnanasambanthan vs. The Board of Governors*[28]. Upon consideration of the divergent judicial authorities V. Ramasubramanian, J. (as His Lordship then was) held that automatic vacation of stay order would cause prejudice to a party which was the beneficiary of the interim order and whose conduct could not be faulted. More often than not the stay orders were getting vacated on account of failure of the Courts to take up and decide the stay vacation application on merits. On this footing Article 226(3) of the Constitution of India insofar as it envisaged automatic vacation of the stay order was held to be directory:

> "64.Before considering the impact of those decisions, it is necessary to take note of the fact that Clause (3) was inserted originally by The Constitution (42nd Amendment) Act, 1976. Later, it was substituted by the present Clause (3) by The Constitution (44th Amendment) Act, 1978. A careful look at Clause (3) would show that it comprises of two parts namely (1) a mandate to the High Court to dispose of the application for vacation of an ex parte interim order, within a period of two weeks from the date on which an application for vacating the interim order is received or furnished; and (2) a dicta that if the application is not so disposed of, the interim order would stand vacated on the expiry of that period. All the High Courts, which have taken the views indicated above, have approached the question of interpretation of Article 226(3)(i) from the point of view of rules relating to statutory interpretation; and (ii) from the angle as to whether it is mandatory or directory.
>
> 65. **But unfortunately, none of the High Courts, whose decisions are relied upon by the respondents, has considered the question from the pedestal of the most fundamental principle of law namely that no one shall be prejudiced by an act of court (actus curiae neminem gravabit). An act can either be an act of omission or be an act of commission. The non listing of an application for**

27. AIR 2004 All 95

28. 2014 SCC OnLine Mad 235

vacation of an interim order, if not due to the fault of any of the parties, but due to the fault of the Registry of the Court, would fall under the category of "act of omission". No law can be so absurd as to say that if the Court is at fault, the parties shall suffer. I do not think that any case law is required to support the proposition that an act of court shall not prejudice a party.

(emphasis supplied)

66. The question as to whether Clause (3) is directory or mandatory should have been approached by the Courts from the perspective as to whether a party can be prejudiced by an act of Court or not. All the Courts including the Division Bench of the Allahabad High Court came to the conclusion that Clause (3) is mandatory, only on the premise that the consequences of non compliance are also prescribed in the clause itself. But, such a view tantamounts to missing the tree for the wood.

67. In *Raza Buland Sugar Co. Ltd* v. *The Municipal Board AIR 1965 SC 895*, a Constitution Bench of the Supreme Court held that the question whether a particular provision is mandatory or directory, cannot be resolved by laying down any general rule and that it would depend upon the facts of each case. The Court has to consider the purpose for which the provision had been made, its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting therefrom whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject as well as other considerations which may arise on the fact of a particular case, including the language of the provision. **The said decision of the Constitution Bench was followed by the Supreme Court in *Salem Advocate Bar* v. *Union of India 2005 6 SCC 344*. While doing so, the Supreme Court pointed out therein that our laws on procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs, that proceedings that affect their lives and properties should not continue in their absence and that they should not be precluded from participating in them. Therefore, we have to interpret Article 226(3), consistent with the interpretation given by the Constitution Bench. If the interpretation given to clause (3) of Article 226 would result in putting one of the parties to grave injustice, without any opportunity of hearing, the provision cannot be taken to be mandatory but can be taken only as directory.**

(emphasis supplied)

68**.** In *Sharif-Ud-Din* v. *Abdul Gani Lone* (1980) 1 SCC 403 : AIR 1980 SC 303, the Supreme Court indicated that the question whether a provision of law is mandatory or not depends upon its language, the context in which it is enacted and its object. The Court made an important observation, which will resolve the problem for us and hence it is extracted as follows:—

> **"In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any**

> **act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one.** Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another, when such act is not don in that manner, the former has to be regarded as a mandatory one".

(emphasis supplied)

69. **Therefore, it is clear that if the condition imposed by the provision of law to do a certain thing within a time frame is upon an institution and the consequences of that institution not complying with the condition is to fall upon someone else who have no control over the institution which is to perform the duty, then the provision of law cannot be construed as mandatory, but only directory.**

(emphasis supplied)

70. **It is true that if a statutory provision contains a prescription and also stipulates the consequences of non compliance with the condition, it would normally be taken to be mandatory. But, the direction as well as the consequences of non compliance with the direction should both fall upon the same person, if such an interpretation is to be given.**

(emphasis supplied)

71. In other words, the statutory provision should contain a direction to a party to the proceeding. It should also prescribe the consequences that would fall upon the party, on whom, the obligation to comply with the condition is imposed by the provision. Take for instance, the provisions of Order XXXIX Rules 3 and 3-A. If a person, in whose favour an interim order of injunction is granted ex parte, fails to comply with the obligation cast under Sub-Rule (a) of Rule 3 of Order XXXIX, the interim injunction granted can be vacated on the ground of failure to comply with the obligation. **But, where a direction to do something is against one party, the consequences of that party not complying with the direction, cannot be made to fall upon another party. Article 226(3) imposes an obligation upon the High Courts to dispose of the application for vacating the stay within two weeks. The failure of the High Court to comply with this Constitutional mandate, cannot result in an adverse consequence upon the party. If an obligation is cast upon one party and the consequences of failure to fulfill the obligation are to be suffered by another party, the provision prescribing such an obligation and consequence, cannot be treated as mandatory, but can be treated as directory.**

(emphasis supplied)

72. As a matter of fact, the Division Bench of the Allahabad High Court appears to have realised this problem in the decision in *R.C. Chaudhary*. That is why in paragraph 22 of the report, the Division Bench of the Allahabad High Court held that if a vacate stay

application is filed in a leisurely manner, such a party will not be entitled to avail the benefit of Clause (3) of Article 226.

73. In other words, the Division Bench of the Allahabad High Court has created an exception to the rule enunciated under Article 226(3). But, it must be pointed out that if a provision is mandatory, it is not permissible for a Court to carve out an exception not inbuilt in the statutory provision itself. Interpreting a statutory provision to be mandatory and at the same time, carving out an exception not found in the language of the provision, go contrary to each other. Therefore, the proper interpretation to be given to Clause (3) of Article 226 is to say that it is directory and not mandatory, so that no party is allowed to take advantage of the failure of the Court to dispose of an application for vacation of stay within 14 days.

74**.** As a matter of fact, the Division Bench of the Allahabad High Court took note of only one serious consequence namely that of a party approaching the Court with a vacate stay application in a leisurely manner and the Division Bench took such a situation out of the purview of Article 226(3). But, any number of such situations, which will prove to be disastrous, can be thought of. Take for instance a case, where an application for vacating the stay is taken up for hearing within two weeks of its presentation and the Court reserves orders. If orders were not pronounced on or before the expiry of the 14th day from the date of filing of the vacate stay application, could it be said that the party, who obtained an interim stay, should still suffer, despite ensuring that the application is heard within two weeks. It is not within the control of any party to have his application or the opposite party's application listed for hearing. Even if a party succeeds in getting the application listed within two weeks, it is not in his control to ensure that the application is heard before the expiry of two weeks. Even if a party succeeds in making the Court hear the application for vacation of the interim order within two weeks, it is not in his control (especially these days) to ensure that it is disposed of within two weeks from the date of filing of the vacate stay application.

75. Therefore, an interpretation that would put a party, who is not at fault, to disastrous consequences, for the failure of an institution or for the happening of something that is beyond his control, is wholly unjustified. If a statutory provision imposes an obligation upon one party and makes the opposite party suffer for the consequences of non fulfillment of the obligation cast therein, such a provision cannot be said to be mandatory. Unfortunately, none of the High Courts, whose decisions are relied upon by the respondents, has taken note of this basic difference between the person, on whom, an obligation is cast and the person, on whom, the consequences are made to fall under Article 226(3). Hence, with great respect, I am unable to agree with the views expressed by the other High Courts."

79. We find the reasoning assigned in *Dr. T. Gnanasambanthan (supra)* to be impeccable and the

judgment expounds the correct law. We are in respectful agreement with the law laid down in *Dr. T. Gnanasambanthan (supra),* in preference to the Division Bench judgment of this Court in *R.C. Chaudhary (supra).*

80. Similarly, Section 254(2-A) of the Income Tax Act, 1961 restricted the life of an interim order to a period fixed in the provision and contemplated automatic vacation of the stay order after the lapse of said period in the event the appeal was not disposed of. The provision is extracted hereunder:

> "**254. *Orders of Appellate Tribunal***.—(1)-(2) * * *
>
> (2-A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of Section 253:
>
> Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of Section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:
>
> Provided further that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:
>
> **Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, the order of stay shall stand vacated after the expiry of such period or periods**."
>
> (emphasis supplied)

81. The said provision was assailed before the Bombay High Court in *Narang Overseas (P) Ltd. Vs Income Tax*

Appellate Tribunal.[29] wherein the Bombay High Court noticed the importance of the vested right of an appeal and also stated the implication of Article 14 on automatic vacation of stay orders for no fault of the assessee:

> "*16.* Did the section as it stood before the Finance Act of 2007, and after the Finance Act of 2007, exclude the power of the Tribunal to grant interim relief after the period provided in the proviso. Was it the intendment of Parliament that the Tribunal even in a case where the assessee was not at fault should be denuded of its incidental power to continue the interim relief granted and if so what mischief was it seeking to avoid. The mischief if and at all was the long delay in disposing of proceedings where interim relief had been obtained by the assessee. The second proviso as it earlier stood, in a case when in an appeal interim relief was granted, if the appeal was not disposed of within 180 days provided that the stay shall stand vacated. The proviso as it stood could really have not have stood the test of non-arbitrariness as it would result in an appeal being defeated even if the assessee was not at fault, as in the meantime the Revenue could proceed against the assets of the assessee. The proviso as introduced by the Finance Act, 2007 was to an extent to avoid the mischief of it being rendered unconstitutional. Once an appeal is provided, it cannot be rendered nugatory in cases were the assessee was not at fault.
>
> *17.* The amendment of 2007 conferred the power to extend the period of interim relief to 360 days. Parliament clearly intended that such appeals should be disposed of at the earliest. If that be the object the mischief which was sought to be avoided was the non-disposal of the appeal during the period the interim relief was in operation. By extending the period Parliament took note of laws delay. The object was not to defeat the vested right of appeal in an assessee, whose appeal could not be disposed of not on account of any omission or failure on his part, but either the failure of the Tribunal or acts of Revenue resulting in non-disposal of the appeal within the extended period as provided.
>
> *18.* Can it then be said that the intention of Parliament by restricting the period of stay or interim relief up to 360 days had the effect of excluding by necessary intendment the power of the Tribunal to continue the interim relief. Would not reading the power not to continue the power to continue interim relief in cases not attributable to the acts of the assessee result in holding that such a provision would be unreasonable. Could Parliament have intended to confer the remedy of an appeal by denying the incidental power of the Tribunal to do justice. In our opinion for reasons already discussed it would not be possible to so read it.
>
> *19.* **It would not be possible on the one hand to hold that there is a vested right of an appeal and on the other hand to hold that there is no power to continue the grant of interim relief for no fault of the assessee by divesting the incidental power of the**

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29. 2007 SCC OnLine Bom 671

> **Tribunal to continue the interim relief. Such a reading would result in such an exercise being rendered unreasonable and violative of Article 14 of the Constitution. The courts must, therefore, construe and/or give a construction consistent with the constitutional mandate and principle to avoid a provision being rendered unconstitutional.”**
>
> (emphasis supplied)

82. Finally the Bombay High Court in *Narang Overseas (supra)* held:

> “*22*. We are of the respectful view that the law as enunciated in *Kumar Cotton Mills (P) Ltd.* [*Commr. of Customs* v. *Kumar Cotton Mills (P) Ltd.*, (2005) 13 SCC 296] should also apply to the construction of the third proviso as introduced in Section 254(2-A) by the Finance Act, 2007. The power to grant stay or interim relief being inherent or incidental is not defeated by the provisos to the sub-section. The third proviso has to be read as a limitation on the power of the Tribunal to continue interim relief in case where the hearing of the appeal has been delayed for acts attributable to the assessee. It cannot mean that a construction be given that the power to grant interim relief is denuded even if the acts attributable are not of the assessee but of the Revenue or of the Tribunal itself. The power of the Tribunal, therefore, to continue interim relief is not overridden by the language of the third proviso to Section 254(2-A). This would be in consonance with the view taken in *Kumar Cotton Mills (P) Ltd.* [*Commr. of Customs* v. *Kumar Cotton Mills (P) Ltd.*, (2005) 13 SCC 296] There would be power in the Tribunal to extend the period of stay on good cause being shown and on the Tribunal being satisfied that the matter could not be heard and disposed of for reasons not attributable to the assessee.”

83. Close on the heels of the judgment of the Bombay High Court Section 254(2-A) of the Income Tax Act, 1961 came to be amended and read as follows:

> “**254.** ***Orders of Appellate Tribunal***.—(1)-(2) * * *
>
> (2-A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of Section 253:
>
> Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of Section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:
>
> Provided further that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the

> Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:
>
> **Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.”**
>
> (emphasis supplied)

84. After its amendment the provision was assailed before Gujarat High Court in *DCIT Vs Vodafone Essar (Gujarat) Ltd. and another*[30]. The Gujarat High Court upon interpretation of the provision protected the powers of the tribunal to grant extension of stay beyond the period of 365 days from the date of initial stay by holding as under:

> “*26*. Applying the decision of the Division Bench of this Court in *Small Industries Development Bank of India* [*Commr.* v. *Small Industries Development Bank of India*, 2014 SCC OnLine Guj 6563] to the facts of the case on hand, more particularly while considering the powers of the Tribunal under Section 254(2-A) of the Act, it is observed and held that by Section 254(2-A) of the Act, it cannot be inferred a legislative intent to curtail/withdraw the powers of the Appellate Tribunal to extend stay of demand beyond the period of 365 days. However, the aforesaid extension of stay beyond the period of total 365 days from the date of grant of initial stay would always be subject to the subjective satisfaction by the learned Appellate Tribunal and on an application made by the appellant assessee to extend stay and on being satisfied that the delay in disposing of the appeal within a period of 365 days from the date of grant of initial stay is not attributable to the appellant assessee. For that purpose, on expiry of every 180 days, the appellant assessee is required to make an application to extend stay granted earlier and satisfy the learned Appellate Tribunal that the delay in not disposing of the appeal is not attributable to him/it and the learned Appellate Tribunal is required to review the matter after every 180 days and while disposing of such application of extension

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30. 2015 SCC OnLine Guj 6235

> of stay, the learned Appellate Tribunal is required to pass a speaking order after having satisfied that the appellant assessee has not indulged into any delay tactics and that the delay in disposing of the appeal within stipulated time is not attributable to the appellant assessee. However, at the same time, it may not be construed that widest powers are given to the Appellate Tribunal to extend the stay indefinitely and that the Appellate Tribunal is not required to dispose of the appeals at the earliest. The object and purpose of Section 35-C(2-A) of the Act particularly one of the object and purpose is to see that in a case where stay has been granted by the learned Appellate Tribunal, the learned Appellate Tribunal is required to dispose of the appeal within total period of 365 days, as ultimately the Revenue has not to suffer and all efforts should be made by the learned Appellate Tribunal to dispose of such appeals in which stay has been granted as far as possible within total period of 365 days from the date of grant of initial stay and the Appellate Tribunal shall grant priority to such appeals over appeals in which no stay is granted. For that even the Appellate Tribunal and/or Registrar of the Appellate Tribunal is required to maintain separate register of the appeals in which stay has been granted fully and/or partially and the appeals in which no stay has been granted."

85. The Delhi High Court in *Pepsi Foods (P) Ltd. v. CIT*[31] ultimately struck down the part of Section 254(2-A) of the Income Tax Act, 1961 (as amended by the Finance Act of 2008) on the footing that it offended Article 14 of the Constitution of India. After referencing the history of the provisions and relying on the judgment rendered in *Mardia Chemicals Ltd. Vs Union of India*[32] and the judgment of a Division Bench of the Punjab and Haryana High Court in *PML Industries Ltd. Vs CCE*[33] the Court propounded the law as under :

> "*23*. Keeping in mind the principles set out by the Supreme Court in *Subramanian Swamy* [*Subramanian Swamy* v. *CBI*, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] , we need to examine whether the present challenge to the validity of the third proviso to Section 254(2-A) can be sustained. This is not a case of excessive delegation of powers and, therefore, we need not bother about the second dimension of Article 14 in its application to legislation. We are here concerned with the question of discrimination, based on an

31. 2015 SCC OnLine Del 9543

32. (2004) 4 SCC 311

33. 2013 SCC OnLine P&H 4440,

impermissible or invalid classification. It is abundantly clear that the power granted to the Tribunal to hear and entertain an appeal and to pass orders would include the ancillary power of the Tribunal to grant a stay. Of course, the exercise of that power can be subjected to certain conditions. In the present case, we find that there are several conditions which have been stipulated. First of all, as per the first proviso to Section 254(2-A), a stay order could be passed for a period not exceeding 180 days and the Tribunal should dispose of the appeal within that period. The second proviso stipulates that in case the appeal is not disposed of within the period of 180 days, if the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to extend the stay for a period not exceeding 365 days in aggregate. Once again, the Tribunal is directed to dispose of the appeal within the said period of stay. The third proviso, as it stands today, stipulates that if the appeal is not disposed of within the period of 365 days, then the order of stay shall stand vacated, even if the delay in disposing of the appeal is not attributable to the assessee. While it could be argued that the condition that the stay order could be extended beyond a period of 180 days only if the delay in disposing of the appeal was not attributable to the assessee was a reasonable condition on the power of the Tribunal to grant an order of stay, it can, by no stretch of imagination, be argued that where the assessee is not responsible for the delay in the disposal of the appeal, yet the Tribunal has no power to extend the stay beyond the period of 365 days. The intention of the legislature, which has been made explicit by insertion of the words — ‘even if the delay in disposing of the appeal is not attributable to the assessee’ — renders the right of appeal granted to the assessee by the statute to be illusory for no fault on the part of the assessee. The stay, which was available to him prior to the 365 days having passed, is snatched away simply because the Tribunal has, for whatever reason, not attributable to the assessee, been unable to dispose of the appeal. Take the case of delay being caused in the disposal of the appeal on the part of the Revenue. Even in that case, the stay would stand vacated on the expiry of 365 days. This is despite the fact that the stay was granted by the Tribunal, in the first instance, upon considering the prima facie merits of the case through a reasoned order.

24. Furthermore, the petitioners are correct in their submission that unequals have been treated equally. Assessees who, after having obtained stay orders and by their conduct delay the appeal proceedings, have been treated in the same manner in which assessees, who have not, in any way, delayed the proceedings in the appeal. The two classes of assessees are distinct and cannot be clubbed together. This clubbing together has led to hostile discrimination against the assessees to whom the delay is not attributable. **It is for this reason that we find that the insertion of the expression — ‘even if the delay in disposing of the appeal is not attributable to the assessee’ — by virtue of the Finance Act, 2008, violates the non-**

> **discrimination clause of Article 14 of the Constitution of India.** The object that appeals should be heard expeditiously and that assessees should not misuse the stay orders granted in their favour by adopting delaying tactics is not at all achieved by the provision as it stands. **On the contrary, the clubbing together of "well behaved" assessees and those who cause delay in the appeal proceedings is itself violative of Article 14 of the Constitution and has no nexus or connection with the object sought to be achieved. The said expression introduced by the Finance Act, 2008 is, therefore, struck down as being violative of Article 14 of the Constitution of India.** This would revert us to the position of law as interpreted by the Bombay High Court in *Narang Overseas* [*Narang Overseas (P) Ltd.* v. *Income Tax Appellate Tribunal*, 2007 SCC OnLine Bom 671 : (2007) 295 ITR 22] , with which we are in full agreement. Consequently, we hold that, where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases. The writ petitions are allowed as above.''
>
> (emphasis supplied)

86. Lastly, the said provision was tested for its validity before the Bench of three Hon'ble Judges of the Supreme Court in *Deputy Commissioner of Income Tax and another Vs Pepsi Foods Ltd. (now Pepsico India Holdings Private Limited)*[34] when the said judgments of various High Courts were carried in appeal to the Supreme Court. Affirming the holdings of the High Courts and finding that the provision violates Article 14 the Supreme Court in *Pepsico Foods Ltd. (supra)* laid down the law in the following terms:

> "20. Judged by both these parameters, there can be no doubt that the third proviso to Section 254(2-A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India. First and foremost, as has correctly been held in the impugned judgment, unequals are treated equally in that no differentiation is made by the third proviso between the assessees who are responsible for delaying the proceedings and assessees who are not so responsible. This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2-A) of the Income Tax Act, making it clear that a stay order may be extended

34. 2021 SCC (7) 413

up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. We have already seen as to how, as correctly held by *Narang Overseas* [*Narang Overseas (P) Ltd.* v. I*ncome Tax Appellate Tribunal*, 2007 SCC OnLine Bom 671 : (2007) 295 ITR 22] , the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to Section 254(2-A) of the Income Tax Act in its previous *avatar*. Ordinarily, the Appellate Tribunal, *where possible*, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned.

"22**.** Since the object of the third proviso to Section 254(2-A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the **completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the Revenue would ensue even if the Revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.**"

(emphasis supplied)

23**.** In fact, in a recent judgment of this Court in *Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta* [*Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , the word "mandatorily" in the 2nd proviso inserted through an amendment made to Section 12(3) of the Insolvency and Bankruptcy Code, 2016 was struck down. This Court held : (SCC pp. 626-28, paras 124-27)

"*124*. Given the fact that timely resolution of stressed assets is a key factor in the successful working of the Code, the only real argument against the amendment is that the time taken in legal proceedings cannot ever be put against the parties before NCLT and NCLAT based upon a Latin maxim which subserves the cause of justice, namely, *actus curiae neminem gravabit*.

125. In *Atma Ram Mittal* v. *Ishwar Singh Punia* [*Atma Ram Mittal* v. *Ishwar Singh Punia*, (1988) 4 SCC 284] , this Court applied the maxim to time taken in legal proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, holding : (SCC pp. 288-89, para 8)

> ‘*8*. It is well settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim *actus curiae neminem gravabit* — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years' holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else.’

127. Both these judgments in *Atma Ram Mittal* [*Atma Ram Mittal* v. *Ishwar Singh Punia*, (1988) 4 SCC 284] and *Sarah Mathew* [*Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] have been followed in *Neeraj Kumar Sainy* v. *State of U.P.* [*Neeraj Kumar Sainy* v. *State of U.P.*, (2017) 14 SCC 136 : 8 SCEC 454] , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(*g*) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from *Madras Petrochem* [*Madras Petrochem Ltd.* v. *BIFR*, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] . Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(*g*) of the Constitution. The effect of this declaration is that *ordinarily* the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the adjudicating authority and/or the Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the

time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the adjudicating authority and/or the Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the adjudicating authority and/or the Appellate Tribunal itself, it may be open in such cases for the adjudicating authority and/or the Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the amending Act of 2019 is exceeded, there again a discretion can be exercised by the adjudicating authority and/or the Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation."

27. **We have already seen how unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India. Also, the expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down, as has been found in para 20 above.**

(emphasis supplied)

30**.** The law laid down by the impugned judgment of the Delhi High Court in *Pepsi Foods (P) Ltd.* [*Pepsi Foods (P) Ltd.* v. *CIT*, 2015 SCC OnLine Del 9543 : (2015) 376 ITR 87] is correct. Resultantly, the judgments [*CIT* v. *Parnod Ricard (India) (P) Ltd.*, 2017 SCC OnLine Del 12851] , [*CIT* v. *Anil Girishbhai Darji*, 2016 SCC OnLine Guj 10059] , [*CIT* v. *Maruti Suzuki (India) Ltd.*, 2016 SCC OnLine Del 6680] , [*CIT* v. *Pepsi Foods (P) Ltd.*, 2016 SCC OnLine Del 6682] , [*CIT* v. *Pepsi Foods (P) Ltd.*, 2016 SCC OnLine Del 6681] , [*CIT* v. *Jindal Steel & Power Ltd.*, 2017 SCC OnLine P&H 5411] , [*CIT* v. *BMW (India) (P) Ltd.*, 2017 SCC OnLine P&H 5414] , [*CIT* v. *Towers Watson (India) (P) Ltd.*, 2017 SCC OnLine P&H 5413] , [*CIT* v. *Pepsi Foods (P) Ltd.*, 2017 SCC OnLine Del 12849] , [*CIT* v. *Maruti Suzuki (India) Ltd.*, 2017 SCC OnLine Del 12852] , [*CIT* v. *Vertex Customer Services (P) Ltd.*, 2017 SCC OnLine Del 12850] , [*CIT* v. *Towers Watson (India) (P) Ltd.*, 2017 SCC OnLine P&H 5410] , [*CIT* v. *Swarovski (India) (P) Ltd.*, 2017 SCC OnLine Del 12854] , [*CIT* v. *Religare Capital Markets Ltd.*, 2017 SCC OnLine Del 12848] , [*CIT* v. *Jindal Steel & Power Ltd.*, 2017 SCC OnLine P&H 5412] , [*CIT* v. *Motherson Sumi Systems Ltd.*, 2017 SCC OnLine Del 12853] , [*CIT* v. *Maruti Suzuki (India) Ltd.*, 2018 SCC OnLine Del 13370] of the various High Courts which follow the aforesaid declaration of law are also correct. Consequently, the third proviso to Section 254(2-A) of the Income Tax Act will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry of the period

> or periods mentioned in the Section *only* if the delay in disposing of the appeal is attributable to the assessee. The appeals of the Revenue are, therefore, dismissed."

87. An examination of the submissions of learned counsels of the application of the law laid down in *Pepsico Foods Ltd. (supra)* to the current controversy and substantial questions as to the interpretation of the Constitution arising therefrom will be made in the latter part of the narrative.

V. High Court : Pre-Constitution Phase to the Constitution : Articles 215, 226 & 227

88. The High Courts were the first superior courts in the country, and together with the Privy Council and the trial court constituted the judicial system in British India. At the time of their creation the High Courts were vested with the attributes of courts of record and the powers necessary for administration of justice by the Indian High Courts Act read with Letters Patent. The autonomous exercise of these powers by the High Courts in colonial India developed sturdy traditions of independence which have always endured.

89. The High Courts attained the stature of primacy in large measure because their relationship with the Privy Council flourished with an understanding of the common purpose of administration of justice and recognition of limits of judicial power. Together the superior courts in colonial India had laid the foundations of civil and criminal law, and conventions of refined judicial dialogue on which independent India could build the temples of justice.

90. The legitimacy acquired by the High Courts in colonial India is best attested by this episode. After independence upon entering into the office of Chief Justice of Bombay High Court, Justice M C Chagla received messages "to maintain high traditions of impartiality and independence in the administration of justice that the British had left behind." Others hoped that His Lordship would "prove a worthy successor of Chief Justices like Sir Charles Sargent and Sir Lawrence Jenkins[35]". Justice M.C. Chagla was the first Indian to hold the high office. Barring some aberrational instances[36] this tells the story of other pre independence High Courts as well (including Allahabad High Court).

91. Referencing these aspects of the history of the High Courts will be fruitful as a new order may loom in the distance.

92. The Constitution retained the High Courts as superior courts of record, but also exalted their status to Constitutional Courts. Further the framers of the Constitution not only protected the existing inherent powers of the High Court, but enlarged the plenary jurisdictions of the High Court.

93. Under Article 215 of the Constitution of India, the High Courts are the courts of record with all powers of such a court including the power to punish for contempt of itself. Well established attributes of courts of record were restated by the Supreme Court while interpreting

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35. An Independent Colonial Judiciary—Abhinav Chandrachud
36 For examples of judicial high handedness in Lahore High Court in British India see: "The New Magna Carta—KL Gauba"

Article 215 of the Constitution of India in *High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore Yadav and others*[37] as follows:

> "10. However the learned Judges were persuaded to declare the impugned Rule as ultra vires on the ground that it conflicted with Article 215 of the Constitution of India. It is difficult to appreciate the said line of reasoning which appealed to the learned Judges. All that Article 215 states is that every High Court shall be a court of record meaning thereby all the original record of the court will be preserved by the said court and it shall have all the powers of such a superior court of record including the power to punish for contempt of itself. It has to be kept in view that as a superior court of record the High Court is entitled to preserve its original record in perpetuity. It is also now well settled that even apart from the aforesaid attribute of a superior court of record the High Court as such has twofold powers. Being a court of record the High Court (*i*) has power to determine the question about its own jurisdiction; and (*ii*) has inherent power to punish for its contempt summarily. The aforesaid twin incidents of a court of record are well established by a catena of decisions of this Court. We may usefully refer to one of them. A majority of the Constitution Bench of nine learned Judges of this Court in the case of *Naresh Shridhar Mirajkar* v. *State of Maharashtra* [AIR 1967 SC 1 : (1966) 3 SCR 744] speaking through Gajendragadkar, C.J., has made the following pertinent observations in para 60 of the Report:
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> > "There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior court of record and under Article 215 shall have all powers of such a court of record including the power to punish contempt of itself. One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in *Special Reference No. 1 of 1964* [(1965) 1 SCR 413 : AIR 1965 SC 745] , SCR at p. 499. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument this Court observed that in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from *Halsbury's Laws of England* where it is observed that
> >
> > 'prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while

37. (1997) 3 SCC 11

> nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court.'
>
> If the decision of a superior court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."

94. The pre-existing inherent powers of High Courts came to be preserved under Article 225 of the Constitution of India. The extraordinary jurisdiction was vested in the High Courts under Article 226, and superintending jurisdiction over trial courts and tribunals was endowed in the High Court under Article 227 of the Constitution of India.

95. Tracing the history of the High Courts in the country and also adverting to the vast scope of writ jurisdiction vested by the Constitution of India under Article 226 in all High Courts to meet the peculiar and complicated requirements of the country, the Supreme Court in *Prabodh Verma v. State of U.P.*[38], also compared the scope of Article 226 and Article 32 of the Constitution of India and went on to hold:

> "36. In India, prior to the Constitution, the power to issue prerogative writs was vested only in three High Courts, that is, the High Courts established by Letters Patent issued by Queen Victoria under authority given by the Indian High Courts Act, 1861 (24 & 25 Vict c, 104) for the establishment of the High Courts of Judicature at Fort William in Bengal and at Madras and at Bombay for these three presidencies, namely, the High Courts of Calcutta, Madras and Bombay. Hence this Act is generally called the Charter Act and the High Courts established there under the Chartered High Courts. These High Courts were the successors so far as their original jurisdictions were concerned of the Supreme Courts which were established in these three Presidency-towns and inherited from those Courts the powers of the Courts of King's Bench which included the power to issue prerogative writs,

38 (1984) 4 SCC 251

Apart from these three High Courts none of the other High Courts in India possessed this power. The position was changed when the Constitution of India came into force. Article 225 continues the jurisdiction of existing High Courts. Article 226, however, confers upon every High Court the power to issue to any person or authority, including in proper cases, any Government, within the territories in relation to which it exercises jurisdiction, "directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of the rights conferred by Part III or for any other purpose". It may be mentioned that under Article 32 of the Constitution, the same power as has been conferred upon the High Courts is conferred upon this Court without any restriction as to territorial jurisdiction but, unlike the High Court, restricted only to the enforcement of any of the rights conferred by Part III of the Constitution, namely, the Fundamental Rights. Referring to Article 226, this Court in Dwarka nath, Hindu Undivided Family v. Income Tax officer, Special Circle. Kanpur and another(1) said:

> "This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England but the scope of those writs also is widened by the use of the expression `nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them, That apart High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the high Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government in to a vast country like India functioning under a federal structure, such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this article. Some limitations are implicit in the article and others may be evolved to direct the article through the defined channels."
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> (emphasis supplied)

96. The Constitution Bench of the Supreme Court in *T.C. Basappa v. T. Nagappa*[39] after noticing wide powers of the Supreme Court and High Courts to issue orders, writs or directions including the writs of

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39 (1955) 1 SCR 250

different types, declined to import the procedural technicalities of English Law of writs by holding:

> "6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

97. Powers of superintendence of the High Court under Article 227 of the Constitution of India over trial courts as well as the tribunals were construed to be both judicial and administrative by the Supreme Court in *Waryam Singh v. Amarnath*[40]*:*

> "13…..Re. 2.— The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of superintendece has been extended by the Article also to Tribunals. That the Rent Controller and the District Judge exercising jurisdiction under the Act are Tribunals cannot and has not been controverted. The only question raised is as to the nature of the power of superintendence conferred by the Article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. In this connection it has to be remembered that Section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as Section 224. Section 224 of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as

40 1954 SCR 565

> giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227. This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1915. See the cases referred to in Moti Lal v. The State through Shrimati Sagrawati [ILR (1952) 1 Allahabad 558 at p. 567] . Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view."

98. The judgment of Waryam Singh (supra) was followed by Seven Judges Bench in *Hari Vishnu Kamath v. Syed Ahmad Ishaque and others*[41]:

> "20. We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that superintendence is both judicial and administrative. That was held by this Court in Waryam Singh v. Amarnath [1954 SCR 565] where it was observed that in this respect Article 227 went further than Section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under Section 107 of the Government of India Act, 1915. It may also be noted that while in a certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of certiorari and for other reliefs was maintainable under Articles 226 and 227 of the Constitution."

99. The scope of inherent powers of the High Court under Section 482 Cr.P.C. will be discussed later.

100. Repertoire of plenary powers under Articles 226 and 227 of the Constitution of India or Section 482 Cr.P.C. are equal to the high purposes they subserve. The High Courts have exercised these powers to act ex debito justitiae, uphold the law, protect fundamental

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41 1955 (1) SCR 1104

rights of citizens, thwart abuse of the process of court at the threshold, prevent miscarriage of justice and interpret the Constitution. Briefly put, for administration of justice.

101. The constitutional status of the High Court preserves its autonomy. The plenary powers under inherent and extraordinary jurisdictions protect the independence of the High Court. The capacity of the High Court to administer justice flowing from these powers undergirds its position as the sentinel on the qui vive and keeps the abiding faith of the citizenry.

102. Powers of the High Court whether vested under Articles 226 and 227 of the Constitution of India or inherent powers under Section 482 Cr.P.C. together comprise the defining elements of the High Court. Infact the existence of inherent powers under Section 482 Cr.P.C. and the endowment of extraordinary jurisdictions under Articles 226 and 227 of the Constitution of India and exercise of these powers and jurisdictions are the pivots on which legitimacy of the High Court rests. The Supreme Court has zealously protected these powers of the High Court, and entrenched them in the body of constitutional law as enduring virtues of our constitutional scheme.

103. Curtailment of these powers will cause disarray in the administration of justice. Bereft of these powers the constitutional status of the High Court will be rendered illusory.

104. Salience of the High Court as a Constitutional Court and its autonomy are a given in the constitutional text, but they cannot be taken for granted in constitutional law. There are various factors which can dilute the autonomy of the High Courts and denude their capacity for administration of justice. Some facets and consequences of dilution of autonomy of the High Courts over the years were discussed by this Court in *Hasae @ Hasana Wae Vs. State of U.P. and another*[42].

105. In *Hasae @ Hasana Wae (supra)*, this Court had the occasion to consider some features of the raison detre of the High Court as a Constitutional Court:

> "8. The Allahabad High Court has a history of more than 155 years which predates most constitutional Courts in the country. Rectitude of conduct of the judges, adherence to ethical norms by lawyers, and professional achievements which set standards of excellence form the quintessence of its storied reputation and animates the Court even today. The Allahabad High Court has thus earned the abiding trust of the people of the State by dispensing fair and impartial justice and by the probity of conduct of the Bar and the Bench alike.
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> 9. The Bar of this Court was in the frontline of the freedom struggle and the Court has been at the vanguard of protection of rights and liberties of citizens in times of maximum peril.
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> 10. The paradox of the Allahabad High Court is that the unconditional trust of the citizens is its most precious asset but also poses the most pressing challenge. The people of the State of U.P. approach this Court with full confidence and no constraint. The result of the people of the State approaching the Court in huge numbers is the largest docket size in the country. The workload on Judges in the Allahabad High Court is the highest in the country.
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> 11. Unremitting the toil of judges and unsurpassed industry of lawyers has allowed the Court to keep the faith and confidence of the people in its ability to deliver justice.
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> 12. The distant vision of the founding fathers was reflected in the creation of the comity of constitutional Courts which included the High Courts of the States and the Supreme Court of India. The High Courts and the Supreme Court have been vested with analogous powers by the Constitution of India. Constitutional autonomy of the High Courts is paired with the attribute of finality to the holdings of

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42 2021(11) ADJ 111

> the Supreme Court as the highest appellate Court in the country. These features are integral to the scheme of judicial federalism in the Constitution of India.
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> 13. The High Courts possess supervisory powers over the District Courts under Article 227 of the Constitution of India. However it is noteworthy that no such powers of superintendence over the High Courts are vested in the Supreme Court by the Constitution of India. The reasons are not far to seek.
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> 14. Considering the unique circumstances of our country, most citizens are not likely to go beyond the High Court in search of justice.
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> 15. An overwhelming majority of the citizens make the Allahabad High Court the final temple in their pursuit of justice. Primarily it is the quality of justice and trust in the institution which persuades the majority of our citizens to accept the finality of the judgements of the Allahabad High Court. High Court is the litigative terminus for other reasons as well, including litigation fatigue, financial burden and desire for closure. The Allahabad High Court is final because of the citizens' choice as the Court of last resort.
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> 32. The High Courts are best placed to understand and respond to the local problems of the State and the special needs of its people. Upholding the law and dispensing justice on a day to day basis in this setting provides an acute insight to the High Courts and imparts great value to their judgements. Legal practices evolved by the High Courts from the experience gained by proximity to ground realities of the State and which have eminently served the cause of justice should not be readily reversed.
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> 49. The understanding of particularized circumstances of the society and the facts of the case is essential to dispense justice in a State like Uttar Pradesh. The richness of the State of U.P. is reflected in the diversity of its heritage. The disparities in the society are manifested in the challenges faced by the State and the complex issues arising before the High Court."

VB. INHERENT POWERS U/S 482 Cr.P.C.

106. After tracing the origins of inherent powers under Section 482 Cr.P.C. to the inception of High Courts, the Supreme Court in *Ratilal Bhanji Mithani v. Asstt. Collector of Custom*[43], expounded the purpose of the said powers:

> "9. **Now the question is whether the inherent power of the High Court is conferred by or has the sanction of enacted law. From its very inception the High Court has possessed and enjoyed its**

43. AIR 1967 SC1639

inherent powers including the power to prevent the abuse of the process of any Court within its jurisdiction and to secure the ends of justice. These powers inhere in the High Court and spring from its very nature and constitution as a court of superior jurisdiction. All the existing powers of the High Courts were preserved and continued by legislation from time to time.

(emphasis supplied)

10. Section 561-A of the Criminal Procedure Code declared that "nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order passed under this Code, or to prevent the abuse of process of any Court or otherwise to secure the ends of justice". The section was inserted in the Code by Act 18 of 1923 to obviate any doubt that these inherent powers have been taken away by the Code. **In terms, this section did not confer any power, it only declared that nothing in the Code shall be deemed to limit or affect the existing inherent powers of the High Court, see *King Emperor* v. *Khwaja Nazir Ahmad* [LR 61 IA 203, 213]**.Then came other enactments which were framed differently. Section 223 of the Government of India Act, 1935, provided:

(emphasis supplied)

> "Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of Part III of this Act."

The Section enacted that the jurisdiction of the existing High Courts and the powers of the judges thereof in relation to the administration of justice "shall be" the same as immediately before the commencement of Part III of the Act. The statute confirmed and revested in the High Court all its existing powers and jurisdiction including its inherent powers. Then came the Constitution. Article 225 of the Constitution provides:

> "225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction, of and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution."

The proviso to the article is not material and need not be read. The Article enacts that the jurisdiction of the existing High Courts and the powers of the judges thereof in relation to administration of justice "shall be" the same as immediately before the commencement of the Constitution. **The**

> **Constitution confirmed and re-vested in the High Court all its existing powers and jurisdiction including its inherent powers, and its power to make rules.** When the Constitution or any enacted law has embraced and confirmed the inherent powers and jurisdiction of the High Court which previously existed, that power and jurisdiction has the sanction of an enacted "law" within the meaning of Article 21 as explained in A.K. Gopalan case. The inherent powers of the High Court preserved by Section 561-A of the Code of Criminal Procedure are thus vested in it by "law" within the meaning of Article 21. The procedure for invoking the inherent powers is regulated by rules framed by the High Court. The power to make such rules is conferred on the High Court by the Constitution. The rules previously in force were continued in force by Article 372 of the Constitution. The order of the High Court cancelling the bail and depriving the appellant of his personal liberty is according to procedure established by law and is not violative of Article 21."
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> (emphasis supplied)

107. Some instances of exercise of inherent powers by the High Court for quashing criminal cases as illustrated by the Supreme Court in *R. P. Kapur v. State of Punjab*[44] are as under:

> "*6.* … It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is

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44 AIR 1960 SC 866

> disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings….”

108. The Supreme Court examined the concept of doctrine of abuse of the process of court and remedy of refusal to allow the trial by relying on judgments of English Courts as well as Courts in India in *Chandran Ratnaswami v. K.C. Palanisamy*[45], by holding:

> “32. Before we embark upon dealing with the issue posed before us, we would like to discuss the principles laid down by various courts as to when continuance of criminal proceeding will amount to abuse of the process of the court.
>
> 33. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognised doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court.
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> 34. Lord Morris in Connelly v. Director of Public Prosecutions [1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)], observed: (AC pp. 1301-02)
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> > “There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. … A court must enjoy such powers in order to enforce its rules

45 (2013) 6 SCC 740

> of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.
>
> The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice."
>
> In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

35. In Hui Chi-ming v. R. [(1992) 1 AC 34 : (1991) 3 WLR 495 : (1991) 3 All ER 897 (PC)] , the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

36. In the leading case of R. v. Horseferry Road Magistrates' Court, ex p Bennett [(1994) 1 AC 42 : (1993) 3 WLR 90 : (1993) 3 All ER 138 (HL)] , on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

> (i) where it would be impossible to give the accused a fair trial; or
>
> (ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

37. In R. v. Derby Crown Court, ex p Brooks [(1984) 80 Cr App R 164 (DC)] , Lord Chief Justice Ormrod stated:

> "It may be an abuse of process if either (a) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable."

38. Neill, L.J. in R. v. Beckford (Anthony) [(1996) 1 Cr App R 94 : 1995 RTR 251 (CA)] , observed that:

> "The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried."

What is unfair and wrong will be for the court to determine on the individual facts of each case."

109. C*handran Ratnaswami (supra)* thereafter cited various other authorities with approval including *State of*

Haryana Vs. Bhajan Lal[46]*; Zandu Pharmaceutical Works Ltd. vs. Mohd. Sharaful Haque*[47]*, Inder Mohan Goswami Vs. State of Uttranchal*[48] and *G. Sagar Suri v. State of U.P.*[49]

110. The purpose of vesting inherent powers in the High Court from their inception to act ex debito justitiae was reiterated by the Supreme Court in *Minu Kumari v. State of Bihar*[50], while determining the ambit of Section 482 Cr.P.C.:

> "19. The section does not confer any new power on the High Court. **It only saves the inherent power which the Court possessed before the enactment of the Code.** It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. **It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.** No legislative enactment dealing with procedure can provide for all cases that may possibly arise. **Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts.** All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. **It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court**

46 AIR 1992 SC 604
47 (2005) 1 SCC 122
48 (2007) 12 SCC 1
49 (2000) 2 SCC 636
50 (2006) 4 SCC 359

> **would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice**."
>
> (emphasis supplied)

111. After examining the provisions of the statute, the Supreme Court in *Hamida v. Rashid Alias Rasheed*[51], noticed that the statute did not limit the inherent powers of the High Court. Further the procedural Code, howsoever exhaustive, cannot provide for all contingencies for all times to come. Existence of inherent powers was accordingly justified in *Hamida (supra)* on the following footing:

> "6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 CrPC saves **the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect** to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. **A procedural code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in** proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. **It is well-established principle that every court has inherent power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court.** As held by the Privy Council in *Emperor* v. *Khwaja Nazir Ahmad* [AIR 1945 PC 18] with regard to Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 CrPC is a verbatim copy of the said provision) gives no new powers. It only provides that those powers which the Court already inherently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Act."
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> (emphasis supplied)

112. The scope of the inherent powers of the High Court under Section 482 Cr.P.C., and the rationale for confiding such wide powers in the High Court was

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51. (2008) 1 SCC 474

explained by the Supreme Court in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*[52]*:*

> "8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

113. While describing the plenitude of the powers under Section 482 Cr.P.C., the need to observe caution in exercise of such powers and the importance of jealously

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52. (2005) 1 SCC 122

preserving the said powers was underscored by the Supreme Court after citing authorities of our courts as well as international authorities in point in *Gorige Pentaiah v. State of A.P.*[53]:

> "12. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent **power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.** Inherent power under Section 482 CrPC can be exercised:
>
> (i) to give effect to an order under the Code;
> (ii) to prevent abuse of the process of court; and
> (iii) to otherwise secure the ends of justice.
>
> (emphasis supplied)
>
> Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.
>
> 13. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. Director of Public Prosecutions[1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)] Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in Director of Public Prosecutions v. Humphrys [1977 AC 1 : (1976) 2 WLR 857 : (1976) 2 All ER 497 (HL)] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that **the courts' power to prevent such abuse is of great constitutional importance and should be jealously preserved."**
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> (emphasis supplied)

114. The jurisdiction under Section 482 Cr.P.C. was construed as a crowning power to exercise control over the administration of justice within its territorial

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53. (2008) 12 SCC 531

jurisdiction by the Supreme Court in *State of Punjab v. Davinder Pal Singh Bhullar*[54]:

> "60. The rule of inherent powers has its source in the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. The order cannot be passed bypassing the procedure prescribed by law. The court in exercise of its power under Section 482 CrPC cannot direct a particular agency to investigate the matter or to investigate a case from a particular angle or by a procedure not prescribed in CrPC. Such powers should be exercised very sparingly to prevent abuse of process of any court. Courts must be careful to see that their decision in exercise of this power is based on sound principles.
>
> 61. To inhere means that it forms a necessary part and belongs as an attribute in the nature of things. **The High Court under Section 482 CrPC is crowned with a statutory power to exercise control over the administration of justice in criminal proceedings within its territorial jurisdiction. This is to ensure that proceedings undertaken under CrPC are executed to secure the ends of justice. For this, the legislature has empowered the High Court with an inherent authority which is repository under the statute.** The legislature therefore clearly intended the existence of such power in the High Court to control proceedings initiated under CrPC. Conferment of such inherent power might be necessary to prevent the miscarriage of justice and to prevent any form of injustice. However, it is to be understood that it is neither divine nor limitless. It is not to generate unnecessary indulgence. The power is to protect the system of justice from being polluted during the administration of justice under the Code.
>
> (emphasis supplied)
>
> 62. The High Court can intervene where it finds the abuse of the process of any court which means, that wherever an attempt to secure something by abusing the process is located, the same can be rectified by invoking such power. There has to be a nexus and a direct correlation to any existing proceeding, not foreclosed by any other form under the Code, to the subject-matter for which such power is to be exercised."

115. The scope and the powers under Section 482 Cr.P.C. was discussed at length by the Supreme Court in *Gian Singh v. State of Punjab*[55], wherein need to consider the facts and circumstances of a case to

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54. (2011) 14 SCC 770
55 (2012) 10 SCC 303

determine whether the inherent jurisdiction can be exercised was restated:

> "53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. **The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice.** As has been repeatedly stated that **Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice**. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.
>
> (emphasis supplied)
>
> 54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (*i*) to prevent abuse of the process of any court, or (*ii*) to secure the ends of justice, is a sine qua non.
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> 55. In the very nature of its constitution, **it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists.** The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection. (emphasis supplied)
>
> 56. **It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided**."
>
> (emphasis supplied)

116. The scope of powers under Section 482 Cr.P.C. was interpreted in light of necessity of inherent powers in a court for administration of justice in *State of Karnataka v. M. Devendrappa*[56]:

> "6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

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56 (2002) 3 SCC 89

117. Citing the higher purpose of ex debito justitiae the Supreme Court in *Sushil Suri v. Central Bureau of Investigation*[57], declined to lay down any inflexible rule which would restrict the exercise of inherent jurisdiction:

> "16. Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (*i*) to give effect to an order under CrPC; (*ii*) to prevent an abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. **It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.** Nevertheless, it is neither feasible **nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court.** Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."
>
> (emphasis supplied)

118. *Minu Kumari (supra)* also advised caution while invoking section 482 Cr.P.C. but refrained from laying down any hard and fast rule for exercise of extraordinary jurisdiction:

> "20. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. **Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its**

57. (2011) 5 SCC 708

> **extraordinary jurisdiction of quashing the proceeding at any stage**."

(emphasis supplied)

119. The law set its face against a narrow and pedantic approach while exercising inherent jurisdiction and declining the relief on technical grounds in *State v. M. Subrahmanyam*[58]:

> "10. The High Court was exercising inherent jurisdiction in the interest of justice and to prevent the abuse of the process of law. **In the facts and circumstances of the case, the High Court ought to have exercised its inherent powers to allow the bringing of the authorisation order on record rather than to have adopted a narrow and pedantic approach to its own jurisdiction given the provisions of Sections 173(2) & (5)(*a*) CrPC, as observed in *R.S. Pai.*"**

120. Similarly the Supreme Court in *Janata Dal v. H.S. Chowdhary*[59] held:

> "132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised **in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.**"

(emphasis supplied)

121. The importance of rendering reasoned judgments in application under Section 482 Cr.P.C. was emphasised by the Supreme Court in *Shree Mahavir Carbon Ltd. v. Om Prakash Jalan*[60]:

> "11. After all the High Court was setting aside the order of the subordinate court by which the subordinate court had taken cognizance in the matter. This could be done after appropriately dealing with the contentions of both the parties, more specially when it was the first judicial review of the orders of the court below. In Hindustan Times Ltd. v. Union of India [Hindustan Times Ltd. v. Union of India, (1998) 2 SCC 242 : 1998 SCC

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58 (2019) 6 SCC 357
59 (1992) 4 SCC 305
60 (2015) 12 SCC 653

(L&S) 481] this Court made pertinent observation in the context: (SCC p. 248, para 8)

> "8. In an article 'On Writing Judgments' [(1990) 64 ALJ 691 (Aust)] , Justice Michael Kirby of Australia has approachwed the problem from the point of view of the litigant, the legal profession, the subordinate courts/tribunals, the Brother Judges and the Judges' own conscience. To the litigant, the duty of the Judge is to uphold his own integrity and let the losing party know why he lost the case. The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and for the reassurance of the quality of the judiciary which is still the centrepiece of our administration of justice. It does not take long for the profession to come to know, including through the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact, etc. The reputational considerations are important for the exercise of appellate rights, for the Judges' own self-discipline, for attempts at improvement and the maintenance of the integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to the lower hierarchy of Judges and tribunals is of utmost importance. Justice Asprey of Australia has even said in Petit v. Dankley [Petit v. Dankley, (1971) 1 NSWLR 376 (CA Aust)] that the failure of a Court to give reasons is an encroachment upon the right of appeal given to a litigant."

12. It was finally stated: (Hindustan Times Ltd. case [Hindustan Times Ltd. v. Union of India, (1998) 2 SCC 242 : 1998 SCC (L&S) 481] , SCC p. 248, para 8)

> "8. … In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal."

(emphasis supplied)

In that case, the order of dismissal of the writ petition by the High Court was affirmed by us but the task fell on the Supreme Court, to inform the appellant why it had lost the case in the High Court.

13. In the present case, we have avoided to do this exercise and have not gone into the merits of the case to find out whether the conclusion of the High Court is correct or not, as the counsel for both the parties have agreed for remand of the matter.

14 [Ed.: Para 14 corrected vide Official Corrigendum No. F.3/Ed.B.J./23/2014 dated 23-4-2014.] . It is nowhere suggested by us that the judgment should be too lengthy or prolix and disproportionate to the issue involved. However, it is to be borne in mind that the principal objective in giving judgment is to make an effective, practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by

> choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or writers (precedents). Since the court is to come to a workable decision, its reasoning and conclusion must be practical, suit the facts as found and provide an effective, workable remedy to the winner.
>
> 15. We are of the opinion that while recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on an objective consideration.
>
> 16. When we talk of giving "reasons" in support of a judgment, what is meant by "reasons"? In the context of legal decision-making, the focus is on what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in non-arbitrary ways in favour of making or accepting that decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason.
>
> 17. We are not entering into a jurisprudential debate on the appropriate theory of legal reasoning. It is not even a discourse on how to write judgments. Our intention is to simply demonstrate the importance of legal reasoning in support of a particular decision. What we have highlighted is that instant is a case or arriving at a conclusion, in complete absence of reasons, what to talk of adequate or good reasons that justify that conclusion.
>
> 18. In the given case, it was required by the High Court to take note of the arguments of the complainant on the basis of which the complainant insisted that ingredients of the particular offences alleged are prime facie established justifying the cognizance of the complaint and the arguments of the respondents herein on the basis of which the respondents made an endeavour to demonstrate that it was a pure civil dispute with no elements of criminality attached. Thereafter, the conclusion should have been backed by reasons as to why the arguments of the complainant are meritless and what is the rationale basis for accepting the case of the accused persons. We hope that this aspect would be kept in mind by the High Court while deciding the case afresh."

122. The requirement to conform the principles of natural justice by giving adversary parties an opportunity to file objections was iterated in *Engineering Export Promotion Council v. Usha Anand*[61].

123. The extraordinary powers conferred under Article 226 of the Constitution of India and the inherent

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61 (2013) 12 SCC 630

jurisdiction under Section 482 Cr.P.C. were put on a similar footing since the two were created for the same elevated purpose i.e. ex debito justitiae but the Supreme Court did not lay down any cast iron rule for exercise of such powers in *Varala Bharath Kumar v. State of Telangana*[62] by holding:

> "6. **It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice.** Where allegations made in the first information report/the complaint or the outcome of investigation as found in the charge-sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the first information report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; **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, the power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure may be exercised.**
>
> (emphasis supplied)
>
> 7. **While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a court of appeal or revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised ex debito justitiae to do real and substantial justice, for the administration of which alone courts exist**. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. **Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."**
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> (emphasis supplied)

124. Similarly, the powers vested by virtue of Articles 226 and 227 of the Constitution of India and those

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62 (2017) 9 SCC 413

Section 482 Cr.P.C. were construed as analogous powers which were vested with the sole purpose to achieve justice and not to frustrate it in *State of Maharashtra v. Arun Gulab Gawali*[63] by holding:

> "13.….The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers."

[Also See: *State of W.B. v. Swapan Kumar Guha (1982) 1 SCC 561; Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749; G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11].*

125. The salutary purpose of inherent powers of the High Court under Section 482 Cr.P.C. and extraordinary jurisdiction under Article 226 of the Constitution of India was outlined by the Supreme Court in *Kapil Agarwal v. Sanjay Sharma*[64] to equate both two jurisdictions by holding:

> "18.1. As observed and held by this Court in a catena of decisions, inherent jurisdiction under Section 482 CrPC and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of inherent powers, such proceedings can be quashed."

126. Abuse of the process of court and other extraordinary situations would create right conditions

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63. (2010) 9 SCC 701
64. (2021) 5 SCC 524

for invoking the exercise of inherent and revisional jurisdictions and that the limitations created by the courts in exercise of the same was nothing more than self restraint as held by the Supreme Court in *Raj Kapoor* v. *State*[65] by establishing the contours of law as under:

> "10. The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye case* [*Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution
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> > "would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding

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65 (1980) 1 SCC 43

> initiated illegally, vexatiously or as being without jurisdiction" [(1977) 4 SCC 551, 556, para 10 : AIR 1978 SC 47, 51] .

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. **The limitation is self-restraint, nothing more.** The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a *tertium quid*, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.:

(emphasis supplied)

> "The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

127. *Raj Kapoor (supra) was approved in Prabhu Chawla v. State of Rajasthan*[66].

128. The Supreme Court provided some categories of cases by way of illustration where extraordinary powers under Article 226 of the Constitution of India or inherent power under Section 482 Cr.P.C. could be exercised by the High Court in *State of Haryana v. Bhajan Lal*[67] by expounding the law as under:

> "108. 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

66 (2016) 16 SCC 30

67 AIR 1992 SC 604

extracted and reproduced above, we give 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 Act concerned (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 Act concerned, 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.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the

> FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."
>
> (emphasis supplied)

129. A more categorical pronouncement acknowledging the overlap in the extraordinary jurisdictions under Article 226 and 227 of the Constitution of India and inherent powers under Section 482 Cr.P.C. was made by the Supreme Court in *Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others*[68]. In *Pepsi Foods (supra)* the nomenclature of the petition was held not relevant, as the said powers are devised to advance justice and not to frustrate it:

> "22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In *State of Haryana* v. *Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. **Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice.** One of such guidelines is 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. **Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles**

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68 1998 (5) SCC 749

> **for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.**
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> 26. **Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.**
>
> (emphasis supplied)
>
> 30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. **Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case**. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."
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> (emphasis supplied)

130. Advancement of justice and prevention of abuse of the process of court were outlined as the existential purposes of courts in *State of Orissa v. Saroj Kumar Sahoo*[69] and use of powers under Section 482 Cr.P.C. were set forth as under:

> "*8.* … While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. **It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the**

69 (2005) 13 SCC 540

> **court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.** When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto."
>
> (emphasis supplied)

131. *Saroj Kumar Sahoo (supra)* was followed by the Supreme Court in *Mahendra K.C. v. State of Karnataka*[70], to hold that the High Court in exercise of powers under Section 482 Cr.P.C. can issue orders to prevent abuse of legal process or otherwise secure the ends of justice. [Also see: *Parbatbhai Aahir v. State of Gujarat, (2017) 9 SCC 641; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516; Pratibha v. Rameshwari Devi, (2007) 12 SCC 369;* and *Dinesh Dutt Joshi v. State of Rajasthan, (2001) 8 SCC 570].*

132. The Supreme Court in *Inder Mohan Goswami v. State of Uttaranchal*[71], advocated invocation of inherent powers to advance justice and prevent injustice whenever abuse of the process leading to injustice is brought to the notice of the court:

> "23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:
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> (*i*) to give effect to an order under the Code;
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> (*ii*) to prevent abuse of the process of court, and

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70 (2022) 2 SCC 129

71 (2007) 12 SCC 1

(*iii*) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. **If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."**

(emphasis supplied)

133. Criminal proceedings arising out of certain offences were terminated in *Gian Singh v. State of Punjab*[72] after identifying certain categories of cases and the fact that the parties had arrived at a compromise by holding:

"*61*. … **Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (*i*) to secure the ends of justice, or (*ii*) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed**. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. **But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be**

72 (2012) 10 SCC 303

> **caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”**
>
> (emphasis supplied)

134. Noticing the tendency of unscrupulous litigants to abuse the process of court and use the criminal justice system as a weapon of harassment, the Supreme Court in *Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*[73] emphasised the need to employ the inherent powers under Section 482 Cr.P.C. as a tool of justice by holding:

> “84. It is well settled that the inherent jurisdiction under Section 482 CrPC is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed.”

135. The need to exercise the powers under Section 482 Cr.P.C. to prevent the judicial process from being used as an instrument of harassment in the hands of frustrated litigants was held to be not only desirable but necessary by the Supreme Court in *S.W. Palanitkar v. State of Bihar*[74]:

> “27**.** In the case on hand, we have already stated above that except against Appellant 7, no offence was made out against the remaining appellants as the ingredients of offences alleged against them were not satisfied. Unfortunately, the High Court failed to exercise jurisdiction under Section 482 CrPC to correct manifest

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73 (2019) 16 SCC 610

74 (2002) 1 SCC 241

> error committed by the learned Magistrate in issuing process against Appellants 1-6 and 8 when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences. The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV CrPC, having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. **In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 CrPC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred**."

136. In *Krishna Lal Chawla v. State of U.P.*[75] the Supreme Court reiterated the fundamental rights of the individual to be free from frivolous and repeated criminal prosecution forced upon him by the might of the State or by vexatious complaints. Consequences of frivolous criminal litigation, the powers and duties of the courts in such situations was underscored thus :

> "10. Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case. As this Court has held in Amitbhai Anilchandra Shah [Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348 : (2014) 1 SCC (Cri) 309] , such an absurd and mischievous interpretation of the provisions of the

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75 (2021) 5 SCC 435

> CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.
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> 12. **Thus, it is incumbent upon this Court to preserve this delicate balance between the power to investigate offences under the CrPC, and the fundamental right of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State**. If Respondent 2 was aggrieved by lack of speedy investigation in the earlier case filed by him, the appropriate remedy would have been to apply to the Magistrate under Section 155(2) CrPC for directions to the police in this regard. Filing a private complaint without any prelude, after a gap of six years from the date of giving information to the police, smacks of mala fides on the part of Respondent 2.
>
> (emphasis supplied)
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> 22. Frivolous litigation should not become the order of the day in India. **From misusing the public interest litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue**. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in *Subrata Roy Sahara* v. *Union of India* [*Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712] : (SCC p. 642, para 191)
>
> (emphasis supplied)
>
> > "*191*. … One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his."
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> While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself."

137. The Supreme Court in *Krishna Lal Chawla (supra)* invoked Article 142 of the Constitution of India to quash frivolous criminal proceedings or those instituted with oblique or vengeful or malafide motives and also

noticed earlier decisions on use of Section 482 Cr.P.C. by the High Courts for the same cause:

> "27. This Court's inherent powers under Article 142 of the Constitution to do "complete justice" empowers us to give preference to equity and a justice-oriented approach over the strict rigours of procedural law (State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2014) 8 SCC 883 : (2014) 4 SCC (Civ) 657 : (2014) 6 SCC (Cri) 154 : (2014) 3 SCC (L&S) 134]). This Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (Monica Kumar v. State of U.P. [Monica Kumar v. State of U.P., (2008) 8 SCC 781 : (2008) 3 SCC (Cri) 649]). Other decisions have held that inherent powers of High Courts provided in Section 482 CrPC may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or mala fide motives. (Sirajul v. State of U.P. [Sirajulv. State of U.P., (2015) 9 SCC 201 : (2015) 3 SCC (Cri) 749] ; State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] .) Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants."

138. The need to check frivolous criminal complaints and to nip such litigation in the bud was emphasized by the Supreme Court in *Deepak Gaba and others Vs. State of Uttar Pradesh and another*[76] by holding:

> "28. ….Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in *Thermax Ltd.* v. *K.M. Johny* [*Thermax Ltd.* v. *K.M. Johny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] , as it refers to earlier case laws in copious detail."

139. The Supreme Court in *R. Nagender Yadav v. State of Telangana*[77] laid down that the purpose of inherent jurisdiction was to prevent abuse of the process of court and otherwise to secure the ends of justice:

> "19. While exercising its jurisdiction under Section 482CrPC, the High Court has to be conscious that this power is to be exercised

76. (2023) 3 SCC 423
77. (2023) 2 SCC 195

> sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court."

140. Converting civil cases into the criminal proceedings was construed to be an abuse of the process of court in *Rajib Ranjan v. R. Vijaykumar*[78].

141. In *B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 ; Manoj Sharma v. State, (2008) 16 SCC 1; Nikhil Merchant v. CBI, (2008) 9 SCC 677; Shiji v. Radhika, (2011) 10 SCC 705,* it was held that the High Court may quash proceedings exercising powers under Section 482 Cr.P.C. and the same are not limited by Section 320 of the Cr.P.C.

142. The Supreme Court in *State of Karnataka v. L. Muniswamy*[79] discussed the salutatory public purpose of inherent powers to appreciate the width and contours of that salient jurisdiction:

> "7…...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. **In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.** The ends of justice are higher than the ends of

78 (2015) 1 SCC 513
79 (1977) 2 SCC 699

> mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."
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> (emphasis supplied)

143. There is something so right and obvious about the inherent powers of superior courts that they are traced by ancient authorities as those plenary powers which were vested when the superior courts came into existence. Inherent powers exist because the superior courts are there.

144. Cases in point also advert to the fact that Section 482 Cr.P.C. did not infact confer any power but only recognised that such powers inhered in superior courts.

145. Article 225 saved the aforesaid power under Section 482 Cr.P.C. which inhered in the High Courts prior to the Constitution.

146. The nature and ambit of these powers has been settled by long line of consistent cases in point. The powers are exercised ex debito justitiae, and to prevent miscarriage of justice for which alone the courts exist. The power is also used to thwart abuse of process of court at the very inception.

147. Inherent powers are plenary in scope. By their very nature inherent powers elude specific definitions and are incapable of being cast into rigid formulae. Courts have never attempted to limit or to catalogue such powers, but simultaneously advocated caution and self

restraint in its exercise. Cases in point have left it to the Courts to decide the manner of use of these powers in the facts and circumstances of a case. The grant of interim orders to serve the ends of justice has also been traced to inherent powers.

148. Inherent powers under Section 482 Cr.P.C. and the jurisdictions of the Court under Articles 226 and 227 of the Constitution of India may be distinct in some ways but also have many commonalities of purpose and overlap in usage. In many instances, the same relief can be sought in either of the jurisdictions. Institution of separate proceedings under these jurisdictions is only a rule of self restraint and convenience in orderly judicial procedure.

149. Nomenclature of the jurisdiction be it an application under Section 482 Cr.P.C or an application under Articles 226 and 227 may not matter if the powers are being used to fulfill the crowning purpose of acting ex debito justitiae and to prevent abuse of process of court.

150. The preceding discussion highlights that the plenary powers under inherent jurisdiction (Section 482 Cr.P.C.) and extraordinary jurisdictions (under Article 226 and Article 227 of the Constitution of India) provide the High Courts with the capacity of administration of justice, while the exercise of these jurisdictions prove the quality of administration of justice.

151. More importantly the narrative also provides an insight into the consequences of curtailment of powers under Article 226, Article 227 of the Constitution of India and Section 482 Cr.P.C. which the legislature has not restricted and the Constitutional Courts never downsized.

V (C). Basic Structure:

152. The proposition that the jurisdiction conferred on the High court under Articles 226 and 227 of the Constitution of India was part of the basic structure of the Constitution arose squarely for consideration before a Bench of Seven Judges of the Supreme Court in *L. Chandra Kumar* v. *Union of India*[80]. *L. Chandra Kumar (supra)* entrenched judicial review under Article 226 of the Constitution of India and the judicial superintendence of High Courts over decisions of Courts and Tribunal under Article 227 of the Constitution of India in the basic structure of the Constitution of India:

> "76. To express our opinion on the issue whether the power of judicial review vested in the High Courts and in the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The doctrine of basic structure was evolved in *Kesavananda Bharati case* [(1973) 4 SCC 225] . However, as already mentioned, that case did not lay down that the specific and particular features mentioned in that judgment alone would constitute the basic structure of our Constitution. Indeed, in the judgments of Shelat and Grover, JJ., Hegde and Mukherjea, JJ. and Jaganmohan Reddy, J., there are specific observations to the effect that their list of essential features comprising the basic structure of the Constitution are illustrative and are not intended to be exhaustive. In *Indira Gandhi case* [1975 Supp SCC 1] , Chandrachud, J. held that the proper approach for a Judge who is confronted with the question

80 (1997) 3 SCC 261

whether a particular facet of the Constitution is part of the basic structure, is to examine, in each individual case, the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of our Constitution as a fundamental instrument for the governance of the country. (*supra* at pp. 751-752). This approach was specifically adopted by Bhagwati, J. in *Minerva Mills case* [(1980) 3 SCC 625] (at pp. 671-672) and is not regarded as the definitive test in this field of Constitutional Law.

77. We find that the various factors mentioned in the test evolved by Chandrachud, J. have already been considered by decisions of various Benches of this Court that have been referred to in the course of our analysis. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme. While several judgments have made specific references to this aspect [Gajendragadkar, C.J. in *Keshav Singh case* [(1965) 1 SCR 413 : AIR 1965 SC 745] , Beg, J. and Khanna, J. in *Kesavananda Bharati case* [(1973) 4 SCC 225] , Chandrachud, C.J. and Bhagwati, J. in *Minerva Mills* [(1980) 3 SCC 625] , Chandrachud, C.J. in *Fertilizer Kamgar* [(1981) 1 SCC 568] , K.N. Singh, J. in *Delhi Judicial Service Assn.* [(1991) 4 SCC 406] , etc.] the rest have made general observations highlighting the significance of this feature.

78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. [See Chapter VII, “The Judiciary and the Social Revolution” in Granville Austin, The Indian Constitution : Cornerstone of a Nation, Oxford University Press, 1972; the chapter includes exhaustive references to the relevant preparatory works and debates in the Constituent Assembly.] These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power

> envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.
>
> 79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

153. Following the judgment rendered in *L. Chandra Kumar (supra),* the Supreme Court in *Union of India and Others vs. Parashotam Dass*[81] affirmed judicial review as part of the basic structure of the Constitution and emphasized the distinction between self-restraint of the High Court under Article 226 and an embargo on the High Court to exercise such jurisdiction:

> "25. While we agree with the aforesaid principle, we are unable to appreciate the observations in the case of *Major General Shri Kant Sharma*, which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure. The principles of basic structure have withstood the test of time and are emphasized in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.

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26. On the legislature introducing the concept of "Tribunalisation" (one may say that this concept has seen many question marks vis-a-vis different tribunals, though it has also produced some successes), the same was tested in *L. Chandra Kumar* case before a Bench of seven Judges of this Court. Thus, while upholding the principles of "Tribunalisation" under Article 323A or Article 323B, the Bench was unequivocally of the view that decisions of Tribunals would be subject to the jurisdiction of the High Court under Article 226 of the Constitution, and would not be restricted by the 42ndConstitutional Amendment which introduced the aforesaid two Articles. In our view, this should have put the matter to rest, and no Bench of less than seven Judges could have doubted the proposition. The need for the observations in the five-Judges' Bench in *Rojer Mathew* case qua the Armed Forces Tribunal really arose because of the observations made in *Major General Shri Kant Sharma* Thus, it is, reiterated and clarified that the power of the High Court under Article 226 of the Constitution is not inhibited, and superintendence and control under Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution.

29. We believe that there is no necessity to carve out certain cases from the scope of judicial review under Article 226 of the Constitution, as was suggested by the learned Additional Solicitor General. It was enunciated in the Constitution Bench judgment in *S.N. Mukherjee* case that even in respect of courts-martial, the High Court could grant appropriate relief in a certain scenario as envisaged therein, i.e., "*if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record*."

30. How can courts countenance a scenario where even in the aforesaid position, a party is left remediless? It would neither be legal nor appropriate for this Court to say something to the contrary or restrict the aforesaid observation enunciated in the Constitution Bench judgment in *S.N. Mukherjee* case. We would loath to carve out any exceptions, including the ones enumerated by the learned Additional Solicitor General extracted aforesaid as irrespective of the nature of the matter, if there is a denial of a fundamental right under Part III of the Constitution or there is a jurisdictional error or error apparent on the face of the record, the High Court can exercise its jurisdiction. There appears to be a misconception that the High Court would re-appreciate the evidence, thereby making it into a second appeal, etc. We believe that the High Courts are quite conscious of the parameters within which the jurisdiction is to be exercised, and those principles, in turn, are also already enunciated by this Court.

32. We have, thus, no hesitation in concluding that the judgment in *Major General Shri Kant Sharma* case does not lay down the correct law and is in conflict with judgments of the Constitution Benches rendered prior and later to it, including in *L. Chandra Kumar* case, *S.N. Mukherjee* case, and *Rojer Mathew* case making it abundantly clear that there is no *per se* restriction on the exercise of power under Article 226 of the Constitution by the High Court.

> However, in respect of matters of self-discipline, the principles already stand enunciated."

154. The submissions of the learned counsels at the Bar are grounded in the holdings of the Supreme Court in *L. Chandra Kumar (supra)* and *Parashotam Dass (supra)*. Powers to grant, alter or vary interim orders flow from Articles 226 and 227 of the Constitution of India. According to the learned counsels, the directions in Paras 34, 36, 37 of *Asian Resurfacing (supra)* damage the Basic Structure of the Constitution of India by curtailing the said powers. The magnitude of the impact on the administration of justice by the High Court consequent to the abridgement of its powers by the said directions in *Asian Resurfacing (supra),* vindicates the Basic Structure doctrine. Since the Basic Structure of the Constitution has to be protected at all costs, the submissions of the learned counsels do give rise to substantial questions as to interpretation of the Constitution.

VI. SUPREME COURT

155. The Supreme Court is the highest court of the land. The Supreme Court has been constituted as a Court of record under Article 129 of the Constitution of India. The Supreme Court exercises appellate jurisdiction over all High Courts. The Supreme Court also possesses original jurisdiction in certain matters. There are other distinctive provisions relating to the Supreme Court contained in Chapter IV of the Constitution of India. However, for the purposes of this controversy, three provisions are of relevance.

156. Under Article 141 of the Constitution of India the law declared by the Supreme Court is binding on all courts. Article 142 of the Constitution of India vests the Supreme Court with plenary powers for doing complete justice in any case or matter pending before it. Article 144 of the Constitution of India requires all civil and judicial authorities to act in aid of the Supreme Court.

VI (A). ARTICLE 141:

157. Article 141 of the Constitution of India is a constitutional recognition of the doctrine of precedents which was followed by courts in pre independence India.

158. The law is settled to the point that it is axiomatic that only the ratio decidendi in a judgement constitutes the binding precedent.

159. The Civil Appeal before the Supreme Court in *State of Orissa v. Sudhansu Sekhar Misra and others*[82] was an outcome of the conflict between the High Court and the Government of Orissa. The High Court effected transfers of judicial officers in light of its reading of the judgment of the Supreme Court in *State of Assam v. Ranga Muhammad and others*[83]. The High Court relied on the observations in *Ranga Muhammad (supra)* that after a judicial officer is posted to the cadre it is for the High Court to effect his transfers and accordingly passed orders transferring judicial officers to posts in the State Government.

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82. AIR 1968 SC 647
83. (1967) 1 SCR 454

160. The Supreme Court in *Sudhansu Sekhar Misra (supra)* clarified the ratio in *Ranga Muhammad (supra)* as follows:

> "13. ...Obviously relying on the observation of this Court that after a judicial officer is posted to the cadre, it is for the High Court to effect his transfers, the court below has come to the conclusion that as the posts of the law secretary, deputy law secretary and superintendent and legal remembrancer are included in the cadre, the High Court has the power to fill those posts by transfer of judicial officers. The cadre this Court was considering in *Ranga Mahammad case* [(1967) 1 SCR 454] , namely, Assam Superior Judicial Services Cadre consisted of the Registrar of the Assam High Court and three district judges in the first grade and some additional district judges in Grade II. In that cadre, no officer holding any post under the government was included. Hence the reference by this Court to the cadre is a reference to a cadre consisting essentially of officers under the direct control of the High Court. It was in that context this Court spoke of the cadre. The question of law considered in that decision was as regards the scope of the expression "control over District Court" in Article 235. The reference to the cadre was merely incidental."

161. The principle that only the ratio decidendi of a judgement that is treated as a binding precedent was reflected in *Sudhansu Sekhar (supra)* wherein after relying on British authorities it was held:

> " 13. ...A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in Quinn v. Leathem [[1901] AC 495]:
>
> > "Now before discussing the case of Allen v. Flood, [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

> It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

162. The said judgment was also followed by the Supreme Court in *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior, etc. v. Union of India and another*[84]. *Madhav Rao Scindia Bahadur (supra)* also cautioned:

> "It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

163. A Full Bench of this Court in *Indian Ceramic House, Langra-Ki-Chowki, Agra v. Sales Tax Officer, II Sector, Agra*[85] when faced with two conflicting decisions of this Court delineated ratio decidendi from obiter dictum and expounded the law of binding precedents as follows:

> "7. The above question, in one way, determines the jurisdiction of this Full Bench, and it shall but be proper that we should clearly express our opinion why we regard the observations made in the above Full Bench case as *obiter dicta*, which cannot be used as a precedent on the interpretation of Rule 41 of the U.P. Sales Tax Rules (to be referred hereinafter as the Rules). In Sec. 29 of Salmond on Jurisprudence, Twelfth Edition, rules determining *ratio decidendi* have been indicated. It can, broadly speaking, be said that what is not a *ratio decidendi* is an *obiter dictum*. It is the *ratio decidendi* which is binding on the Courts. The material observations on this question contained in the above section are as below:—
>
> > "First, however, we must distinguish what a case decides generally and as against all the world from what it decides between the parties themselves. What it decides generally is the *ratio decidendi* or rule or law for which it is authority ……."
> >
> > "As against persons not parties to the suit, the only part of a case which is conclusive (with the exception of cases relating to status) is the general rule of law for which it is authority. This rule or proposition, the *ratio decidendi*, may be described roughly as the rule of law applied by and acted on by the Court, or the rule which the court regarded as governing the case.

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84. (1971) 1 SCC 85
85. 1970 SCC OnLine All 193

8. Or again, having decided the case on one point, the judge may feel it unnecessary to pronounce on the other points raised by the parties but he may nevertheless want to indicate how he would have decided these points if necessary. Here again we are not given the judge's final decision on a live issue, so that once more it would be unwise to endow it with as much authority as the actual decision. These observations by the way, *obiter dicta*, are without binding authority, but are nonetheless important: not only to do they help to rationalise the law but they serve to suggest solutions to problems not yet decided by the courts. Indeed dicta of the House of Lords or of judges who were masters of their fields, like Lord Blackburn, may often in practice enjoy greater prestige than the rationes of lesser judges.

9. The *ratio-decidendi*, as opposed to *obiter dicta* is the rule acted on by the court in the case,……

> "Various methods of determining the ratio have been advanced. The "reversal" test of Professor Wambaugh suggested that we should take the proposition of law put forward by the judge, reverse or negate it, and then see if its reversal would have altered the actual decision. If so, then the proposition is the ratio or part of it; if the reversal would have made no difference, it is not. In other words the ratio is a general rule without which the case would have been decided otherwise. This test, however, will not help us in cases …….. Nor is it very helpful where a court gives several reasons for its decision. In such cases we could reverse each reason separately and the decision would remain unaltered, since it could still rest on the other grounds …… Quite often, in fact, where a case is argued on several grounds the judge will decide it on one of these and merely indicate his views on the remaining points, so that here his first proposition of law alone will constitute the ratio. Sometimes, however, he will declare that he is deciding the case on more than one ground, and here each proposition on which he bases the decision will qualify as a ratio."

10. Consequently, where the case is decided in favour of the petitioner on grounds more than one, but on certain points a finding is recorded against him, on the application of the reversal test, the decision on the main question, if apparent from the judgment, would be *ratiod decidendi*, otherwise all the grounds in support of the decision would be *ratio decidendi*; but the point on which a finding is given against the petitioner would not be a *ratiod decidendi* and shall be mere *obiter dictum* considering that the reversal of the finding on this point would not alter the decision of the case.

11. In Chapter X of Keeton's Elementary Principles of Jurisprudence, Second Edition, "*obiter dicta*" is described as "statements of law made by a judge in the course of a decision, arising out of the circumstances of the case, but not necessary for the decision." It was further laid down "that the value of such *dicta* as sources of law naturally varies with the reputation of the judge, and with the closeness of their relation to the matter in issue in the case in which the *dicta* are delivered."

12. The opinions of other authorities and also the English decisions are reproduced in the three cases of Bombay, Madras and Nagpur High Courts to which we shall make a reference shortly. The purpose shall be served by our giving certain quotations from these cases. In *Mohandas Issardas* v. *A.N. Sattonathan*, the point under consideration was whether an *obiter dictum* of the Supreme Court was as much binding upon the High Courts, as an express decision given by the Supreme Court. However, the allied question what is an *obiter dictum* which has a binding effect upon a Court was also commented upon. *Obiter dictum* was regarded as an expression of opinion on a point which was not necessary to the decision of the case. The material observations on this point are as below:—

> "Now, an 'obiter dictum' is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a poist which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the tribunal. Two questions may arise before a Court for its deterfination. The Court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be the '*ratio decidendi*'; the opinion of the tribunal on the question which was not necessary to decide the case would be only an '*obiter dictum*.'

13. Reference was then made to the definition of '*obiter dictum*' to be found in Stroud's Judicial Dictionary, which is based upon the case —'*Flower* v. *Ebbw Vale Steel Iron and Coal Co.*' and the following passage at page 154 in the judgment of Mr. Jnstire Talbot in '*Dew* v. *United British Steamship Co. Ltd.*

> "…….. It is of course perfectsy familiar doctrine that *obiter dicta*, though they may have great weight as such, are not conclusive authority. *Obiter dicta* in this context means what the words literally signify—namely, statements by way.
>
> If a judge thinks it desirable to give his opinion on some point which is not necessary for the decision of the case, that of course has not the binding weight of the decision of the case and the reasons for the decision".

14. Thereafter the statement of the law in Halsbury, Volume XIX, at page 251 was quoted and it is as below:—

> "It may be laid down as general rule that part alone of a decision of a Court of law is binding upon Courts of co-ordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the '*ratio decidendi*'. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand (usually termed decta) have no binding authority on another Court, though they may have some merely persuasive efficacy."

15. In *M. Shaikh Dawood* v. *Collector of Central Excise, Madras*7, reference was made not only to the passage in the judgment of Mr. Justice Talbot, already quoted above, but also to certain passages from Salmond on Jurisprudence, 11th Edition, the material part of which is as below:—

> "A precedent, therefore, is a judicial decision which contains in itself, a principle. The underlying principle which thus forms its authorities element is often termed the *ratio decidendi*. The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the word at large ……. 'The only thing' says the same distinguished judge in another case, 'in a Judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided" ……. The only judicial principles which are authoritative are those which are thus relevant in their subject matter and limited in their scope. All others, at the best, are of merely persuasive efficacy. They are not true *rationes decidendi*, and are distinguished from them under the name of *dicta* or *obiter dicta*, things said by the way."

> "The weight to be given to *obiter dicta* depends upon the circumstances, Sir Carleton Allen's conclusion is that "if the eminence of the tribunal, the consensus of judicial opinion, and the degree of deliberation all combine to lend a special weight and solemnity to *dicta*, then their authority is for all practical purposes indistinguishable from that of *rationes decidendi*."

16. In *Kanglu Baula Kotwal* v. *Chief Executive Officer, Janpad Sabha, Durg*, reference was made to rule for determining the *ratio decidendi* of a case as stated by Professor John Chipman Gray at page 261 in the Nature and Sources of the law (2nd Edition 1921) and also to Allen in his Law in the Making and to the following observations of Lord Sterndale M.B. in—"*Slack* v. *Leeds Industrial Co-operative Society Ltd.*".

> "Dicta are of different kinds and of varying degrees of weight: Sometimes they may be called almost casual expressions of opinion upon a point which has not been raised in the case, and is not really present to the Judge's mind. Such dicta, though entitled to the respect due to the speaker, may fairly be disregarded by judges before whom the point has been raised and argued in a way to bring it under much fuller consideration. Some dicta, however, are of a different kind; they are, although not necessary for the decision of the case, deliberate expressions of opinion given after consideration upon a point clearly brought and argued before the Court. It is open, no doubt, to other judges to give decisions contrary to such dicta, but much greater weight attaches to them than to the former class."

17. The well recognized principle of interpretation accepted by the Courts in England, therefore, is:—

> **"Any judgment of any Court is authoritative only as to that part of it, called the 'ratio decidendi', which is considered**

> **to have been necessary to the decision of the actual issue between the litigants.** It is for the Court, of whatever degree, which is called upon to consider the precedent, to determine what the true 'ratio decidendi' was……..Judicial opinions upon such matters, whether they be merely casual, or wholly gratuitous or (as is far more usual) of what may be called collateral relevance, are known as '*obiter dicta* or simply 'dicta', and it is extremely difficult to establish any standard of their relative weight." (Allen in his Law in the Making).
>
> (emphasis supplied)

18. A Judgment is authoritative only as to that part of it which is considered to have been necessary to the decision of the case, and not that part which was not necessary to its decision. The first is called '*ratio decidendi*'. Which is binding as a precedent. The other called '*obiter dicta*' cannot be treated as a binding precedent though the opinion so expressed is entitled to respect. This rule has been followed by the three High Courts mentioned above and we find no reason to depart from this well recognized principle.

19. The learned Standing Counsel invited our attention to two English decisions — *Jacobs* v. *London County Council* and *Behrens* v. *Bertram Mills Circus Ltd.* But they apply to only those cases where more than one reason has been given for the decision, and not where it was not necessary to record a finding on a particular point for the proper decision of the case. Where more than one reason has been given for the view expressed in the case, that is, in support of the decision, both shall be *ratio decidendi* as no one can say with certainty, expect for the judge himself who decided the case, which point was upper most in his mind; but where many questions arise in the case, some are decided in favour of the petitioner and others against him, and, in the end, decision is given in favour of the petitioner, they shall be the points decided in his favour which have a binding precedent, and not the one which was decided against him, for the simple reason, that for the decision of the case it was not necessary to record a finding on the latter category of points. Only those points were material for the decision of the case which entitled him to a favourable judgment and the others which could not entitle him to a favourable judgment need not have been decided.

20. There can never exist any controversy as to the absence of binding effect of observations of a casual nature, or where the remarks have been made in passing on certain questions of law involved in the case. They shall all be casual observations which cannot take the place of a final expression of opinion on those questions. Such observations cannot amount to a precedent, that is, *ratio decidendi*: they would be obiter dicta which can be disregarded by an other judge, though the observations made by higher Court or even by a Bench of a larger number of Judges must be given due respect and departure therefrom made on good grounds after detailed consideration of the provisions of the law and the rules. Difficulty arises only when observations have been

made after detailed consideration on points which were not necessary to the decision of the case. Where there has been no detailed comments on the provisions of the enactment and the rules, formal expression of opinion on points not necessary to the decision of the case, can be placed in the same category as casual observations and they shall be *obiter dicta* not binding on other Courts, all the more, a Court constituted with the same number of Judges. Even when the points not necessary to the decision of the case are decided after detailed consideration of the provisions of the law, they can be regarded as the considered expression of opinion by the Judges but in other respects would fall in the same category as casual observations not necessary to the decision of the case. We find no reason to depart from the well recognized principles already commented upon above.

21. In *Adarsh Bhandar* v. *Sales Tax Officer, Aligarh*, the petitioner furnished a return of his turnover for the quarter ending 30th June, 1956, but denied that any sales tax could legally be recovered from him on the turnover on the ground that the turnover on the goods in which he dealt was not liable to tax. The Sales Tax Officer, however, provisionally assessed the petitioner to a tax of Rs. 75,000/- on an estimated turnover of Rs. 12 lakhs at the rate of one anna per rupee. The Full Bench allowed the Writ Petition on a few grounds, though they also recorded the finding that the Sales Tax Officer had the jurisdiction to provisionally assess the petitioner when proper sales tax had not been deposited before submitting the return or a cheque for the proper amount was not enclosed with the return. This finding would have justified the dismissal of the Writ Petition in case the other points were not favourable to the petitioner. In other words, for the favourable decision of the Writ Petition, it was not necessary to record a finding on the jurisdiction of the Sales Tax Officer to make provisional assessment where proper tax, though the liability was disputed, was not deposited or remitted by cheque with the return. Even if a finding was not recorded on this point, the decision of the case would have been the same.

22. The observations of Mootham, C.J. on this question are contained in Para. 38 of the Report. It shall be found that no detailed comments have been made, all the more, with reference to the provisions of Sec. 7 of the U.P. Sales Tax Act (to be referred hereinafter as the Act). In the earlier part Mootham, C.J. himself mentioned that he was referring briefly to the three submissions made on behalf of the petitioner with regard to the invalidity of the assessment proceedings. This by itself makes it clear that there was no proper and detailed consideration of these points and Mootham, C.J. made certain observations simply because these points had also been argued before the Bench. When the other points raised by the petitioner had appealed to the Bench, the petitioner himself may not have made detailed submissions in the three points on which the validity of the assessment proceedings was being challenged. We are thus of opinion that the finding on the above question contained in Para 38 of the Report of the Full Bench case of *Adarsh Bhandar* v. *Sales Tax Officer, Aligarh*1 cannot be placed

> in the category of a precedent binding on other Benches, all the more, on a Full Bench with a similar strength. It is not a *ratio decidendi*, but is mere *obiter dictum* which cannot be used as a precedent in other cases. When this finding cannot be deemed to be a judicial pronouncement having the force of a binding precedent, the matter can be reconsidered by this Full Bench without recourse to a reference to a still larger Bench. This view is in consonance with the observations in *Atma Ram* v. *State of Punjab*. Their Lordships of the Supreme Court had advised reference to a larger Bench where a Full Bench of three Judges was inclined to take a view contrary to that of another Full Bench of equal strength so that the subordinate Courts may not be placed under the embarrassment of preferring one view to another, both equally binding upon them. When the expression of opinion by the earlier Full Bench does not have the force of a binding precedent, there shall be only one decision of the Full Bench binding on the subordinate courts and no occasion for embarrassment shall arise. We are thus of the opinion that we are competent to hear and decide the question referred to us even though the earlier Full Bench had made observations contrary to the law as is being enunciated by us."

164. The scope of law declared within the meaning of Article 141 of the Constitution of India arose for consideration before the Supreme Court in *Dalbir Singh and others v. State of Punjab*[86]. The process to isolate the ratio decidendi from the judgment was set out in *Dalbir Singh (supra)* as under:

> "22. With greatest respect, the majority decision in Rajendra Prasad case does not lay down any legal principle of general applicability. **A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less "law declared" within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents every decision contains three basic ingredients:**
>
> > **"(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;**
> >
> > **(*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and**
> >
> > **(*iii*) judgment based on the combined effect of (*i*) and (*ii*) above."**
>
> For the purposes of the parties themselves and their privies, ingredient (*iii*) is the material element in the decision for it determines finally their rights and liabilities in relation to the

86. (1979) 3 SCC 745

> subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. **However, for the purpose of the doctrine of precedents, ingredient (*ii*) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker : The English Legal System. Butterworths, 1972, 3rd Edn., pp. 123-24] It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of *Qualcast (Wolverhampton) Ltd.* v. *Haynes* [LR 1959 AC 7 43 : (1959) 2 All ER 38] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts.** This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case."
>
> (emphasis supplied)

165. The precedential value of the judgement of the Supreme Court rendered in *State Bank of India v. Yasangi Venkateswara Rao*[87] arose for consideration before the Supreme Court in *Jayant Verma and others v. Union of India and others*[88]. The issue which arose for consideration in *Jayant Verma (supra)* was defined thus:

> "53**.** By a short judgment in Yasangi Venkateswara Rao (supra), this Court upset the elaborate judgment of the High Court thus:
>
> > "7. We are unable to understand as to how the High Court could come to the conclusion that Parliament had no jurisdiction to enact Section 21-A. There can be no doubt that Section 21-A deals with the question of the rate of interest which can be charged by a banking company. Entry 45 of List I of the Seventh Schedule clearly empowers Parliament to legislate with regard to banking. The enactment of Section 21-A was clearly within the domain of Parliament. The said section applies to all types of loans which are granted by a banking company, whether to an agriculturist or a non- agriculturist, and, therefore, reference by the High Court to Entry 30 of List II was of no consequence. In our opinion, the said Section 21-A had been validly enacted."
>
> **At first blush, it appears that, though cryptic, the said paragraph does contain reasons for upsetting the High Court judgment. But, on a closer look, it becomes clear that there is no**

87. (1999) 2 SCC 375
88. (2018) 4 SCC 743

> **reasoning worth the name for so doing.** Paragraph 7 is a series of conclusions put together without any clear reasoning in support. This is probably because only the learned Additional Solicitor General for the appellant appeared before the Court and argued the case on behalf of the appellant. The respondent, though probably served, did not appear and consequently was not heard. **It will also be noticed that, despite the fact that the judgment of the single Judge referred to a very large number of High Court, Federal Court, Privy Council and Supreme Court judgments, not a single judgment is adverted to in the cryptic paragraph 7 set out hereinabove. Can it be said that this judgment is a declaration of the law under Article 141 of the Constitution, which as a matter of practice we cannot differ from being a bench of coordinate strength?"**
>
> (emphasis supplied)

166. The discussion on binding precedents was initiated in *Jayant Verma (supra*) by citing from authorities of repute. Precedent in English Law by Cross and Harris (4th Edn.) was quoted and the dissenting judgement of A.P. Sen, J. in *Dalbir Singh v. State of Punjab*[89], was also cited with approval :

> "54. This question is answered by referring to authoritative works and judgments of this Court. In Precedent in English Law by Cross and Harris (4th edn.), 'ratio decidendi' is described as follows:
>
> > "The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury."

167. Thereafter, the judgement in *Jayant Verma (supra)* proceeded to discuss the following authorities rendered by the Supreme Court :

> "56. Similarly, this Court in Som Prakash Rekhi v. Union of India (1981) 2 SCR 111 at 139 referred to the "laconic discussion and limited ratio" in Subhajit Tewary v. Union of India (1975) 3 SCR 616, a judgment of a Constitution Bench of this Court, and was not bound by it. Krishna Iyer, J. put it thus:
>
> > "43. We may first deal with Subhajit Tewary v. Union of India (1975) 3 SCR 616, where the question mooted was as to whether the C.S.I.R. (Council of Scientific and Industrial Research) was

89 (1979) 3 SCC 745

> ‘State’ under Art. 12. The C.S.I.R. is a registered society with official and non-official members appointed by Government and subject to some measure of control by Government in the Ministry of Science and Technology. The court held it was not ‘State’ as defined in Art. 12. It is significant that the court implicitly assented to the proposition that if the society were really an agency of the Government it would be ‘State’. But on the facts and features present there the character of agency of Government was negatived. The rulings relied on are, unfortunately, in the province of Art. 311 and it is clear that a body may be ‘State’ under Part III but not under Part XIV. Ray, C.J., rejected the argument that merely because the Prime Minister was the President or that the other members were appointed and removed by Government did not make the Society a ‘State’. With great respect, we agree that in the absence of the other features elaborated in Airport Authority case (1979) 3 SCC 489, the composition of the Governing Body alone may not be decisive. The laconic discussion and the limited ratio in Tewary (supra) hardly help either side here.”

58. Further, in State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 at 679-680, it was stated:

> “65. “Incuria” literally means “carelessness”. In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the “quotable in law” is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.
>
> 67. Thus, “per incuriam” are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.”

168. Finally in light of the said discussion the *Jayant Verma (supra)* expounded the law as under:

> “59. **It is clear, therefore, that where a matter is not argued at all by the respondent, and the judgment is one of reversal, it would be hazardous to state that the law can be declared on an ex parte appraisal of the facts and the law, as demonstrated before the Court by the appellant’s counsel alone.** That apart, where there is a detailed judgment of the High Court dealing with several authorities, and it is reversed in a cryptic fashion without dealing with any of them, the per incuriam doctrine kicks in, and the judgment loses binding force, because of the manner in which it deals with the proposition of law in question. **Also, the ratio decidendi of a judgment is the principle of law adopted having regard to the line of reasoning of the Judge which alone binds in future cases. Such principle can only be laid down after a discussion of the relevant provisions and the case law on the subject. If only one side is heard and a**

> **judgment is reversed, without any line of reasoning, and certain conclusions alone are arrived at, without any reference to any case law, it would be difficult to hold that such a judgment would be binding upon us and that we would have to follow it.** In the circumstances, we are of the opinion that the judgment in Yasangi Venkateswara Rao (supra) cannot deter us in our task of laying down the law on the subject."
>
> (emphasis supplied)

169. The Supreme Court in *Arnit Das v. State of Bihar*[90] cautioned that a decision not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be a law declared within the meaning of Article 141 of the Constitution of India by holding:

> "20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined."

170. Analysis of facts of a case and the process of reasoning were part of the process to ascertain the ratio decidendi of a judgement or the principle of law having binding force in all Courts in India according to the Supreme Court in *Krishena Kumar v. Union of India and others*[91]. *Krishena Kumar (supra)* also clarified if the ratio is not clear the Court is not bound by the judgement:

> "19. **The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required".** This was what Lord Selborne said in *Caledonian Railway Co.* v. *Walker's Trustees* [(1882) 7 App Cas 259 : 46 LT 826 (HL)] and Lord Halsbury in *Quinn* v. *Leathem* [1901 AC 495, 502 : 17 TLR 749 (HL)] . Sir Frederick Pollock has also said : **"Judicial authority belongs not to the exact words used in this**

90 2000 (5) SCC 488
91 1990 (4) SCC 207

or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision."

(emphasis supplied)

20. **In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)**

> **"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."**

(emphasis supplied)

33**.** *Stare decisis et non quieta movere*. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 14 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. **When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice.** It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] it was never required to be decided that all the retirees formed a class and no further classification was permissible."

(emphasis supplied)

171. In *State of Orissa and others v. Md. Illiyas*[92], the Supreme Court iterated the well settled position of law that it is only the ratio decidendi which comes within the ambit of the law declared by Supreme Court and is binding precedent by stating the law as follows:

> "12. When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the case concerned and there cannot be any straitjacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that prerequisite conditions were absent. **Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates : (*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa* v. *Sudhansu Sekhar Misra* [(1968) 2 SCR 154 : AIR 1968 SC 647] and *Union of India* v. *Dhanwanti Devi* [(1996) 6 SCC 44] .) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn* v. *Leathem* [1901 AC 495 : 85 LT 289 : (1900-03) All ER Rep 1 (HL)] the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."**
>
> (emphasis supplied)

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92. 2006 (1) SCC 275

172. It would be apposite to refer to the following observations of the three-Judge Bench of the Supreme Court in *Regional Manager and another v. Pawan Kumar Dubey*[93], wherein it was held that even a single fact could make a difference in conclusions drawn in two cases:

> "7. ...**It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.**"
>
> (emphasis supplied)

173. While deducing the ratio in a judgement, the Supreme Court in *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation*[94] held:

> "35. This Court has held that the **ratio decidendi is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar.** It has been held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."
>
> (emphasis supplied)

174. The process of deducing the ratio of the binding statement of law made in a judgment arose for consideration before the Supreme Court in *Union of India and others v. Dhanwanti Devi and others*[95]. *Dhanwanti Devi (supra)* after emphasizing the need to examine the established facts of a case and the principle of law on which the issue was decided, the law of precedents was encapsulated as under:

> "9. Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, **we will**

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93. (1976) 3 SCC 334
94. (2022) 9 SCC 286
95. (1996) 6 SCC 44

dispose of the objection raised by Shri Vaidyanathan that *Hari Krishan Khosla case* [1993 Supp (2) SCC 149] is not a binding precedent nor does it operate as *ratio decidendi* to be followed as a precedent and is *per se per incuriam*. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contains three basic postulates—(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi*.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.

(emphasis supplied)

175. The *Dhanwanti Devi (supra)* was followed in *Kotak Mahindra Bank Limited v. A. Balakrishnan and another*[96] by the Supreme Court.

176. Deriving the ratio of a judgement arose for consideration in *Islamic Academy Education and another v. State of Karnataka and others*[97] wherein the Supreme Court explained the process as follows:

> "2. Most of the petitioners/applicants before us are unaided professional educational institutions (both minority and non-minority). On behalf of the petitioners/applicants it was submitted that the answers given to the questions, as set out at the end of the majority judgment, lay down the true ratio of the judgment. It was submitted that any observation made in the body of the judgment had to be read in the context of the answers given. We are unable to accept this submission. The answers to the questions, in the majority judgment in *Pai case* [(2002) 8 SCC 481] are merely a brief summation of the ratio laid down in the judgment. **The *ratio decidendi* of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire *ratio decidendi* of the judgment.** We, therefore, while giving our clarifications, are disposed to look into other parts of the judgment other than those portions which may be relied upon.
>
> 139. **A judgment, it is trite, is not to be read as a statute. The *ratio decidendi* of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The *ratio decidendi* of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.** (See *Executive Engineer, Dhenkanal Minor Irrigation Division* v. *N.C. Budharaj* [(2001) 2 SCC 721] .
>
> 143. **It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.**

96 (2022) 9 SCC 186
97 (2003) 6 SCC 697

> 146. The judgment of this Court in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] will, therefore, have to be construed or to be interpreted on the aforementioned principles. The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the constitutional or relevant statutory provisions vis-à-vis its earlier decisions on which reliance has been placed."
>
> (emphasis supplied)

177. Ratio decidendi of a judgement alone constituted the law declared in a judgment rendered by the Supreme Court and the method to cull out the ratio from a judgement in *Natural Resources Allocation, In Re, Special Reference No.1 of 2012*[98] was restated after referencing good authorities in point:

> "69**.** Article 141 of the Constitution lays down that the "law declared" by the Supreme Court is binding upon all the courts within the territory of India. **The "law declared" has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided. (See *Fida Hussain* v. *Moradabad Development Authority* [(2011) 12 SCC 615 : (2012) 2 SCC (Civ) 762] .) Hence, it flows from the above that the "law declared" is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided.** [Also see *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213] and *CIT* v. *Sun Engg. Works (P) Ltd.* [(1992) 4 SCC 363]] **In other words, the "law declared" in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.**
>
> 70. **Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio decidendi. In the matter of applying precedents, the erudite Justice Benjamin Cardozo in *The Nature of the Judicial Process*, had said that "if the Judge is to pronounce it wisely, some principles of selection there must be to guide him among all the potential judgments that compete for recognition" and "almost invariably his first step is to examine and compare them;" "it is a process of search, comparison and little more" and ought not to**

98 (2012) 10 SCC 1

> **be akin to matching "the colors of the case at hand against the colors of many sample cases" because in that case "the man who had the best card index of the cases would also be the wisest Judge". Warning against comparing precedents with matching colours of one case with another, he summarised the process, in case the colours do not match, in the following wise words:**
>
> > **"It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the Judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon's: 'For many times, the things deduced to judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate. The sentence of today will make the right and wrong of tomorrow."**
>
> 73. **It is also important to read a judgment as a whole keeping in mind that it is not an abstract academic discourse with universal applicability, but heavily grounded in the facts and circumstances of the case.** Every part of a judgment is intricately linked to others constituting a larger whole and thus, must be read keeping the logical thread intact.
>
> (emphasis supplied)

178. The process of deciphering the ratio of decidendi in a judgement was elaborated in *Sanjay Singh and another v. U.P. Public Service Commission, Allahabad and another*[99] in the following terms :

> "10. The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. **Broadly speaking, every judgment of superior courts has three segments, namely, (*i*) the facts and the point at issue; (*ii*) the reasons for the decision; and (*iii*) the final order containing the decision.** The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. The term "judgment" and "decision" are used, rather loosely, to refer to the entire judgment or the final order or the ratio decidendi of a judgment. *Rupa Ashok Hurra* [(2002) 4 SCC 388] is of course, an authority for the proposition that a petition under Article 32 would not be maintainable to challenge or set aside or quash the final order contained in a judgment of this Court. It does not lay down a

99 (2007) 3 SCC 720

> proposition that the ratio decidendi of any earlier decision cannot be examined or differed in another case. Where violation of a fundamental right of a citizen is alleged in a petition under Article 32, it cannot be dismissed, as not maintainable, merely because it seeks to distinguish or challenge the ratio decidendi of an earlier judgment, except where it is between the same parties and in respect of the same cause of action. **Where a legal issue raised in a petition under Article 32 is covered by a decision of this Court, the Court may dismiss the petition following the ratio decidendi of the earlier decision. Such dismissal is not on the ground of "maintainability" but on the ground that the issue raised is not tenable, in view of the law laid down in the earlier decision.** But if the Court is satisfied that the issue raised in the later petition requires consideration and in that context the earlier decision requires re-examination, the Court can certainly proceed to examine the matter (or refer the matter to a larger Bench, if the earlier decision is not of a smaller Bench). When the issue is re-examined and a view is taken different from the one taken earlier, a new ratio is laid down. When the ratio decidendi of the earlier decision undergoes such change, the final order of the earlier decision as applicable to the parties to the earlier decision, is in no way altered or disturbed. Therefore, the contention that a writ petition under Article 32 is barred or not maintainable with reference to an issue which is the subject-matter of an earlier decision, is rejected."
>
> (emphasis supplied)

179. The need to study the whole judgment in light of facts and circumstances of a case, and to avoid cherry picking select facts was essential while determining the precedential value of a decision as held by the Supreme Court in *Commissioner of Income Tax v. Sun Engineering Works (P) Ltd.*[100]*:*

> "39. ...Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. **It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."**
>
> (emphasis supplied)

100 (1992) 4 SCC 363

180. The dictum of law that the ratio of a decision must be understood in the facts situation of a case and that a judgment is an authority for what it actually decides and not what logically follows from it was reiterated by the Supreme Court in *Ambica Quarry Works and others v. State of Gujarat and others*[101]:

> "18...**The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.**"
>
> (emphasis supplied)

181. The Supreme Court in *Prakash Amichand Shah v. State of Gujarat and others*[102] cautioned that a judgement is not a statute, and underscored the need to carefully ascertain the true principles laid down by the previous decision and outlined when decisions are liable to be disregarded:

> "26. **Before embarking upon the examination of these decisions we should bear in mind that what is under consideration is not a statute or a legislation but a decision of the court. A decision ordinarily is a decision on the case before the court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.**
>
> 31. Expressions like "virtually overruled" or "in substance overruled" are expressions of inexactitude. In such circumstances, it is the duty of a Constitution Bench of this Court which has to consider the effect of the precedent in question to read it over again and to form its own opinion instead of wholly relying upon the gloss placed on it in some other decisions. It is significant that none of the learned judges who decided the subsequent cases has held that the Act had

101 (1987) 1 SCC 213
102 1986 (1) SCC 581

> become void on account of any constitutional infirmity. They allowed the Act to remain in force and the State Governments concerned have continued to implement the provisions of the Act. What cannot be overlooked is that the decision in *Shantilal Mangaldas case* [(1969) 1 SCC 509 : AIR 1969 SC 634 : (1969) 3 SCR 341] was quoted in extenso with approval and relied on by the very same judge while deciding the *Bank Nationalisation case* [(1970) 1 SCC 248 : AIR 1970 SC 564 : (1970) 3 SCR 530] . He may have arrived at an incorrect or contradictory conclusion in striking down the Bank Nationalisation Act. The result achieved by him in the subsequent case may be wholly wrong but it cannot have any effect on the efficacy of the decision in *Shantilal Mangaldas case* [(1969) 1 SCC 509 : AIR 1969 SC 634 : (1969) 3 SCR 341] . **An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare."**
>
> (emphasis supplied)

182. The Supreme Court in *Delhi Administration in the NCT of Delhi v. Manohar Lal*[103] reiterated the need to find out the ratio of a decision and cautioned against following decisions which do not lay down any principle of law:

> "5. **The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them.** Considered in that context, we could not find from the decisions reported in *Sukumaran* [(1997) 9 SCC 101 : 1997 SCC (Cri) 608] and *Santosh Kumar* [(2000) 9 SCC 151 : 2000 SCC (Cri) 1184 : 2000 Cri LJ 2777] any law having been declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a disposal. **The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any or all the courts as a universal and invariable solution in all such future cases also."**
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> (emphasis supplied)

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103 (2002) 7 SCC 222

183. In *Union of India v. Amrit Lal Manchanda and another*[104], it was observed:

> "*15*. … Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

184. The need to ascertain the principle of law in a judgement and caution against unnecessary expansion of the scope and authority of the precedent was restated by the Supreme Court in *Divisional Controller, KSRTC v. Mahadeva Shetty*[105] :

> "23. So far as *Nagesha case* [(1997) 8 SCC 349] relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. **Therefore, while applying the decision to a later case, the court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment.** Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."
>
> (emphasis supplied)

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104 (2004) 3 SCC 75
105 (2003) 7 SCC 197

185. Upon considering the law of binding precedents the Supreme Court in *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs and Pharmaceuticals Ltd.*[106] held that mere directions issued under Article 142 do not constitute binding precedent under Article 141 of the Constitution of India:

> "41. **No doubt, in some decisions the Supreme Court has directed regularisation of temporary or ad hoc employees but it is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often the Supreme Court issues directions without laying down any principle of law, in which case, it is not a precedent.** For instance, the Supreme Court often directs appointment of someone or regularisation of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance, if the Supreme Court directs regularisation of service of an employee who had put in 3 years' service, this does not mean that all employees who had put in 3 years' service must be regularised. Hence, such a direction is not a precedent. In *Municipal Committee, Amritsar* v. *Hazara Singh* [(1975) 1 SCC 794 : 1975 SCC (Cri) 354 : AIR 1975 SC 1087] the Supreme Court observed that only a statement of law in a decision is binding. In *State of Punjab* v. *Baldev Singh* [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080] this Court observed that everything in a decision is not a precedent. In *Delhi Admn.* v. *Manohar Lal* [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088] the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent.
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> 42**.** In *J&K Public Service Commission* v. *Dr. Narinder Mohan* [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56 : AIR 1994 SC 1808] this Court held that the directions issued by the Court from time to time for regularisation of ad hoc appointments are not a ratio of this decision, rather the aforesaid directions were to be treated under Article 142 of the Constitution of India. This Court ultimately held that the High Court was not right in placing reliance on the judgment as a ratio to give the direction to the Public Service Commission to consider the cases of the respondents for regularisation. In that decision this Court observed : (SCC pp. 640-41, para 11)
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> > "*11*. This Court in *A.K. Jain (Dr.)* v. *Union of India* [1987 Supp SCC 497 : 1988 SCC (L&S) 222 : (1988) 1 SCR 335] *gave directions under Article 142 to regularise the services of the ad hoc doctors appointed on or before 1-10-1984. It is a direction under Article 142 on the peculiar facts and circumstances therein.*

106 (2007) 1 SCC 408

Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142-power is confined only to this Court. The ratio in P.P.C. Rawani (Dr.) v. *Union of India* [(1992) 1 SCC 331 : 1992 SCC (L&S) 309 : (1992) 19 ATC 503] *is also not an authority under Article 141*. Therein the orders issued by this Court under Article 32 of the Constitution to regularise the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In *Union of India* v. *Dr. Gyan Prakash Singh* [1994 Supp (1) SCC 306 : 1994 SCC (L&S) 472 : (1994) 26 ATC 940 : JT (1993) 5 SC 681] this Court by a Bench of three Judges considered the effect of the order in *A.K. Jain case* [1987 Supp SCC 497 : 1988 SCC (L&S) 222 : (1988) 1 SCR 335] and held that the doctors appointed on ad hoc basis and taken charge after 1-10-1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In *H.C. Puttaswamy* v. *Hon'ble Chief Justice of Karnataka High Court* [1991 Supp (2) SCC 421 : 1992 SCC (L&S) 53 : (1992) 19 ATC 292 : AIR 1991 SC 295 : 1991 Lab IC 235] this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as regular, on humanitarian grounds, since they have put in more than 10 years' service. *It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 141*. In *State of Haryana* v. *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : AIR 1992 SC 2130] this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. … Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

(emphasis supplied)

186. A blind reliance on judgments without considering the fact situation was disapproved in *Ashwani Kumar Singh v. U.P. Public Service Commission and others*[107]*:*

> "10**. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments.** They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.* v. *Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord McDermott observed : (All ER p. 14 C-D)
>
> > "The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge…."
>
> 11. In *Home Office* v. *Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said, "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances" (All ER p. 297*g-h*). Megarry, J. in *Shepherd Homes Ltd.* v. *Sandham (No. 2)* [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed : (All ER p. 1274*d-e*) "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;" In *Herrington* v. *British Rlys. Board* [(1972) 2 WLR 537 : (1972) 1 All ER 749 : 1972 AC 877 (HL)] Lord Morris said : (All ER p. 761*c*)
>
> > "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."
>
> 12. **Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."**
>
> (emphasis supplied)

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107 (2003) 11 SCC 584

187. The ratio decidendi was distinguished from the obiter dicta in *Director of Settlement, A.P. and others v. M.R. Apparao and another*[108] as under:

> "7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. **The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case.** So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani* v. *Municipal Committee, Malkapur* [(1970) 2 SCC 267 : AIR 1970 SC 1002] and AIR 1973 SC 794 [(sic)]). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh* v. *Surjit Singh* [(1984) 2 SCC 402] and *Kausalya Devi Bogra* v. *Land Acquisition Officer* [(1984) 2 SCC 324] .) We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr Rao in elaborating his arguments

108 (2002) 4 SCC 638

> contending that the judgment of this Court dated 6-2-1986 [*State of A.P.* v. *Rajah of Venkatagiri*, (2002) 4 SCC 660] cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma* v. *Sri Krishna Sinha* [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati Keshavram Reddy* v. *Nafisul Hasan* [(1952) 1 SCC 343 : AIR 1954 SC 536 : 1954 Cri LJ 1704] relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law."
>
> (emphasis supplied)

188. More recently the Supreme Court adopted the Inversion Test which was propounded by Eugene Wambaugh, a Professor at The Harvard Law School in *State of Gujarat and others v. Utility Users' Welfare Association and others*[109] :

> "112. It is undoubtedly true that the question which the Court was seized of, related to the interpretation of Section 86 of the said Act and certain other matters, which are not connected with the controversy herein. Thus, the issue arises, whether the observations made, albeit to be construed as advisory or suggestive qua the appointment of a Chairman and a Member are to be treated as *ratio decidendi* or *obiter dicta*.
>
> 113. In order to determine this aspect, one of the well-established tests is "the Inversion Test" propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called *The Study of Cases* [Eugene Wambaugh, *The Study of Cases* (Boston: Little, Brown & Co., 1892).] in the year 1892. This textbook propounded inter alia what is known as the "Wambaugh Test" or "the Inversion Test" as the means of judicial interpretation. "the Inversion Test" is used to identify the *ratio decidendi* in any judgment. The central idea, in the words of Professor Wambaugh, is as under:
>
> > "In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a

109 (2018) 6 SCC 21

> precedent for the original proposition and possibly for other propositions also. [Eugene Wambaugh, *The Study of Cases* (Boston: Little, Brown & Co., 1892) at p. 17.] ”

114**.** In order to test whether a particular proposition of law is to be treated as the *ratio decidendi* of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the *ratio decidendi* of the case. This test has been followed to imply that the *ratio decidendi* is what is absolutely necessary for the decision of the case. “In order that an opinion may have the weight of a precedent”, according to John Chipman Grey [Another distinguished jurist who served as a Professor of Law at Harvard Law School.] , “it must be an opinion, the formation of which, is necessary for the decision of a particular case”.

189. The Inversion Test was also applied in *Nevada Properties Pvt. Ltd. v. State of Maharashtra and another*[110]*:*

> “13. It follows from the aforesaid discussion that the decision in *Tapas D. Neogy* [*State of Maharashtra* v. *Tapas D. Neogy*, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] did not go into and decide the issue: whether immovable property would fall under the expression “any property” under Section 102 of the Code. We say so by applying the inversion test as referred to in *State of Gujarat* v. *Utility Users' Welfare Assn.* [*State of Gujarat* v. *Utility Users' Welfare Assn.*, (2018) 6 SCC 21] , which states that the Court must first carefully frame the supposed proposition of law and then insert in the proposition a word reversing its meaning to get the answer whether or not a decision is a precedent for that proposition. If the answer is in the affirmative, the case is not a precedent for that proposition. If the answer is in the negative, the case is a precedent for the original proposition and possibly for other propositions also. This is one of the tests applied to decide what can be regarded and treated as ratio decidendi of a decision. Reference in this regard can also be made to the decisions of this Court in *U.P. SEB* v. *Pooran Chandra Pandey* [*U.P. SEB* v. *Pooran Chandra Pandey*, (2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736] , *CIT* v. *Sun Engg. Works (P) Ltd.* [*CIT* v. *Sun Engg. Works (P) Ltd.*, (1992) 4 SCC 363] and other cases which hold that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio. Not every observation found therein nor what logically flows from those observations is the ratio decidendi. Judgment in question has to be read as a whole and the observations have to be considered in light of the instances which were before the Court. This is the way to ascertain the true principles laid down by a decision. Ratio decidendi cannot be decided by picking out words or sentences averse to the context under question from the judgment.”

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110. (2019) 20 SCC 119

190. Similarly in *Career Institute Educational Society v. Om Shree Thakurji Educational Society*[111] the Supreme Court followed the "Inversion Test" and *Jayant Verma (supra)* to hold:

> "6. The distinction between *obiter dicta* and *ratio decidendi* in a judgment, as a proposition of law, has been examined by several judgments of this Court, but we would like to refer to two, namely, *State of Gujarat* v. *Utility Users' Welfare Association*3 and *Jayant Verma* v. *Union of India*.
>
> 7. The first judgment in *State of Gujarat* (supra) applies, what is called, "the inversion test" to identify what is *ratio decidendi* in a judgment. To test whether a particular proposition of law is to be treated as the *ratio decidendi* of the case, the proposition is to be inversed, i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the *ratio decidendi* of the case.
>
> 8. In *Jayant Verma* (supra), this Court has referred to an earlier decision of this Court in *Dalbir Singh* v. *State of Punjab*5 to state that it is not the findings of material facts, direct and inferential, but the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision and operates as a precedent. Even the conclusion does not operate as a precedent, *albeit* operates as *res judicata*. Thus, it is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the *obiter dicta*."

191. *Gasket Radiator Pvt. Ltd. v. Employees' State Insurance Corporation and another*[112] rendered by the Supreme Court highlighted the importance of not construing judgments as statutes held thus:

> "8. …. **We once again have to reiterate what we were forced to point out in *Amar Nath Om Prakash* v. *State of Punjab* [(1985) 1 SCC 345 : 1985 SCC (Tax) 92 : AIR 1985 SC 218] that judgments of courts are not to be construed as Acts of Parliament. Nor can we read a judgment on a particular aspect of a question as a Holy Book covering all aspects of every question whether such questions and facets of such questions arose for consideration or not in that case."**
>
> (emphasis supplied)

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111. 2023 SCC Online 586
112 (1985) 2 SCC 68

192. In *Sreenivasa General Traders and others v. State of Andhra Pradesh and others*[113], the Supreme Court explained the concept of binding precedents and expounded that observations in a judgment which were not necessary for the purpose of the decision are not binding precedents:

> "30. In the ultimate analysis, the Court held in *Kewal Krishan Puri case* [(1980) 1 SCC 416 : AIR 1980 SC 1008 : (1979) 3 SCR 1217] that so long as the concept of fee remains distinct and limited in contrast to tax, such expenditure of the amounts recovered by the levy of a market fee cannot be countenanced in law. **A case is an authority only for what it actually decides and not for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. It would appear that there are certain observations to be found in the judgment in *Kewal Krishan Puri case* [(1980) 1 SCC 416 : AIR 1980 SC 1008 : (1979) 3 SCR 1217] which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value.** The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely: (SCC p. 435, para 23) "At least a good and substantial portion of the amount collected on account of fees, maybe in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter."
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> (emphasis supplied)

193. The Supreme Court in *Sanjeev Coke Manufacturing Company v. M/s Bharat Coking Coal Limited and another*[114] expressed reservations on the issue of courts answering hypothetical questions where constitutional issues are involved without a proper lis by holding :

> "11. We confess the case has left us perplexed. In the first place, no question regarding the constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 appears to have

113 (1983) 4 SCC 353
114 (1983) 1 SCC 147

> arisen for consideration in that case. The question was about the nationalisation and take-over by the Central Government of a certain textile mill under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974. The validity of some of the provisions of that Act was impugned. **We have serious reservations on the question whether it is open to a court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved. We (Judges) are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords.** We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon."
>
> (emphasis supplied)

194. In *Ashok Kumar Gupta and another v. State of U.P. and others*[115], the Supreme Court cautioned that constitutional issues not directly arising for decision cannot be decided :

> "32. In *Mandal case* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] admittedly, the two Government Memorandums provided for reservation to OBCs in initial direct recruitment in Central services. **The question of reservation in promotion was a non-issue as conceded in that case itself and across the bar; but the learned Judges, with all due respect and deference to their learned views, decided a non-issue, though objected to on the ground that counsel appearing for the parties had put their heads together and framed the issue and reference was made to a larger Bench so that the issue was decided on that premise. Though it is settled constitutional law that constitutional issues cannot be decided unless the issue directly arises for decision, with due respect, the Bench decided a non-issue on a constitutional law affecting 22% of the national population and held that Article 16(1) read with Article 16(4) provides right to reservation in initial recruitment.** The framers of the Constitution did not intend to provide for reservation in promotion. Since Article 335 speaks of efficiency of administration, reservation in promotion to the Dalits and Tribes, without competition with non-reserved employees would affect efficiency in service and is unconstitutional. It is an admitted case that as there was no issue, nor was any evidence adduced to prove whether efficiency of administration was deteriorated due to reservation in promotion; nor was it pointed out from the facts of any case."
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> (emphasis supplied)

115. 1997 (5) SCC 201

195. The Supreme Court in *Government of India v. Workmen and State Trading Corporation and others*[116] opined that a decision which does not set out the facts or the reasons for the conclusion given cannot be treated as a binding precedent and held:

> "4. ….**The decision of this Court is virtually a non-speaking order which does not set out the facts and the circumstances in which the direction came to be issued against the Government.** It is not clear as to what was the connection between the respondent-Corporation and the State Government. In the present case the Government of India had clearly averred that it had nothing to do with the State Trading Corporation and there was no relationship of master and servant between the petitioners and the Government of India and, therefore, the Government of India was not in any manner concerned with the closure of the Leather Garment unit of the State Trading Corporation and the consequences thereof. **Mr Usgaocar rightly emphasised that the decision on which the High Court had relied could not be treated as a precedent and in support of this contention he drew our attention to a Constitution Bench judgment in the case of *Krishena Kumar* v. *Union of India*** [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846 : AIR 1990 SC 1782 : JT (1990) 3 SC 173] . **In paras 18 and 19 the question as to when a decision can have binding effect has been dealt with. We need say no more as it is obvious from the decision relied on that it does not set out the facts or the reason for the conclusion or direction given. It can, therefore, not be treated as a binding precedent."**
>
> (emphasis supplied)

196. While enquiring into the ratio of the judgement the Supreme Court in *Dr. Shah Faesal and others v. Union of India and another*[117] bisected a judgment into two parts :

> "25**. In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case.** The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in *Union of India* v. *Dhanwanti Devi* [*Union of India* v. *Dhanwanti Devi*, (1996) 6 SCC 44]."
>
> (emphasis supplied)

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116. (1997) 11 SCC 641
117 (2020) 4 SCC 1

197. *Dr. Shah Faesal (supra)* thereafter elucidated the benefits of the practice of adopting judicial precedents as binding statements of law:

> "18**.** Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law."

198. In *Dr. Rohit Kumar v. Secretary Office of Lieutenant Governor of Delhi and others*[118], the Supreme Court delineated the distinction between the law laid down by the Supreme Court which was binding on all Courts under Article 141 of the Constitution of India, and the directions made in exercise of powers under Article 142 of the Constitution of India by holding :

> "33. It is well settled that a judgment is an authority for the issue of law which is raised and decided. What is binding on the courts is what the Supreme Court decides under Article 141 and not what the Supreme Court does under Article 142, in exercise of its power to do complete justice in any cause or matter pending before it.
> 34. To quote V. Sudhish Pai from *Constitutional Supremacy—A Revisit*:
>
> > "Judgments and observations in judgments are not to be read as Euclid's theorems or as provisions of statute. Judicial utterances/pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute it may become necessary for Judges to embark upon lengthy discussions, but such discussion is meant to explain not define. Judges interpret statutes, their words are not to be interpreted as statutes."

199. The rule of per incuriam carves out an exception to the doctrine of binding precedent. *Halsbury's Laws of England*[119] elucidates the rule in this manner:

> "1687. …**the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a decision of the House of**

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118. (2021) 8 SCC 381
119. 3rd Edn., Vol. 22, Para 1687, pp. 799-800.

> **Lords. In the former case it must decide which decision to follow, an in the latter it is bound by the decision of the House of Lords."**
>
> (emphasis supplied)

200. The Supreme Court in *Municipal Corporation of Delhi v. Gurnam Kaur*[120] held that a judgment which was delivered without arguments and consideration of provisions of the Act was passed sub silentio and did not constitute a binding precedent by holding:

> "10. ..**Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] could not be treated to be a precedent.**
>
> 11. **Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority.** Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. **A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter.** Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:
>
> > "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point

120. (1989) 1 SCC 101

> of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."
>
> (emphasis supplied)

201. The consequences of failure to consider an earlier binding precedent by a Bench were examined by the Supreme Court in *D.J.Malpani v. Commissioner of Central Excise, Nashik*[121] which quoted *Salmond on Jurisprudence*[122] with approval:

> "27. ...a decision held is not binding since **it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority",** therefore, would not be followed. The author also states that precedents sub silentio and without arguments are of no moment."
>
> (emphasis supplied)

202. The Constitution Bench in *A. R. Antulay v. R.S. Nayak and another*[123] stipulated that observations reached per incuriam in a judgement are devoid of any precedent value and stated forth:

> "183. **But the point is that the circumstance that a decision is reached per-incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent.** A co-ordinate bench can disagree with it and decline to follow it. A larger bench can over rule such decision. When a previous decision is so overruled it does not happen-nor has the overruling bench any jurisdiction so to do-that the finality of the operative order, inter-parties, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative- order in the previous decision, binding inter-parties. Even if a previous decision is overruled by a larger-bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter-parties. Even if the earlier decision of

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121. (2019) 9 SCC 120
122. Salmond on Jurisprudence [P.J. Fitzgerald (Ed.) 12th Edn., 1966], p.15
123. (1988) 2 SCC 602 (hereinafter referred to "A.R. Antulay (1988)"

> the five Judge bench is per- incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the five Judge bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per- incurium? Indeed, Ranganath Misra, J. says this on the point:
>
> > "Overruling when made by a larger bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without affecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger bench .. "
> >
> > (emphasis supplied)

203. Similarly the Supreme Court in *Punjab Land Development & Reclamation Corpn. Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and others*[124] considered the consequences of judgements rendered in ignorance of relevant constitutional provisions or statutory provisions and held that the law laid down has to be interpreted consistently with the subject or context:

> “43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provi- sions were not really present to its mind. **But in this case ss. 25G and 25H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context**. The problem of judgment per incuriam when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together.”
>
> (emphasis supplied)

204. Further *Dr. Shah Faesal (supra)* elaborated the concept of per incuriam when a judgment is rendered in ignorance of a previous decision of the Court of coordinate jurisdiction and categorically propounded

124 (1990) 3 SCC 682

that a judgment ceases to be a binding precedent by the operation of the rule of per incuriam :

> "27. Having discussed the aspect of the doctrine of precedent, we need to consider another ground on which the reference is sought i.e. the relevance of non-consideration of the earlier decision of a coordinate Bench. In the case at hand, one of the main submissions adopted by those who are seeking reference is that, the case of *Sampat Prakash* [*Sampat Prakash* v. *State of J&K*, AIR 1970 SC 1118] did not consider the earlier ruling in *Prem Nath Kaul* [*Prem Nath Kaul* v. *State of J&K*, AIR 1959 SC 749] .
>
> **28. <u>The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant statute or any other binding authority</u>** [see *Young* v. *Bristol Aeroplane Co. Ltd.* [*Young* v. *Bristol Aeroplane Co. Ltd.*, 1944 KB 718 (CA)]]. The aforesaid rule is well elucidated in *Halsbury's Laws of England* in the following manner [3rd Edn., Vol. 22, Para 1687, pp. 799-800.] :
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> > "*1687*. … the court is not bound to follow a decision of its own if given per incuriam. *A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords*. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."
> >
> > (emphasis supplied)
>
> 29. In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of *A.R. Antulay* v. *R.S. Nayak* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)
>
> > "*183*. **<u>But the point is that the circumstance that a decision is reached *per incuriam, merely serves to denude the decision of its precedent value*. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision.</u>** *When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes*. … Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)
> >
> > "Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the

> precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench."
>
> (emphasis supplied)

31. Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding *Pranay Sethi case* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in *Sundeep Kumar Bafna* v. *State of Maharashtra* [*Sundeep Kumar Bafna* v. *State of Maharashtra*, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (*Sundeep Kumar Bafna case* [*Sundeep Kumar Bafna* v. *State of Maharashtra*, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)

> "*19.* **It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court.** ***A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta*****."**
>
> (emphasis supplied)

32. The view that the subsequent decision shall be declared per incuriam only if there exists a conflict in the ratio decidendi of the pertinent judgments was also taken by a five-Judge Bench decision of this Court in *Punjab Land Development & Reclamation Corpn. Ltd.* v. *Labour Court* [*Punjab Land Development & Reclamation Corpn. Ltd.* v. *Labour Court*, (1990) 3 SCC 682 : 1991 SCC (L&S) 71] : (SCC pp. 706-07, para 43)

> "*43*. **As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind.** But in this case Sections 25-G and 25-H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. *The problem of judgment per incuriam when actually arises, should present*

> *no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together*."
>
> (emphasis supplied)

205. The Supreme Court elucidated the concept of binding precedent in *Siddharam Satlingappa Mhetre v. State of Maharashtra and others*[125] and stipulated the limitations imposed on the same by the rule of per incuriam after citing the British authorities and also judgements rendered by the Supreme Court :

> "128. Now we deem it imperative to examine the issue of per incuriam raised by the learned counsel for the parties. In Young v. Bristol Aeroplane Company Limited (1994) All ER 293 the House of Lords observed that `Incuria' literally means `carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The `quotable in law' is avoided and ignored if it is rendered, `in ignoratium of a statute or other binding authority. The same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.
>
> "..... In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp. 297-98, para 578) per incuriam has been elucidated as under:
>
> "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300.
>
> In Huddersfield Police Authority v. Watson, 1947 KB 842 : (1947) 2 All ER 193.); or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."
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> 129. Lord Godard, C.J. in Huddersfield Police Authority v. Watson (1947) 2 All ER 193 observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.
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> 130**.** This court in Government of A.P. and Another v. B. Satyanarayana Rao (dead) by LRs. and Others (2000) 4 SCC 262 observed as under:

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125 (2011) 1 SCC 694

> "The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

131. In a Constitution Bench judgment of this Court in Union of India v. Raghubir Singh (1989) 2 SCC 754, Chief Justice Pathak observed as under:

> "The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

132. In Thota Sesharathamma and another v. Thota Manikyamma (Dead) by LRs. and others (1991) 4 SCC 312 a two Judge Bench of this Court held that the three Judge Bench decision in the case of Mst. Karmi v. Amru (1972) 4 SCC 86 was per incuriam and observed as under:

> "...It is a short judgment without adverting to any provisions of Section 14(1) or 14(2) of the Act. The judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in Badri Pershad v. Smt. Kanso Devi. The decision in Mst. Karmi cannot be considered as an authority on the ambit and scope of Section 14(1) and (2) of the Act."

133. In R. Thiruvirkolam v. Presiding Officer and Another (1997) 1 SCC 9 a two Judge Bench of this Court observed that the question is whether it was bound to accept the decision rendered in Gujarat Steel Tubes Ltd. v. Mazdoor Sabha (1980) 2 SCC 593, which was not in conformity with the decision of a Constitution Bench in P. H. Kalyani v. Air France (1964) 2 SCR 104. J.S. Verma, J. speaking for the court observed as under:

> "With great respect, we must say that the above-quoted observations in Gujarat Steel at P. 215 are not in line with the decision in Kalyani which was binding or with D.C. Roy to which the learned Judge, Krishna Iyer, J. was a party. It also does not match with the underlying juristic principle discussed in Wade. For the reasons, we are bound to follow the Constitution Bench decision in Kalyani, which is the binding authority on the point."

134. In Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangra and others (2001) 4 SCC 448 a Constitution Bench of this Court ruled that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness.

135. A Constitution Bench of this Court in Central Board of Dawoodi Bohra Community v. State of Maharashtra (2005) 2 SCC 673 has observed that the law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

137. In Subhash Chandra and Another v. Delhi Subordinate Services Selection Board and Others (2009) 15 SCC 458, this court again reiterated the settled legal position that Benches of lesser strength are bound by the judgments of the Constitution Bench and any Bench of smaller strength taking contrary view is per incuriam. The court in para 110 observed as under:-

> "110. Should we consider S. Pushpa v. Sivachanmugavelu (2005) 3 SCC 1 to be an obiter following the said decision is the question which arises herein. We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely Marri Chandra Shekhar Rao v. Seth G. S. Medical College (1990) 3 SCC 139 and E.V. Chinnaiah v. State of A.P. (2005) 1 SCC 394. Marri Chandra Shekhar Rao (supra) had been followed by this Court in a large number of decisions including the three-Judge Bench decisions. S. Pushpa (supra) therefore, could not have ignored either Marri Chandra Shekhar Rao (supra) or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the constitutional scheme as contained in clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket. Following Official Liquidator v. Dayanand and Others (2008) 10 SCC 1 therefore, we are of the opinion that the dicta in S. Pushpa (supra) is an obiter and does not lay down any binding ratio."

138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of judges of co-equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this court. These judgments have clearly ignored a Constitution Bench judgment of this court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated under section 438 of Cr.P.C.. Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are per incuriam.

139. In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the court doubts the correctness of the judgments by two or three judges, then the proper course would be to request Hon'ble the Chief Justice to refer the matter to a larger Bench of appropriate strength."

206. The Supreme Court adhered to the judicial discipline of subsequent benches of lesser or coequal

strength being bound by an earlier pronouncement in *Central Board Dawoodi Bohra Community and another v. State of Maharashtra and another*[126]*:*

> "12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:
>
> (*1*) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength."

207. The need for the High Courts to fully consider the views expressed by the larger Benches of the Supreme Court in preference to those expressed by smaller Benches was expounded in *State of Orissa and others v. Titaghur Paper Mills Company Limited and another*[127]*:*

> "122. It is also true that an interpretation placed by the court on a document is not binding upon it when another document comes to be interpreted by it but that is so where the two documents are of different tenors and not where they have the same tenor. On the ground that they dealt with the general law of real property, the Court in ***Orient Paper Mills case*** **[(1977) 2 SCC 77 : 1977 SCC (Tax) 261 : (1977) 2 SCR 149] did not advert to the earlier decisions of this Court relating to documents with similar tenor even though those cases were referred to in the judgment of the Madhya Pradesh High Court under appeal before it. In view of this, the Orissa High Court in the judgment under appeal before us held that *Orient Paper Mills case* [(1977) 2 SCC 77 : 1977 SCC (Tax) 261 : (1977) 2 SCR 149] was decided by this Court per incuriam because it did not take into consideration decisions of larger Benches of this Court."**
>
> (emphasis supplied)

208. The view was reiterated in *Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others*[128], as under:

> "8. The aforesaid decision of the eleven-Judge Bench of this Court in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] was no doubt considered in *Islamic Academy case* [(2003) 6 SCC 697] and *Inamdar case* [(2005) 6 SCC 537] , but those latter two decisions were of smaller Benches and hence cannot be deemed to have overruled or laid down anything contrary to the eleven-

126 2005 (2) SCC 673
127 1985 Suppl. SCC 280
128 2009(7) SCC 751

> Judge Bench decision in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] . **It is well-settled that a larger Bench decision prevails over the decision of a smaller Bench**."
>
> (emphasis supplied)

209. The conflict between the two or more judgments of the Supreme Court was resolved in *Pyare Mohan Lal v. State of Jharkhand and others*[129], by holding:

> "24. In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed."

[Also see: (i) The *State of U.P. v. Ram Chandra Trivedi*[130]*; (ii) Smt. Triveniben v. State of Gujarat*[131]].

210. The Supreme Court in *Bhargavi Constructions and another v. Kothakapu Muthyam Reddy and others*[132], held that it was bound by its own pronouncements by virtue of being law under Article 141 of the Constitution of India:

> "33. ….**In our view, the decision rendered in *State of Punjab* [*State of Punjab* v. *Jalour Singh*, (2008) 2 SCC 660 : (2008) 1 SCC (Civ) 669 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535] is by the larger Bench (three Judge) and is, therefore, binding on us.**"
>
> (emphasis supplied)

211. In *Shanker Raju v. Union of India*[133] the Supreme Court held:

> "18. The second observation we wish to make is, the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions. **The pronouncement of law by a larger Bench of this Court is binding on a Division Bench of this Court, especially where the particular determination by this Court not only disposes of the case, but also decides a principle of law.** We further add that it would be inappropriate to reagitate the very issue or a particular provision, which this Court had already considered and upheld."
>
> (emphasis supplied)

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129. (2010) 10 SCC 693
130. (1976) 4 SCC 52
131. (1989) 1 SCC 678
132. (2018) 13 SCC 480
133. (2011) 2 SCC 132

212. In *Shayara Bano v. Union of India and others*[134], the Supreme Court of India categorically laid down that it was bound by the judgments rendered by it in terms of Article 141 of the Constitution of India :

> "353. …. **In fact, this Court is bound by the judgments of the Supreme Court of India, which in terms of Article 141 of the Constitution, are binding declarations of law.**"
>
> (emphasis supplied)

213. The recourse available to the High Court in a situation where two mutually irreconcilable decisions of the Supreme Court are cited at the Bar was highlighted by the Supreme Court in *Sundeep Kumar Bafna v. State of Maharashtra*[135]. Further the diminution of the precedential value of a decision upon the application of the per incuriam rule was embedded in the tenets of discipline demanded by the rule of precedent in *Sundeep Kumar Bafna (supra):*

> "19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its *ratio* with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta*. **It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*.**"
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> (emphasis supplied)

214. The binding effect of law laid down by the Supreme Court cannot be diluted on the ground that full

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134. (2017) 9 SCC 1
135. (2014) 16 SCC 623

facts were not placed before the Supreme Court as it would be detrimental to the rule of law and constitutional order, as held by the Supreme Court in *Palitana Sugar Mills Private Limited and another v. Vilasiniben Ramachandran and others*[136] :

> "12**. <u>It is well settled that the judgments of this Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show-cause notices. Such an attempt is to belittle the issues and the orders of this Court. We are pained to say that the then Deputy Collector has scant respect for the orders passed by the Apex Court."</u>**

(emphasis supplied)

215. The Courts are often faced with conflicting judgements on the same point or the judgements which do not consider the earlier decisions of a coordinate Bench. The decision rendered by a coordinate Bench is binding on the subsequent Benches or equal lesser strength. This proposition of law was reiterated in *National Insurance Co. Ltd. v. Pranay Sethi*[137], wherein it is held:

> "59.1.The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench."

(emphasis supplied)

216. Dealing squarely with the issue where two conflicting judgements of the Supreme Court were cited before the High Court, the Supreme Court in *Union of*

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136. (2007) 15 SCC 218
137. (2017) 16 SCC 680

India v. K.S. Subramanian[138] unequivocally held that the proper course for the High Court was to follow the opinion expressed by larger Benches of the Court in preference to those expressed by smaller Benches of the Court by holding:

> "12. But, we do not think that the High Court acted correctly in skirting the views expressed by larger Benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger Benches of this Court in preference to those expressed by smaller Benches of the Court. That is the practice followed by this Court itself. The practice has now crystallised into a rule of law declared by this Court."

217. The question which arose for consideration before a Full Bench of this Court in *Ganga Saran v. Civil Judge, Hapur, Ghaziabad and others*[139] was:

> "8. ...When there is a direct conflict between the two decisions of Supreme Court rendered by Judges of equal strength, which of them should be followed by the High Court and whether later decision of the Supreme Court has effect of overruling the earlier decision of the Supreme Court?"

218. The Full Bench of this Court embarked on the following line of reasoning to answer the aforesaid question after relying on a Full Bench of Punjab & Haryana High Court:

> "9. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case there is a conflict between the judgments of Supreme Court consisting of equal authorities, incidence of time is not a relevant factor and the High Court must follow the judgment which appears it to lay down law elaborately and accurately.
>
> 10. Similar situation arose before a Full Bench of Punjab and Haryana High Court in the case of M/s Indo Swiss Time Limited, Dundahera vs. Umrao, AIR 1981 Punj & Har 213. What the Full Bench in the said case held is extracted below (at pp. 219-220 of AIR) :
>
> > "Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-

138. (1976) 3 SCC 677
139. 1991 SCC Online All 63

> eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortutious circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. **The mere incidence of time whether the judgments of coequal Benches of the Superior Court are earlier later is a consideration which appears to me as hardly relevant."**
>
> (emphasis supplied)

11. This decision was followed by the Bombay High Court in the case of Special Land Acquisition Officer v. Municipal Corporation, AIR 1988 Bombay 9. The majority of Judges in the Full Bench held that if there was a conflict between the two decisions of equal benches which cannot possibly reconcile, the courts must follow the judgment which appear to them to state the law accurately and elaborately. We are in respectful agreement with the view expressed by the Full Bench of Punjab & Haryana High Court in the case of M/ s Indo Swiss Time Limited v. Umrao, (AIR 1981 Punj & Har 213) (Supra) especially when the Supreme Court while deciding Qamaruddin's case (1990 All WC 308) (Supra) did not notice the U.P. amendment to S. 115, C.P.C. and earlier decision of the Supreme Court. In the light of the view expressed in this case it is to be examined as to which of the case decided by the Supreme Court lays down the law accurately. As noticed earlier the U.P. Amendment Act No. XXXI of 1978 amended S. 115 of Code of Civil Procedure. By virtue of this amendment, revision u/S. 115, S.P.C. did not lie to the High Court against the appellate or revisional order passed by the District Court where the valuation of the suit is less than Rs. 20,000/-. This amendment came up for consideration in M/s Jupiter Chit Fund (Pvt) Ltd. v. Dwarka Diesh (AIR 1979 All 218) (FB) (Supra) and it was held that S. 115, C.P.C. as amended by U.P. Amendment Act mutually exclusive jurisdiction to the High Court and district Court. This full bench decision was affirmed by Supreme Court in its two decisions namely in the cases of Vishesh Kumar v. Shanti Prasad, (AIR 1980 SC 892) and Vishnu Awatar v. Shiv Autar (AIR 1980 SC 1575) (supra). A perusal of the judgment of the Supreme Court in the case of Qamaruddin's case (1990 All WC 309) (Supra) indicates that it was not brought to the notice of the bench deciding' the case that it was a case from U.P. and that S. 115, C.P.C. amended by U.P. Amendment Act No. XXXI of 1978 governed the matter. The matter was disposed of as if S. 115, C.P.C. as originally enacted applied.

12. In such a situation it cannot be held that the case of Qamaruddin (Supra) lays| down the law accurately. Further it also cannot be held

> that the decision of the Supreme Court in Qamaruddin's case overruled the decision of Full Bench of this Court which as noticed already, has been specifically affirmed in two decisions of the Supreme Court. It would not be reasonable to say that even though Qamaruddin's case does not notice U.P. Amendment Act and the earlier decision of Supreme Court approving the Full Bench decision of this Court, it must be deemed to have dissented or departed from earlier decisions or that it has over-ruled the Full Bench decision of this Court. It goes without saying that even the decision of the Supreme Court must be understood reasonably. It would not be reasonable to say that the Supreme Court would depart or dissent from its earlier decision without even referring to them or without even referring to the relevant provisions of law.
>
> 13. **For the above reasons it must be held that the decision of Supreme Court in Qamaruddin's case (1990 All WC 308) (Supra) to the extent it holds that revision against an appellate or revisional order passed by the district court is maintainable u/S. 115, C.P.C. (as amended by U.P. Act 31/78) to the High Court does not state the law accurately or overrule the decision of the Full Bench of this Court in Jupiter Chit Fund (Pvt) Ltd. v. Dwarka Diesh (AIR 1979 All 218) (Supra) particularly when it has specifically been approved by the two earlier decisions of the Supreme Court."**
>
> (emphasis supplied)

219. The process of distilling the ratio in a judgment is a deliberative process governed by a long line of legal precedents. It is the duty of all Courts (including trial courts and tribunals) to cull out the ratio of a judgement in light of the cases in point before following it as a binding precedent. The first step in isolating the ratio of a judgment requires a full reading of the judgment. The material facts and the legal issues in the controversy have to be then ascertained from the judgement as a whole. Finally the principle of law on which the decision was rendered on the subject matter under consideration has to be identified. The said statement of law so extracted is the binding precedent in the said judgement. Courts have to observe the caution of not

picking up stray facts or observations and apply them mechanically or out of context as binding precedents.

220. The doctrine of precedent is leavened by judicial discipline. Judicial discipline contemplates that the law laid down by a Bench of larger strength will prevail over the legal dictum propounded by Benches of lesser strength.

221. The law of precedents is also limited in its operation by the concept of per incuriam. The judgment is rendered per incuriam when it is passed in ignorance of earlier binding law or failure to consider relevant statutory provisions. A judgment per incuriam does not have any precedential value. Deviating from the ratio of a judgement or following observations not comprised in the ratio amounts to lack of adherence to the law of precedents.

222. Further when faced with conflicting decisions of the Supreme Court the process of law in the High Court will not stand still. Hands of the High Courts are not tied and they shall chart their course of action in light of authorities which hold the field. [See: *K.S. Subramanian (supra) & Ganga Saran (supra)*].

VI.A(I) Article 141 & Asian Resurfacing (supra) :

223. The submissions of the learned counsel at the Bar are these. The material facts and legal issues under consideration before the Supreme Court in *Asian Resurfacing (supra)* were with regard to the legal

remedies available to a litigant against an order framing a charge under the Prevention of Corruption Act and whether the High Court can grant interim protection to the accused who has been charged under the Prevention of Corruption Act. The issue of pendency of all criminal and civil cases in all High Courts where criminal trials and civil suits had been stayed was not the subject matter of the controversy and did not arise for consideration. The plea is also sought to be advanced on the footing of the law laid down by the Supreme Court in *Sanjeev Coke Manufacturing Company (supra) & Islamic Academy Education (supra)* that no arguments were raised on this issue, and "battle lines were not properly drawn" and neither was any response called from parties on the said issues. On that count the directions in paras 34, 36, 37 *Asian Resurfacing (supra)* do not comprise the ratio of the judgement and hence the directions do not have binding effect. Further issues and consequences of not referencing previous judgements of larger Benches in point was also raised. These submissions in the facts of the controversy at hand raise substantial questions as to the interpretation of the Constitution.

224. The application of the concept of judgment rendered per incuriam and also the judicial discipline of precedents which contemplates that a judgment rendered by a Larger Bench strength will be binding over a judgment of a lesser Bench strength shall be considered in view of the submissions at the Bar.

225. After placing the said judgments of the Supreme Court in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)* the learned counsels made the following submissions.

226. The judgement of the *Asian Resurfacing (supra)* was passed without consideration of the judgement rendered by the Supreme Court by the Benches of superior strength in *A. R. Antulay (supra) and P. Ramachandra Rao (supra).* According to the learned counsels directions in paras 34, 36, 37 in *Asian Resurfacing (supra)* are per incuriam for this reason.

227. The directions issued by the Supreme Court in Paras 34, 36, 37 in *Asian Resurfacing (supra)* are contrary to the law laid down by the Supreme Court in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)*. Binding law laid down under Article 141 in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)* proscribes judicial directions creating an outer time limit to conclude criminal proceedings or trials pending before the courts. Imperative directions issued under Article 142 in paras 34, 36, 37 of *Asian Resurfacing (supra)* prescribe mandatory timelines to conclude criminal and civil proceedings before the High Courts.

228. The contention at the Bar is that the judgments of five Judges Bench in *A. R. Antulay (supra)* and seven Judges Bench in *P. Ramachandra Rao (supra)* were binding on the three Judges Bench in *Asian Resurfacing (supra).*

229. The law laid down by the Supreme Court in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)* is binding on all Courts including this Court. It is also submitted that this Court has to determine which judgement lays down the binding law and follow the same accordingly. According to the learned counsels in the instant case it is the bounden duty of this Court and all trial courts to follow the judgements rendered by Benches of superior strength in *A. R. Antulay (supra)* and *P. Ramchandra Rao (supra),* in preference to the contrary directions in *Asian Resurfacing (supra),* which was handed down by a Bench of lesser strength.

VI(B) ARTICLE 142

230. The scope of powers of the Supreme court under Article 142, the interface of Article 142 with Article 194 (3) and the issue of conflict between Article 142 and Article 32 of the Constitution of India were examined by the Court in *Prem Chand Garg v. Excise Commissioner*[140]. *Prem Chand Garg (supra)* noticed the following submissions made at the Bar:

> "10. It is, however, urged by the learned Solicitor-General that the powers of this Court under Article 142 are very wide and cannot be controlled by Article 32. He has put his argument in two ways. He urges that the words used in Article 142 are very wide and since they constitute the constitutional charter of this Court's powers, they must be very liberally construed. This contention is undoubtedly well founded. Article 142(1) provides that in exercise of its jurisdiction, this Court may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it; and it adds that a decree or order so made shall be enforceable throughout the territory of India in the manner prescribed by any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. The Solicitor-General wants us to compare Article 142(1) with Article 194(3) and he suggests that just as the powers, privileges and immunities specified

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by the latter article are not subject to the provisions in respect of fundamental rights so is the power specified by Article 142(1) not subject to the said rights."

231. However, the Supreme Court in *Prem Chand Garg (supra)* categorically rejected the argument that the powers under Article 142(1) can be compared with Article 194(3) of the Constitution which are not subject to the provisions of Part III by holding:

"12. Basing himself on this decision, the Solicitor-General argues that the power conferred on this Court under Article 142(1) is comparable to the privileges claimed by the members of the State Legislatures under the latter part of Article 194(3), and so, there can be no question of striking down an order passed by this Court under Article 142(1) on the ground that it is inconsistent with Article 32. **It would be noticed that this argument proceeds on the basis that the order for security infringes the fundamental right guaranteed by Article 32 and it suggests that under Article 142(1) this Court has jurisdiction to pass such an order. In our opinion, the argument thus presented is misconceived**. In this connection, it is necessary to appreciate the actual decision in the case of *Sharma* [(1959) 1 SCR 806 at 859-860] and its effect. The actual decision was that the rights claimable under the latter part of Article 194(3) were not subject to Article 19(1)(*a*), because the said rights had been expressly provided for by a constitutional provision viz. Article 194(3), and it would be impossible to hold that one part of the Constitution is inconsistent with another part. The position would, however, be entirely different if the State Legislature was to pass a law in regard to the privileges of its members. Such a law would obviously have to be consistent with Article 19(1)(*a*). If any of the provisions of such a law were to contravene any of the fundamental rights guaranteed by Part III, they would be struck down as being unconstitutional. Similarly, there can be no doubt that if in respect of petitions under Article 32 a law is made by Parliament as contemplated by Article 145(1), and such a law, in substance, corresponds to the provisions of Order 25 Rule 1 or Order 41 Rule 10, it would be struck down on the ground that it purports to restrict the fundamental right guaranteed by Article 32. The position of an order made either under the rules framed by this Court or under the jurisdiction of this Court under Article 142(1) can be no different. If this aspect of the matter is borne in mind, there would be no difficulty in rejecting the Solicitor-General's argument based on Article 142(1). **The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws.**

> **Therefore, we do not think it would be possible to hold that Article 142(1) confers upon this Court powers which can contravene the provisions of Article 32.**
>
> (emphasis supplied)
>
> 13. In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.
>
> 14. That takes us to the second argument urged by the Solicitor-General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. **In this connection, we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions. There can, therefore, be no conflict between Article 142(1) and Article 32.** In the case of *K.M. Nanavati* v. *State of Bombay* [(1961) 1 SCR 497] on which the Solicitor-General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. **The said rule can have no application to the present case, because on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32.** The existence of the said power is itself in dispute, and so, the present case is clearly distinguishable from the case of *K.M. Nanavati* [(1961) 1 SCR 497] .”
>
> (emphasis supplied)

232. The view taken by the Supreme Court in *Prem Chand Garg (supra)* as regards the scope of Article 142 of the Constitution of India was fully endorsed in *A. R. Antulay (1988) (supra). A. R. Antulay (1988) (supra)* after considering the ratio of *Prem Chand Garg (supra)* held:

> “50. This Court by majority held that Rule 12 of Order 35 of the Supreme Court Rules was invalid insofar as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the content of this right

could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. **Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose.** Gajendragadkar, J., speaking for the majority of the judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that *an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws* (emphasis supplied). The court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16-2-1984, on the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the court of Special Judge, Greater Bombay. Shri S.B. Sule, to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, Section 7(2) of the Criminal Law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among the special cases, without any guideline as to which cases required speedier justice. If that was so as in *Prem Chand Garg case* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] , that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the court is drawn the court has always the power and the obligation to correct it *ex debito justitiae* and treat the second application by its inherent power as a power of review to correct the original mistake. **No suitor should suffer for the wrong of the court.** This Court in *Prem Chand Garg case* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the court for non-deposit of such security in the subsequent stage of the same proceeding when attention of the court to the infirmity of the rule was drawn. It may be mentioned that Shah, J., was

> of the opinion that Rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter."
>
> (emphasis supplied)

233. Subsequently, however, clarifying the judgments rendered in *Prem Chand Garg (supra)* and *A. R. Antulay (1988) (supra)* in regard to the ambit and the limitations of the powers under Article 142(1) of the Constitution, the Supreme Court in *Union Carbide Corporation v. Union of India*[141] ruled:

> "60. The expression "cause or matter" in Article 142(1) is very wide covering almost every kind of proceedings in Court. In *Halsbury's Laws of England* (4th edn., vol. 37, para 22) referring to the plenitude of that expression it is stated:
>
> > "*Cause or matter*.— The words 'cause' and 'matter' are often used in juxtaposition, but they have different meanings. 'Cause' means any action or any criminal proceedings and 'matter' means any proceedings in court not in a cause. When used together, the words 'cause or matter' *cover almost every kind of proceeding in court*, whether civil or criminal, whether interlocutory or final, and whether before or after judgment."
>
> Any limited interpretation of the expression "cause or matter" having regard to the wide and sweeping powers under Article 136 which Article 142(1) seeks to effectuate, limiting it only to the short compass of the actual dispute before the Court and not to what might necessarily and reasonably be connected with or related to such matter in such a way that their withdrawal to the apex Court would enable the court to do "complete justice", would stultify the very wide constitutional powers. Take, for instance, a case where an interlocutory order in a matrimonial cause pending in the trial court comes up before the apex Court. The parties agree to have the main matter itself either decided on the merits or disposed of by a compromise. If the argument is correct this Court would be powerless to withdraw the main matter and dispose it of finally even if it be on consent of both sides. Take also a similar situation where some criminal proceedings are also pending between the litigating spouses. If all disputes are settled, can the court not call up to itself the connected criminal litigation for a final disposal? If matters are disposed of by consent of the parties, can any one of them later turn around and say that the apex Court's order was a nullity as one without jurisdiction and that the consent does not confer jurisdiction? This is not the way in which jurisdiction with such wide constitutional powers is to be construed. While it is neither possible nor advisable to enumerate exhaustively the multitudinous ways in which such situations may present themselves before the Court where the Court with the aid of the

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powers under Article 142(1) could bring about a finality to the matters, it is common experience that day in and day out such matters are taken up and decided in this Court. It is true that mere practice, however long, will not legitimize issues of jurisdiction. But the argument, pushed to its logical conclusions, would mean that when an interlocutory appeal comes up before this Court by special leave, even with the consent of the parties, the main matter cannot be finally disposed of by this Court as such a step would imply an impermissible transfer of the main matter. Such technicalities do not belong to the content and interpretation of constitutional powers.

83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Article 142(1) is unsound and erroneous. In both *Garg* [1963 Supp 1 SCR 885, 899-900 : AIR 1963 SC 996] as well as *Antulay cases* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Sri Sorabjee, learned Attorney General, referring to *Garg case* [1963 Supp 1 SCR 885, 899-900 : AIR 1963 SC 996] , said that limitation on the powers under Article 142 arising from “inconsistency with express statutory provisions of substantive law” must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression ‘prohibition’ is read in place of ‘provision’ that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of “complete justice” of a

cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.

84. Learned Attorney General said that Section 320 Criminal Procedure Code is "exhaustive of the circumstances and conditions under which composition can be effected." (See *Sankar Rangayya* v. *Sankar Ramayya* [AIR 1916 Mad 483, 485 : 16 Cri LJ 750 : 31 IC 350]) and that "the courts cannot go beyond a test laid down by the legislature for determining the class of offences that are compoundable and substitute one of their own". Learned Attorney General also referred to the following passage in *Biswabahan Das* v. *Gopen Chandra Hazarika* [(1967) 1 SCR 447, 451 : AIR 1967 SC 895 : 1967 Cri LJ 828] :

> "If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal."

He said that "if a criminal case is declared to be non-compoundable, then it is against public policy to compound it, and any agreement to that end is wholly void in law." (See *Majibar Rahman* v. *Muktashed Hossein* [ILR 40 Cal 113, 117-18 : 16 CWN 854 : 15 IC 259]); and submitted that court "cannot make that legal which the law condemns". Learned Attorney General stressed that the criminal case was an independent matter and of great public concern and could not be the subject matter of any compromise or settlement. There is some justification to say that statutory prohibition against compounding of certain class of serious offences, in which larger social interests and social security are involved, is based on broader and fundamental considerations of public policy. But all statutory prohibitions need not necessarily partake of this quality. The attack on the power of the apex Court to quash the criminal proceedings under Article 142(1) is ill-conceived. But the justification for its exercise is another matter.

86. But Shri Nariman put it effectively when he said that if the position in relation to the criminal cases was that the Court was invited by the Union of India to permit the termination of the prosecution and the Court consented to it and quashed the criminal cases, it could not be said that there was some prohibition in some law for such powers being exercised under Article 142. The mere fact that the word 'quashing' was used did not matter. Essentially, it was a matter of mere form and procedure and not of substance. The power under Article 142 is exercised with the aid of the principles of Section 321 CrPC which enables withdrawal of prosecutions. We cannot accept the position urged by the learned Attorney General and learned counsel for the petitioners that Court had no power or jurisdiction to make that order. We do not appreciate Union of India which filed the memorandum of February 15, 1989, raising the plea of want of jurisdiction."

234. Both the scope and limits of the plenary powers under Article 142 of the Constitution arose for consideration before a Constitution Bench of the Supreme Court in *Supreme Court Bar Association v. Union of India*[142] and the Supreme Court observed as under:

> "43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.
>
> 47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes*. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties*. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to

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practice, a power otherwise statutorily available *only* to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., *to do complete justice between the parties*. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it.* Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see *K. Veeraswami* v. *Union of India* [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject."

235. *Supreme Court Bar Association (supra)* also reconciled the judgments in *Union Carbide Corporation (supra)*, *A.R. Antulay (1988) (supra)*, *Prem Chand Garg (supra)* in the following manner:

"55. Thus, a careful reading of the judgments in *Union Carbide Corpn.* v. *Union of India* [(1991) 4 SCC 584] ; the *Delhi Judicial Service Assn. case* [(1991) 4 SCC 406 : (1991) 3 SCR 936] and *Mohd. Anis case* [1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251] relied upon in *V.C. Mishra case* [(1995) 2 SCC 584] show that the Court did not actually doubt the correctness of the observations in *Prem Chand Garg case* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] . As a matter of fact, it was observed that in the established facts of those cases, the observations in *Prem Chand Garg case* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] had "no relevance". This Court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be *ignored* by this Court while exercising powers under Article 142.

56. As a matter of fact, the observations on which emphasis has been placed by us from the *Union Carbide case* [(1991) 4 SCC 584] , *A.R. Antulay case* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] and *Delhi*

> *Judicial Service Assn. case* [(1991) 4 SCC 406 : (1991) 3 SCR 936] go to show that they do not strictly speaking come into any conflict with the observations of the majority made in *Prem Chand Garg case* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] . It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142*to do complete justice* between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether *ignore* the substantive provisions *of a statute*, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in *Union Carbide case* [(1991) 4 SCC 584] either expressly or by implication and on the contrary it has been held that the Apex Court *will take note of the express provisions of any* substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in *V.C. Mishra case* [(1995) 2 SCC 584] that the law laid down by the majority in *Prem Chand Garg case* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] is "no longer a good law"."

236. Finally the Supreme Court in *Supreme Court Bar Association (supra),* stipulated following restraints in exercise of powers under Article 142 of the Constitution of India:

> "78. Thus, to conclude we are of the opinion that this Court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practice, where the contemner happens to be an advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in *Vinay Chandra Mishra, Re* [(1995) 2 SCC 584] is not good law and we overrule it.
>
> 82. In *V.C. Mishra case* [(1995) 2 SCC 584] the Bench relied upon its inherent powers under Article 142 to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. We cannot persuade ourselves to agree with that approach. It must be remembered that wider the amplitude of its power under Article 142, the greater is the need of care for this Court to see that the power is used with restraint without pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction. To the extent this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions."

237. After noticing that the holdings of the Supreme Court in *Union Carbide Corporation (supra), A.R. Antulay (1988) (supra), Prem Chand Garg (supra), Supreme Court Bar Assn. (supra)* are not in conflict, the Supreme Court in *ONGC v. Gujarat Energy Transmission Corporation Ltd.*[143] adhered to the regime of restraints created by it while exercising powers under Article 142 of the Constitution of India and declined to condone the delay beyond the statutory limits by holding:

> "12. In *A.R. Antulay* v. *R.S. Nayak* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as his Lordship then was) opined thus : (SCC p. 656, para 50)
>
> > "*50.* … The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J., speaking [*Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996 : 1963 Supp (1) SCR 885] for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At AIR pp. 1002-03, para 12 : SCR p. 899 of the Report, Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that *an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws*. The court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32."
>
> 15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in *Supreme Court Bar Assn.* [*Supreme Court Bar*

143 (2017) 5 SCC 42

Assn. v. *Union of India*, (1998) 4 SCC 409] has ruled that there is no conflict of opinion in *Antulay case* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] or in *Union Carbide Corpn. case* [*Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584 : 1991 Supp (1) SCR 251] with the principle set down in *Prem Chand Garg* v. *Excise Commr.* [*Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996 : 1963 Supp (1) SCR 885] Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in *Union Carbide Corpn. case* [*Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584 : 1991 Supp (1) SCR 251] . As the pronouncement in *Chhattisgarh SEB* [*Chhattisgarh SEB* v. *Central Electricity Regulatory Commission*, (2010) 5 SCC 23] lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.

16. We had stated earlier that we will be adverting to the passage in *Suryachakra Power Corpn. Ltd.*[*Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt.*, (2016) 16 SCC 152 : (2016) 10 Scale 46] There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on *M.P. Steel Corpn.* [*M.P. Steel Corpn.* v. *CCE*, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] wherein the Court after referring to certain authorities, analysed thus : (*M.P. Steel Corpn. case* [*M.P. Steel Corpn.* v. *CCE*, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , SCC p. 91, para 43)

> "*43.* … when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case."

238. After following the ONGC (supra) the Supreme Court in *National Spot Exchange Ltd. v. Dunar Foods Ltd. (Resolution Professional)*[144] held as under:

> "16. It is also required to be noted that even Shri Maninder Singh, learned Senior Counsel appearing on behalf of the appellant has, as such, fairly conceded that considering Section 61(2) of the IB Code, the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, he has requested and prayed to condone the delay in exercise of powers under Article 142 of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body. We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India."

239. The judgment in *ONGC (supra)* was followed by the Supreme Court in *Assistant Commissioner (CT) v. Glaxo Smith Kline Consumer Health Care Ltd.*[145] with similar results:

> "16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. **Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose.** In a recent decision of a three-Judge Bench of this Court in *ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.* [*ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in *Singh Enterprises* v. *CCE* [*Singh Enterprises* v. *CCE*, (2008) 3 SCC 70] , *CCE* v. *Hongo (India) (P) Ltd.* [*CCE* v. *Hongo (India) (P) Ltd.*, (2009) 5 SCC 791] , *Chhattisgarh SEB* v. *CERC* [*Chhattisgarh SEB* v. *CERC*, (2010) 5 SCC 23] and *Suryachakra*

144 (2022) 11 SCC 761
145 (2020) 19 SCC 681

> *Power Corpn. Ltd.* v. *Electricity Deptt.* [*Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt.*, (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act."
>
> (emphasis supplied)

240. While interpreting the expression "complete justice" in Article 142, the Supreme Court in *Rajeev Suri v. DDA*[146] did not take a narrow view to doing justice but looked at the positions of the parties and the subject matter as a goal and held:

> "578. The character of a public interest proceeding is necessarily non-adversarial in nature and it is not a matter of two individuals fighting against each other at all possible forums. In Kalpana Mehta v. Union of India [Kalpana Mehta v. Union of India, (2018) 7 SCC 1] , this Court, in para 264, had observed that "When courts enter upon issues of public interest and adjudicate upon them, they do not discharge a function which is adversarial." Such a proceeding is essentially in the nature of a collective enquiry to determine whether the State is acting in accordance with settled principles of law and such collective enquiry is always targeted towards larger public interest. What purpose will a public interest proceeding serve if the fulfilment of one notion of public interest leads to a clear subjugation of another legitimate action of the State taken in public interest and as the petitioners themselves put it, concerning project of national importance touching upon democratic polity. That is where the role of this Court comes in, which ought to be active and not passive in such proceedings.
>
> 579. We may usefully refer to our prior discussion on the statutory jurisdiction of NGT vis-à-vis the constitutional powers of this Court. We are not reiterating the same here to avoid repetition. **The expression "complete justice" does not contemplate a narrow view of doing justice to the petitioners or the respondents. Rather, the principle entails looking at the parties, their respective positions and the subject-matter/cause before it as a whole. The Court needs to be even more vigilant and proactive in its pursuit of complete justice when the subject-matter involves an exercise of power in rem and considerations of public interest traverse beyond the immediate expectations of the parties before the Court.** It is not a case where the parties have approached the Court for the vindication of personal rights, as already noted above, and the nature of subject-matter is entirely different.
>
> 580. When competing public interests are brought before a constitutional court, it becomes the duty of the Court to harmonise and balance such interests, even if it requires the invocation of an

146 (2022) 11 SCC 1

> extraordinary power. The performance of this function by the Court becomes even more indispensable when the grievance of the petitioners is that national interest is at stake. It is precisely for such occasions that this Court is bestowed with such a plenary power."
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> (emphasis supplied)

241. The restraints devised by the Supreme Court in exercise of powers in determining the scope of jurisdiction under Article 142 of the Constitution of India were restated by the Supreme Court in *Anupal Singh v. State of U.P.*[147] wherein the Summit Court refused to issue orders which were contrary to expressed provisions of law by unequivocally stating:

> "83. Article 142 of the Constitution of India confers wide power upon the Supreme Court to do complete justice between the parties. Though the powers conferred on the Supreme Court by Article 142 are very wide, the same cannot be exercised to pass an order inconsistent with express statutory provisions of substantive law. In *Ramji Veerji Patel* v. *Revenue Divl. Officer* [*Ramji Veerji Patel* v. *Revenue Divl. Officer*, (2011) 10 SCC 643 : (2012) 3 SCC (Civ) 1062] , the Supreme Court held that the power under Article 142 of the Constitution of India is to be exercised very carefully and sparingly. The power under Article 142 of the Constitution of India can be exercised so as to do complete justice between the parties. However, as held in *Supreme Court Bar Assn.* v. *Union of India* [*Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409] , **though the power under Article 142 of the Constitution is plenary in nature, the same cannot be construed to mean that the power can be used to supplant the substantive law applicable to the case."**
>
> (emphasis supplied)

242. The impermissibility of issuing directions under Article 142 of the Constitution of India which were contrary to a specific provision of law was again emphasized in *Raj Kumar v. State of U.P.*[148] by stating forth:

> "15. It was also urged that we may exercise powers under Article 142 of the Constitution of India because the occurrence took place more than twenty years back. **We are clearly of the view that the power under Article 142 cannot be exercised against the specific provision of law.** Section 16(1)(*a*) of the Act lays down a minimum

147 (2020) 2 SCC 173

148 (2019) 9 SCC 427

> sentence of six months. Considering the bane of adulteration and the deleterious effect of adulteration and sub-standard food on the health of the citizens (especially children when milk is involved), the legislature provided a minimum sentence of six months. Passage of time can be no excuse to award a sentence lower than the minimum.
>
> (emphasis supplied)

> 16. **Furthermore, the power under Article 142, in our considered view, cannot be used in total violation of the law. When a minimum sentence is prescribed by law, this Court cannot, in exercise of its power under Article 142, pass an order totally contrary to law.** If such power could be used in a food adulteration case to impose a sentence lower than the minimum prescribed, then even in cases of murder and rape, this Court applying the same principles could impose a sentence less than the minimum. This, in our opinion, is not the purpose of Article 142. **We have no doubt in our mind that powers under Article 142 cannot be exercised in such a manner that they make a mockery of the law itself."**
>
> (emphasis supplied)

243. The difference between Articles 141 and 142 of the Constitution was considered in *Bir Singh v. Mukesh Kumar*[149] by holding thus:

> "30. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. It is the ratio decidendi of the case which operates as a binding precedent. As observed by this Court in *State of Punjab* v. *Surinder Kumar* [*State of Punjab* v. *Surinder Kumar*, (1992) 1 SCC 489 : 1992 SCC (L&S) 345] , **what is binding on all courts is what the Supreme Court says under Article 141 of the Constitution, which is declaration of the law and not what it does under Article 142 to do complete justice."**
>
> (emphasis supplied)

244. While observing the distinctions between the law laid down by the Supreme Court under Article 141 and Article 142 which gave precedence to equity over law, the Supreme Court in *State v. Kalyan Singh*[150] reiterated that equity cannot disregard substantive provisions of law and stated the law the under:

> "22. Article 142(1) of the Constitution of India had no counterpart in the Government of India Act, 1935 and to the best of our knowledge, does not have any counterpart in any other Constitution world over. The Latin maxim *fiat justitia ruat caelum* [This maxim was quoted by Lord Mansfield in *R.* v. *Wilkes*, (1770) 4 Burr 2527 : 98 ER 327 :

149 (2019) 4 SCC 197
150 (2017) 7 SCC 444

(1558-1774) All ER Rep 570. The passage in which it is quoted makes interesting reading, and among the many other things stated by that great Judge, it is stated: "I wish POPULARITY: but it is that popularity which follows; not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends, by noble means."] is what first comes to mind on a reading of Article 142 — Let justice be done though the heavens fall. This article gives a very wide power to do complete justice to the parties before the Court, a power which exists in the Supreme Court because the judgment delivered by it will finally end the litigation between the parties. **It is important to notice that Article 142 follows upon Article 141 of the Constitution, in which it is stated that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Thus, every judgment delivered by the Supreme Court has two components — the law declared which binds courts in future litigation between persons, and the doing of complete justice in any cause or matter which is pending before it. It is, in fact, an Article that turns one of the maxims of equity on its head, namely, that equity follows the law. By Article 142, as has been held in *State of Punjab* [*State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883 : (2014) 4 SCC (Civ) 657 : (2014) 6 SCC (Cri) 154 : (2014) 3 SCC (L&S) 134] judgment, equity has been given precedence over law. But it is not the kind of equity which can disregard mandatory substantive provisions of law when the court issues directions under Article 142. While moulding relief, the court can go to the extent of relaxing the application of law to the parties or exempting altogether the parties from the rigours of the law in view of the peculiar facts and circumstances of the case."**

(emphasis supplied)

30. According to Shri Venugopal, the Supreme Court's power under Section 406 is circumscribed by transfer taking place only from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court. Clearly Section 406 does not apply to the facts of the present case as the transfer is from one criminal court to another criminal court, both subordinate to the same High Court. This being the case, nothing prevents us from utilising our power under Article 142 to transfer a proceeding from one criminal court to another criminal court under the same High Court as Section 406 does not apply at all. The learned Senior Counsel went on to add that such a power is exercisable only under Section 407 by the High Court and not this Court. Again, the fact that the High Court has been given a certain power of transfer under the Code of Criminal Procedure does not detract from the Supreme Court using a constitutional power under Article 142 to achieve the same end to do complete justice in the matter before it. In the present case, there is no substantive mandatory provision which is infracted by using Article 142. This being the case, both grounds taken by Shri Venugopal are without substance."

245. The Supreme Court in *Nidhi Kaim v. State of M.P.*[151] unequivocally declined to issue directions in

151 (2017) 4 SCC 1

exercise of powers under Article 142 of the Constitution of India which were contrary to the law declared under Article 141 of the Constitution of India even in exceptional circumstances in light of the pronouncement of the Constitution Bench in *Supreme Court Bar Assn. v. Union of India*[152]. However, "the window for such thought and consideration" was left open by observing:

> "90. We shall now consider the submission, founded on the interpretation placed by Mr Fali S. Nariman (*see* para 20, and onwards), on Article 142 of the Constitution. If the instant contention is acceptable then surely, according to the learned counsel, it would be possible to overlook the consequences of fraud (refer to para 81, hereinabove), in case sufficient justification was shown for taking a different course for doing complete justice. **Mr Nariman's suggestion that the Supreme Court must be "trusted", and that, this Court can even ignore statutory law in the overriding interest of doing complete justice under Article 142 of the Constitution has been put forth for our consideration. The said view was sought to be extended by the learned counsel, even to a declared pronouncement of law under Article 141 of the Constitution (in addition to statutory law). Accepting the proposition canvassed, we are sure, would substantially enhance the authority of this Court. And for that reason, the hypothesis of Mr Nariman is extremely attractive. It is, however, not possible for us to ignore the decision of a Constitution Bench of this Court, in *Supreme Court Bar Assn.* v. *Union of India* [*Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409] . The projection of Mr Fali S. Nariman, that this Court had virtually denuded itself of its constitutional power to do complete justice through the above judgment, is an expression of his opinion, which we respect. We are indeed bound by the declaration of the Constitution Bench.**
>
> (emphasis supplied)
>
> 91. **In terms of the above judgment in *Supreme Court Bar Assn. case* [*Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409] , with which we express our unequivocal concurrence, it is not possible to accept that the words "complete justice" used in Article 142 of the Constitution, would include the power to disregard even statutory provisions, and/or a declared pronouncement of law under Article 141 of the Constitution, even in exceptional circumstances.** Undoubtedly, the proposition can certainly be acceptable to a very limited extent — to the extent of self-aggrandisement. The "trust", Mr Nariman reposes in this Court, is indeed heartening and reassuring. But then, Mr Nariman, and a

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152 (1998) 4 SCC 409

> number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. **And thereby, to persuade a court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law. It is this, which every court, should consciously keep out of its reach. In our considered view the hypothesis — that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any court/Judge, however high or noble.** Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally "trusted", as much as the "trust" which is reposed in a court. Any legislation which does not satisfy the above parameters would per se be arbitrary, and would be open to being declared as constitutionally invalid. In such a situation, the legislation itself would be struck down. It is difficult to visualise a situation wherein a valid legislation would render injustice to the parties, or would lead to a situation of incomplete justice — for one or the other party. Imagination, perception and comprehension of future events, have inherent limitations. We would therefore refrain ourselves from saying anything beyond what we have. At the cost of repetition, we would reiterate, that such a situation, as is contemplated by Mr Nariman, does not seem to be possible. **We would however not like to close the window for such thought and consideration. We would rather leave it to the conscience of the court concerned to deal with such an exceptional situation if it ever arises.** In our view, in the facts and circumstances of the present case, the cause of the appellants is not furthered even by the approach suggested by relying on the hypothesis of Mr Nariman. We can only conclude by observing that keeping in mind the conscious involvement of the appellants in gaining admission to the MBBS course, by means of a fraudulent stratagem of trickery, it is not possible for us to ignore or overlook the declaration of law with reference to fraud. Nothing obtained by fraud can be sustained. This declared proposition of law must apply to the case of the appellants as well. This is the outcome of the "trust" reposed in this Court, as being fully equipped to determine at its own, when Article 142 of the Constitution can be invoked to render complete justice, and when it cannot be so invoked."
>
> (emphasis supplied)

246. Delving into the scope of jurisdiction under Article 142 of the Constitution of India, the Supreme Court in *Asha Ranjan v. State of Bihar*[153] held that the said powers cannot curtail the Fundamental Rights of the citizens:

> **"86.6. The Court in exercise of power under Article 142 of the Constitution cannot curtail the fundamental rights of the**

153 (2017) 4 SCC 397

> **citizens conferred under the Constitution and pass orders in violation of substantive provisions which are based on fundamental policy principles, yet when a case of the present nature arises, it may issue appropriate directions so that criminal trial is conducted in accordance with law. It is the obligation and duty of this Court to ensure free and fair trial.**
>
> (emphasis supplied)

247. Delineating differences between Articles 141 and 142 of the Constitution of India and keeping the latter outside the purview of the former, the Supreme Court in *State of Punjab v. Rafiq Masih*[154] has held that:

> "11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in *Union of India* v. *Karnail Singh* [(1995) 2 SCC 728] , it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.
>
> 12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in *Indian Bank* v. *ABS Marine Products (P) Ltd.* [(2006) 5 SCC 72] , *Ram Pravesh Singh* v. *State of Bihar* [(2006) 8 SCC 381 : 2006 SCC (L&S) 1986] and in *State of U.P.* v. *Neeraj Awasthi* [(2006) 1 SCC 667 : 2006 SCC (L&S) 190] has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose

154 (2014) 8 SCC 883

> its basic premise of making it a binding precedent. **This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."**
>
> (emphasis supplied)

248. The restriction of not issuing orders in contravention of law under Article 142 was iterated by the Supreme Court in *Poonam v. Sumit Tanwar*[155]:

> "7. This very Bench decided in *Manish Goel* v. *Rohini Goel* [(2010) 4 SCC 393] vide judgment and order dated 5-2-2010 observing that this Court, in exercise of its powers under Article 142 of the Constitution, generally should not issue any direction to waive the statutory requirement. The courts are meant to enforce the law and therefore, are not expected to issue a direction in contravention of law or to direct the statutory authority to act in contravention of law. While deciding the said case, reliance has been placed upon a large number of judgments of this Court including Constitution Bench judgments of this Court viz. *Prem Chand Garg* v. *Excise Commr*. [AIR 1963 SC 996] ; *Supreme Court Bar Assn.* v. *Union of India* [(1998) 4 SCC 409 : AIR 1998 SC 1895] and *E.S.P. Rajaram* v. *Union of India* [(2001) 2 SCC 186 : 2001 SCC (L&S) 352 : AIR 2001 SC 581]."

249. The same view was taken in *Manish Goel v. Rohini Goel*[156]*:*

> "14. Generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide *State of Punjab* v. *Renuka Singla* [(1994) 1 SCC 175] , *State of U.P.* v. *Harish Chandra* [(1996) 9 SCC 309 : 1996 SCC (L&S) 1240 : AIR 1996 SC 2173] , *Union of India* v. *Kirloskar Pneumatic Co. Ltd.* [(1996) 4 SCC 453 : AIR 1996 SC 3285] , *University of Allahabad* v. *Dr. Anand Prakash Mishra* [(1997) 10 SCC 264 : 1997 SCC (L&S) 1265] and *Karnataka SRTC* v. *Ashrafulla Khan* [(2002) 2 SCC 560 : AIR 2002 SC 629] .)
>
> The Constitution Benches of this Court in *Supreme Court Bar Assn.* v. *Union of India* [(1998) 4 SCC 409 : AIR 1998 SC 1895] and *E.S.P. Rajaram* v. *Union of India* [(2001) 2 SCC 186 : 2001 SCC (L&S) 352 : AIR 2001 SC 581] held that under Article 142 of the Constitution, this Court cannot altogether ignore the substantive

155 (2010) 4 SCC 460
156 **(**2010) 4 SCC 393

> provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.
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> 16. Similar view has been reiterated in *A.R. Antulay* v. *R.S. Nayak* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] , *Bonkya* v. *State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , *Common Cause* v. *Union of India* [(1999) 6 SCC 667 : 1999 SCC (Cri) 1196 : AIR 1999 SC 2979] , *M.S. Ahlawat* v. *State of Haryana* [(2000) 1 SCC 278 : 2000 SCC (Cri) 193 : AIR 2000 SC 168] , *M.C. Mehta* v. *Kamal Nath* [(2000) 6 SCC 213 : AIR 2000 SC 1997] , *State of Punjab* v. *Rajesh Syal* [(2002) 8 SCC 158 : 2002 SCC (Cri) 1867] , *Govt. of W.B.* v. *Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] , *Textile Labour Assn.* v. *Official Liquidator* [(2004) 9 SCC 741 : AIR 2004 SC 2336] , *State of Karnataka* v. *Ameerbi* [(2007) 11 SCC 681 : (2008) 1 SCC (L&S) 975] , *Union of India* v. *Shardindu* [(2007) 6 SCC 276 : (2007) 2 SCC (L&S) 456 : AIR 2007 SC 2204] and *Bharat Sewa Sansthan* v. *U.P. Electronics Corpn. Ltd.* [(2007) 7 SCC 737 : AIR 2007 SC 2961]
>
> 19. Therefore, the law in this regard can be summarised to the effect that in exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor is the power exercised merely on sympathy."

[Also see: A.B. Bhaskara Rao v. CBI[157]]

250. Construing the powers under Article 142 of the Constitution of India, the Supreme Court in *Laxmidas Morarji v. Behrose Darab Madan*[158] held that though the power is not restricted by statutory enactments, but the Supreme Court would not pass an order which would supplant substantive law or ignore express statutory provisions:

> "25. Article 142 being in the nature of a residuary power based on equitable principles, the Courts have thought it advisable to leave the powers under the article undefined. The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. **This means that acting under Article 142, the**

157 (2011) 10 SCC 259, Para 10
158 (2009) 10 SCC 425

> **Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case.** The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties."
>
> (emphasis supplied)

251. The Supreme Court in *Monica Kumar (Dr.) v. State of U.P.*[159] interpreted the word "cause" or "matter" to include every kind of proceeding whether civil or criminal, and after noticing that no provision like Section 482 Cr.P.C. conferred powers on the Supreme Court to quash or set aside criminal proceedings pending before a criminal court to prevent abuse of the process of the Court, the same was done by exercising powers under Article 142 of the Constitution of India read with Article 32 and 136 of the Constitution of India:

> "45. Under Article 142 of the Constitution this Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any "cause" or "matter" pending before it. The expression "cause" or "matter" would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. **Though there is no provision like Section 482 of the Criminal Procedure Code conferring express power on the Supreme Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but the inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court.** If the Court is satisfied that the proceedings in a criminal case are being utilised for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would be in the ends of justice to set aside or quash the criminal proceedings. Once this Court is satisfied that the criminal proceedings amount to abuse of process of court, it would quash such proceedings to ensure justice. This Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. **What would be the need of**

159 (2008) 8 SCC 781

> **“complete justice” in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do “complete justice” in the matter.**
>
> (emphasis supplied)
>
> 46. While considering the nature and ambit of its own power under this article, this Court observed that it was advisable to leave its power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation; even where no alternative remedy is efficacious due to lapse of time. [See *DDA* v. *Skipper Construction Co. (P) Ltd.* [(1996) 4 SCC 622] relying on *Vinay Chandra Mishra, In re* [(1995) 2 SCC 584] and *Kerala SEB* v. *Kurien E. Kalathil* [(2000) 6 SCC 293] *The power to do complete justice under this Article is, in a way, corrective power, which gives preference to equity over law. It is a residuary power, supplementary and complementary to the powers specially conferred by the statutes to do complete justice between the parties whenever it is just and equitable to do so. It is intended to prevent any obstruction to the stream of justice.”*

252. The distinction between a principle of law which amounts to a binding precedent under Article 141 of the Constitution of India and directions issued under Article 142 of the Constitution of India without laying down any principle of law was stated in *Indian Drugs & Pharmaceuticals Ltd. v. Workmen*[160] by holding thus:

> “41. No doubt, in some decisions the Supreme Court has directed regularisation of temporary or ad hoc employees but it is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often the Supreme Court issues directions without laying down any principle of law, in which case, it is not a precedent. For instance, the Supreme Court often directs appointment of someone or regularisation of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance, if the Supreme Court directs regularisation of service of an employee who had put in 3 years' service, this does not mean that all employees who had put in 3 years' service must be regularised. Hence, such a direction is not a precedent. In *Municipal Committee, Amritsar* v. *Hazara Singh* [(1975) 1 SCC 794 : 1975 SCC (Cri) 354 : AIR 1975 SC 1087] the Supreme Court observed that only

160 (2007) 1 SCC 408

> a statement of law in a decision is binding. In *State of Punjab* v. *Baldev Singh* [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080] this Court observed that everything in a decision is not a precedent. In *Delhi Admn.* v. *Manohar Lal* [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088] the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In *Divisional Controller, KSRTC* v. *Mahadeva Shetty* [(2003) 7 SCC 197 : 2003 SCC (Cri) 1722] this Court observed as follows : (SCC p. 206, para 23)
>
> "The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. … The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided."

253. While exercising the discretionary jurisdiction under Article 142 of the Constitution of India, the Supreme Court in *Sandeep Subhash Parate v. State of Maharashtra*[161] emphasised the need to consider all relevant aspects of the matter including the decisions of the Supreme Court and stated forth:

> "14. It is not in dispute that the Bombay High Court held so. However, as it appears from the decision of this Court in *LIC* [(2006) 2 SCC 471 : 2006 SCC (L&S) 329] that the State might have also issued some government orders making such declaration. Indisputably, the conduct of a party assumes significance in moulding the relief. This Court, while exercising its discretionary jurisdiction and to do complete justice between the parties in terms of Article 142 of the Constitution of India, **must consider all relevant aspects of the matter, including the decisions of this Court. The doctrine of proportionality emerging from the recent trend of decisions in preference to the doctrine of Wednesbury unreasonableness is also a factor which weighs with us.** [See *Teri Oat Estates (P) Ltd.* v. *U.T., Chandigarh* [(2004) 2 SCC 130] and *A. Sudhakar* v. *Post Master General* [(2006) 4 SCC 348 : 2006 SCC (L&S) 817 : (2006) 3 Scale 524] ."
>
> (emphasis supplied)

254. The Supreme Court in *State of Haryana v. Sumitra Devi*[162] while defining the scope of jurisdiction under Article 142 of the Constitution of India reiterated that

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161 (2006) 7 SCC 501
162 (2004) 12 SCC 322

no such order could be passed in contravention of statute or statutory rules.

255. Same view was taken in *Textile Labour Assn. v. Official Liquidator*[163].

256. The Supreme Court in *M.S. Ahlawat v. State of Haryana*[164] recalled orders which were purportedly passed under Article 142 of the Constitution of India without following the procedure prescribed under Section 195 and 340 Cr.P.C. when the issue was raised before it by holding thus:

> "12. This Court has always adopted this procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false. We have not been able to appreciate as to why this procedure was given a go-by in the present case. Maybe the provisions of Sections 195 and 340 CrPC were not brought to the notice of the learned Division Bench.
> 13. In the light of the enunciation of law made by this Court in the *Supreme Court Bar Assn. case* [(1998) 4 SCC 409] this Court could not have assumed jurisdiction by issue of a notice proposing conviction for forgery and making false statements at different stages in the Court punishable under Section 193 IPC without following the procedure prescribed under Sections 195 and 340 CrPC. Primarily this Court does not exercise any original criminal jurisdiction in relation to offences arising under Section 193 IPC and secondly the seriousness of the charge arising under Section 193 IPC requires an elaborate inquiry and trial into the matter by the competent criminal court and a summary inquiry by mere issuing a show-cause notice and considering affidavits or inquiry reports would not tantamount to the procedure provided under the Criminal Procedure Code. The order made by this Court convicting the petitioner under Section 193 IPC is, therefore, one without jurisdiction and without following the due procedure prescribed under law. Though it is not clear from the impugned order whether the powers under Article 142 of the Constitution were exercised to convict the petitioner under Section 193 IPC, we have proceeded on the assumption that it is by exercise of that power that the impugned order had been made for there is no other provision enabling the passing of such an order. As discussed earlier, in view of the decision in *Supreme Court Bar Assn. case* [(1998) 4 SCC 409] such an order could not have been made."

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163 (2004) 9 SCC 741
164 (2000) 1 SCC 278

257. Despite the wide coverage of Article 142 of the Constitution of India the Supreme Court in *State of Punjab v. Bakshish Singh*[165] stated that the Court cannot ignore the substantive rights of a litigant while dealing with a cause pending before it and declined to invoke Article 142 of the Constitution of India:

> "5. Learned counsel for the appellant contended that the respondent has not filed any cross-appeal and, therefore, the order of remand passed by the lower appellate court for a fresh order of punishment need not be interfered with, particularly as that order has been upheld by the High Court which had summarily dismissed the second appeal filed by the State of Punjab. If, therefore, this Court intervenes in the matter even in exercise of its power under Article 142 of the Constitution, the same would be without jurisdiction. This contention cannot be accepted.
>
> 6. A Constitution Bench of this Court in *Supreme Court Bar Assn.* v. *Union of India* [(1998) 4 SCC 409 : AIR 1998 SC 1895] **has already held that while exercising power under Article 142 of the Constitution, the court cannot ignore the substantive rights of a litigant while dealing with a cause pending before it**. The power cannot be used to "supplant" substantive law applicable to a case. The Court further observed that Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly."
>
> (emphasis supplied)

258. The Supreme Court in *Chandrakant Patil v. State*[166] restrained frequent use of powers under Article 142 of the Constitution by holding thus:

> "9. It is now well nigh settled that Supreme Court's powers under Article 142 of the Constitution are vastly broad-based. That power in its exercise is circumscribed only by two conditions, first is, that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and the other is that the order which Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it. The first condition is satisfied here as the appellate jurisdiction of the Supreme Court is exercisable by virtue of Section 19 of TADA.
>
> 10. In *Delhi Judicial Service Assn.* v. *State of Gujarat* [(1991) 4 SCC 406] as also in *Union Carbide Corpn.* v. *Union of India* [(1991) 4 SCC 584] , this Court made the position clear that power under Article 142 of the Constitution is entirely of different level and is of a different quality which cannot be limited or restricted by provisions contained

165 (1998) 8 SCC 222
166 (1998) 3 SCC 38

in statutory law. No enactment made by the Central or State Legislature can limit or restrict the power of this Court under Article 142, though while exercising it the Court may have regard to statutory provisions. In *Mohd. Anis* v. *Union of India* [1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251] , Ahmadi, J. (as the learned Chief Justice then was) by following the dictum in the above-mentioned decisions has observed in para 6, as follows: (SCC p. 149)

> "This power has been conferred on the Apex Court only and the exercise of that power is not dependent or conditioned by any statutory provision. The constitutional plenitude of the powers of the Apex Court is to ensure due and proper administration of justice and is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Very wide powers have been conferred on this Court for due and proper administration of justice and whenever the Court sees that the demand of justice warrants exercise of such powers, it will reach out to ensure that justice is done by resorting to this extraordinary power conferred to meet precisely such a situation."

13. **We are aware that powers under Article 142 are not to be exercised frequently but only sparingly.** The occurrence described in this case is not the usual type of crimes reaching this Court. When all the four accused were caught red-handed while making nocturnal movements towards some targeted destination, in the densely crowded city with highly lethal and quickly explosive articles, it is a matter of reasonable imagination that, had they not been timely intercepted by the alert and vigilant police force, the consequences would have been disastrous and calamitous. We have no manner of doubt that the sentence of imprisonment of five years for the offence under Section 5 of the TADA in the circumstances of this case is too inadequate and it warrants enhancement."

(emphasis supplied)

259. Construing the powers under Article 142 as a constituent power transcending statutory prohibitions and its relationship with the law declared under Article 32, 136, 141 of the Constitution of India, the Supreme Court in *Ashok Kumar Gupta v. State of U.P.*[167] held:

> "60. It would be seen that there is no limitation under Article 142(1) on the exercise of the power by this Court. The necessity to exercise the power is to do "complete justice in the cause or matter". The inconsistency with statute law made by Parliament arises when this Court exercises power under Article 142(2) for the matters enumerated therein. Inconsistency in express statutory provisions of substantive law would mean and be understood as some express prohibition contained in any substantive statutory law. **The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (*sic* provision) into consideration before**

167 (1997) 5 SCC 201

> **taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology.** Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise."
>
> (emphasis supplied)

260. The Supreme Court has given full effect to the wide amplitude of powers under Article 142 of the Constitution of India to do complete justice between the parties as is comprehended in the provision.

261. The very nature of the power is such that it is not amenable to precise definition, and the Supreme Court has not confined it in narrow bounds. However, restrictions have been devised by the Supreme Court for exercise of powers under Article 142 of the Constitution of India.

262. Clearly the powers under Article 142 of the Constitution of India as per the holdings of the Supreme Court are malleable enough to serve justice in the facts of a case, but not sufficiently fluid to create fault lines in the edifice of law.

VI B(II) Article 142 & Asian Resurfacing (supra)

263. The submissions squarely raised before this Court do give rise to substantial questions pertaining to

interpretation of the Constitution which in the facts and circumstances of this case are liable to be adjudicated with finality by the Supreme Court.

264. The question is whether peremptory directions issued by the Supreme Court in *Asian Resurfacing (supra)* under Article 142 will prevail over explicit law expounded by the Supreme Court in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)* under Article 141? This conflict between the two provisions is a substantial question which relates to the interpretation of the constitution.

265. There is also one corollary. The concept of judicial discipline envisages that the law laid down by a Bench of higher strength is binding on a Bench of lesser strength is part of the body of law of binding precedents relatable to Article 141 of the Constitution of India. The question of constitutional interpretation which may arise is that whether the said dictum is also applicable to Article 142 of the Constitution of India.

266. The question also arises whether the amplitude of Article 142 gives it primacy over other provisions of the Constitution and the law, namely, Articles 141, 226, 227 of the Constitution of India and Section 482 Cr.P.C.?

267. There is another facet of the scope of Article 142 which comes in sharp focus in the facts of this case from the submissions raised before this Court by the learned counsels.

268. The substantial questions as to interpretation of the Constitution arising from the holdings of the Supreme Court in *Pepsico Foods Ltd. (supra)* and its interface with Article 142 will not be discussed.

269. In summation, the holdings in *Pepsico Foods Ltd. (supra)* show that the constitutional law has set its face against legislative enactments which contemplate the automatic vacation of stay orders upon lapse of a particular period of time even when the litigant cannot be faulted for the delay. The timeless legal maxim "Actus Curiae Neminem Gravabit" i.e. the litigant cannot be prejudiced by an act of the Court, is entrenched in the body of legal precedents unanimously rendered by various Constitutional Courts in the country. Further arbitrary curtailment or restriction by the legislature on powers to extend interim orders will render the substantive rights of the parties before the court/tribunal nugatory, and the remedy for adjudication of such rights will become a nullity.

270. A legislative enactment (Section 254-A I.T. Act) bearing likeness in form, substance and effect to the directions in Paras 34, 36, 37 of *Asian Resurfacing (supra)* has been held to be violative of Article 14 and read down by the Supreme Court in *Pepsico (supra)*. The submission at the Bar is that an act which is prohibited by the courts for the legislature cannot be made permissible in “judicial legislation”. Further powers under Article 142 cannot be exercised in contravention of Part III of the Constitution of India.

271. Moreover litigants aggrieved by legislative enactments (even Constitutional amendments) have the remedy of judicial review. Absence of remedy against judicial legislation created by directions issued under Article 142, and immunity of such legislation from judicial review also raises substantial questions as to interpretation of the Constitution.

272. The consequence of concentration of powers in one department of government and the broad separation of powers as applicable in India were stated by Y.V. Chandrachud, J. (as the then Hon'ble Chief Justice of India was) in *Indira Nehru Gandhi Vs Raj Narain*[168]. In this context it would also be apposite to extract the principles of "distinction between judicial and other powers which are vital to the maintenance of Constitution itself" and the adherence to fine checks and balances between three organs without which no constitution can survive as propounded in *Indira Nehru Gandhi (supra):*

> "685. The truth of the matter is that the existence, and the limitations on the powers of the three departments of government are due to the normal process of specialisation in governmental business which becomes more and more complex as civilization advances. The legislature must make laws, the executive enforce them and the judiciary interpret them because they have in their respective fields acquired an expertise which makes them competent to discharge their duly appointed functions. The Moghal Emperor, Jehangir, was applauded as a reformist because soon after his accession to the throne in 1605, he got a golden chain with sixty bells hung in his palace so that the common man could pull it and draw the attention of the ruler to his grievances and sufferings. The most despotic monarch in the modern world prefers to be armed, even if formally, with the opinion of his judges on the grievances of his subjects.

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168. 1975 (Supp) SCC 1

686. **The political usefulness of the doctrine of separation of powers is now widely recognized though a satisfactory definition of the three functions is difficult to evolve. But the function of the Parliament is to make laws, not to decide cases. The British Parliament in its unquestioned supremacy could enact a legislation for the settlement of a dispute or it could, with impunity, legislate for the boiling of the Bishop of Rochester's cook. The Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed. Princely India, in some parts, often did it.**

(emphasis supplied)

687. The reason of this restraint is not that the Indian Constitution recognizes any rigid separation of powers. Plainly, it does not. **The reason is that the concentration of powers in any one organ may, by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic government to which we are pledged**. Sir Carleton K. Alien says in his *Law and Orders* (1965 Edn., p. 8) that neither in Montesquieu's analysis nor in Locke' s are the governmental powers conceived as the familiar trinity of legislative, executive and judicial powers. Montesquieu's "separation" took the form not of impassable barriers and unalterable frontiers, but of mutual restraints, or of what afterwards came to be known as "checks and balances" (p. 10). The three organs must act in concert, not that their respective functions should not ever touch one another. If this limitation is respected and preserved, "it is impossible for that situation to arise which Locke and Montesquieu regarded as the eclipse of liberty — the monopoly, or the disproportionate accumulation, of power in one sphere" (p. 19; Allen). **In a federal system which distributes powers between three coordinate branches of Government, though not rigidly, disputes regarding the limits of constitutional power have to be resolved by courts and therefore, as observed by Paton, "the distinction between judicial and other powers may be vital to the maintenance of the Constitution itself" [A Text-book of Jurisprudence (1964) p. 295] . Power is of an encroaching nature, wrote Madison in *The Federalist*. The encroaching power which the federalists feared most was the legislative power and that, according to Madison, is the danger of all republics.** Allen says that the history of both the United States and France has shown on many occasions that the fear was not unjustified."

(emphasis supplied)

688. I do not suggest that such an encroaching power will be pursued relentlessly or ruthlessly by our Parliament. **But no Constitution can survive without a conscious adherence to its fine checks and balances. Just as courts ought not to enter into problems entwined in the "political thicket". Parliament must also respect the preserve of the courts. The principle of separation of powers is a principle of restraint which "has in it the precept, innate in the prudence of self-preservation (even if history has not repeatedly brought it home), that discretion is the better part of valour" [Julius Stone : Social Dimensions of**

> **Law and Justice, (1966) p. 668] . Courts have, by and large, come to check their valorous propensities. In the name of the Constitution, the Parliament may not also turn its attention from the important task of legislation to deciding court cases for which it lacks the expertise and the apparatus. If it gathers facts, it gathers facts of policy. If it records findings, it does so without a pleading and without framing any issues. And worst of all, if it decides a court case, it decides without hearing the parties and in defiance of the fundamental principle of natural justice.”**
>
> (emphasis supplied)

273. The Supreme Court in *Indira Nehru Gandhi (supra)* stood at the vanguard in defence of the prerogative of the courts to exercise judicial functions and negatived the legislative (Parliamentary in this case) attempt to assume judicial powers by holding:

> “689. **The Parliament, by clause (4) of Article 329-A, has decided a matter of which the country's courts were lawfully seized. Neither more nor less.** It is true, as contended by the learned Attorney-General and Shri Sen, that retroapective validation is a well-known legislative process which has received the recognition of this Court in tax cases, pre-emption cases, tenancy cases and variety of other matters. In fact, such validation was resorted to by the legislature and upheld by this Court in at least four election cases, the last of them being *Kanta Kathuria* v. *Manak Chand Surana* [(1969) 3 SCC 268 : (1970) 2 SCR 835] . But in all of these cases, what the legislature did was to change the law retrospectively so as to remove the reason of disqualification, leaving it to the courts to apply the amended law to the decision of the particular case. **In the instant case the Parliament has withdrawn the application of all laws whatsoever to the disputed election and has taken upon itself to decide that the election is valid. Clause (5) commands the Supreme Court to dispose of the appeal and the cross-appeal in conformity with the provisions of clause (4) of Article 329-A, that is, in conformity with the “judgment” delivered by the Parliament. The “separation of powers does not mean the equal balance of powers”, says Harold Laski, but the exercise by the legislature of what is purely and indubitably a judicial function is impossible to sustain in the context even of our cooperative federalism which contains no rigid distribution of powers but which provides a system of salutary checks and balances.**”
>
> (emphasis supplied)

274. Further recalling the dissenting view of P.N. Bhagwati, J. (as the then Hon’ble Chief Justice of India

was) in *Minerva Mills Ltd. and others Vs Union of India and others*[169], would be enlightening:

> "86. It is clear from the majority decision in *Kesavananda Bharati case* [*Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : 1973 Supp SCR 1 : AIR 1973 SC 1461] that our Constitution is a controlled Constitution which confers powers on the various authorities created and recognised by it and defines the limits of those powers. The Constitution is suprema lex, the paramount law of the land and there is no authority, no department or branch of the State which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution. **The Constitution has devised a structure of power relationship with checks and balances and limits are placed on the powers of every authority or instrumentality under the Constitution. Every organ of the State, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of such authority.** Parliament too, is a creature of the Constitution and it can only have such powers as are given to it under the Constitution. It has no inherent power of amendment of the Constitution and being an authority created by the Constitution, it cannot have such inherent power, but the power of amendment is conferred upon it by the Constitution and it is a limited power which is so conferred. Parliament cannot in exercise of this power so amend the Constitution as to alter its basic structure or to change its identity. Now, if by constitutional amendment. **Parliament were granted unlimited power of amendment, it would cease to be an authority under the Constitution, but would become supreme over it, because it would have power to alter the entire Constitution including its basic structure and even to put an end to it by totally changing its identity.** It will therefore be seen that the limited amending power of Parliament is itself an essential feature of the Constitution, a part of its basic structure, for if the limited power of amendment were enlarged into an unlimited power, the entire character of the Constitution would be changed. It must follow as a necessary corollary that any amendment of the Constitution which seeks, directly or indirectly, to enlarge the amending power of Parliament by freeing it from the limitation of unamendability of the basic structure would be violative of the basic structure and hence outside the amendatory power of Parliament.
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> (emphasis supplied)
>
> 87. It is a fundamental principle of our constitutional scheme, and I have pointed this out in the preceding paragraph, that every organ of the State, every authority under the Constitution, derives its power from the Constitution and has to act within the limits of such power. **But then the question arises as to which authority must decide what are the limits on the power conferred upon each organ or instrumentality of the State and whether such limits are transgressed or exceeded. Now there are three main departments of the State amongst which the powers of**

169. 1980 (3) SCC 625

government are divided; the executive, the legislature and the judiciary. Under our Constitution we have no rigid separation of powers as in the United States of America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain degree of overlapping is inevitable. The reason for this broad separation of powers is that "the concentration of powers in any one organ may" to quote the words of Chandrachud, J., (as he then was) in *Indira Gandhi case* [(1975) Supp SCC 1 : AIR 1975 SC 2299 : (1976) 2 SCR 341] "by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic government to which we are pledged". Take for example, a case where the executive which is in charge of administration acts to the prejudice of a citizen and a question arises as to what are the powers of the executive and whether the executive has acted within the scope of its powers. Such a question obviously cannot be left to the executive to decide and for two very good reasons. **First, the decision of the question would depend upon the interpretation of the Constitution and the laws and this would pre-eminently be a matter fit to be decided by the judiciary, because it is the judiciary which alone would be possessed of expertise in this field and secondly, the constitutional and legal protection afforded to the citizen would become illusory, if it were left to the executive to determine the legality of its own action. So also if the legislature makes a law and a dispute arises whether in making the law the legislature has acted outside the area of its legislative competence or the law is violative of the fundamental rights or of any other provisions of the Constitution, its resolution cannot, for the same reasons, be left to the determination of the legislature. The Constitution has, therefore, created an independent machinery for resolving these disputes and this independent machinery is the judiciary which is vested with the power of judicial review to determine the legality of executive action and the validity of legislation passed by the legislature.** It is the solemn duty of the judiciary under the Constitution to keep the different organs of the State such as the executive and the legislature within the limits of the power conferred upon them by the Constitution. This power of judicial review is conferred on the judiciary by Articles 32 and 226 of the Constitution. Speaking about draft Article 25, corresponding to present Article 32 of the Constitution, Dr Ambedkar, the principal architect of our Constitution, said in the Constituent Assembly on December 9, 1948:

(emphasis supplied)

> "If I was asked to name any particular Article in this Constitution as the most important — an Article without which this Constitution would be a nullity — I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance. (CAD, Vol. 7, p.953)"

> It is a cardinal principle of our Constitution that no one howsoever highly placed and no authority however lofty can claim to be the sole judge of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. The judiciary is the interpreter of the Constitution and to the judiciary is assigned the delicate task to determine what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. **It is for the judiciary to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law, which inter alia requires that "the exercise of powers by the government whether it be the legislature or the executive or any other authority, be conditioned by the Constitution and the law". The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution. Of course, when I say this I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for *judicial review* cannot be made by Parliament. But what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution.** If by a constitutional amendment, the power of judicial review is taken away and it is provided that the validity of any law made by the legislature shall not be liable to be called in question on any ground, even if it is outside the legislative competence of the legislature or is violative of any fundamental rights, it would be nothing short of subversion of the Constitution, for it would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaningless and futile. So also if a constitutional amendment is made which has the effect of taking away the power of judicial review and providing that no amendment made in the Constitution shall be liable to be questioned on any ground, even if such amendment is violative of the basic structure and, therefore, outside the amendatory power of Parliament, it would be making Parliament sole judge of the constitutional validity of what it has done and that would, in effect and substance, nullify the limitation on the amending power of Parliament and affect the basic structure of the Constitution. The conclusion must therefore inevitably follow that clause (4) of Article 368 is unconstitutional and void as damaging the basic structure of the Constitution."
>
> (emphasis supplied)

275. In wake of preceding observations in *Indira Nehru Gandhi (supra)* and *Minerva Mills (supra)*, it is evident

that "distinction between the judicial and other powers" has to be kept in mind while preserving the salutary system of the structure of power relationship with checks and balances and limits on the power of every authority or instrumentality under the Constitution. According to the learned members of the Bar this caution would apply both to the judiciary and the legislature.

276. The constraints of the legislature to exercise judicial functions are much akin to the limitations of the superior courts to undertake legislative exercises.

277. The expertise of the legislature and their apparatus and procedures are best suited to the most important task of legislation. The inherent difficulties of the legislature to undertake the task of judging have been brought out in *Indira Nehru Gandhi (supra).*

278. If judging by the legislature is forbidden, what are the restrictions on legislation by the courts?

279. The limitations of the capacity of the judiciary for undertaking legislative exercises cannot be denied. The process of courts is siloed by its very nature, restricts participation as a matter of practice, and adheres to the discipline of pleadings and evidences before the Court as a rule. Legislation requires a much broader outreach, a more open consultative process and a different institutional experience. The intellectual capital created by the process of courts is often inadequate for the complex task of legislation.

280. It is for this reason that from time to time the Supreme Court has created red lines on the exercise of powers under Article 142, particularly in certain fields of judicial legislation.

281. However, the issue cannot be approached in a pedantic manner, but has to be understood in a nuanced fashion.

282. The Courts cannot neglect consideration of another important facet of this issue. Complexities of modern day governance defy comprehensive cataloguing and watertight compartmentalization of legislative and judicial powers. The fast pace of socio-economic changes and the lightning speed of technological advancement outstrip the capacity of the legislature and at times of the executive to deal with the fruits of advancing technology and the challenges of social change. Consequently at times the legislature and the executive cannot address such issues with the required promptitude.

283. On many occasions the Courts become cognizant of social and legal problems arising from socio-economic and technological developments much before the cause is brought in the consciousness of the legislative process or in the realm of execution action. There are many instances where absence of legislation or executive inaction implicates fundamental rights of citizens. Legislative lag and executive inertia cannot cause a constitutional stasis.

284. In such situations, the superior courts cannot become silent spectators and standby. The process of realization of fundamental rights of the citizenry will never standstill. The courts have to protect the fundamental rights of the citizens at all times, and constitutional guarantees have to be enforced on demand.

285. Fruitful exercise of judicial legislation was evidenced in *Vishaka and others Vs State of Rajasthan and others*[170]. This was one cause where the legislative field was vacant and judicial legislation was made to secure the fundamental rights of a vulnerable class of citizens. Subsequently, the legislature enacted the law [The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013] to provide statutory remedies to the aggrieved citizens.

286. This Court too on various occasions is confronted with similar issues. In *Saumya Tiwari Vs. State of U.P. and others*[171] absence of Maternity Leave Regulations was the justification of the University to deny the maternity benefits and maternity support systems to a student who was an expectant mother.

287. This Court in *Saumya Tiwari (supra)* while relying on the law laid down by the Supreme Court in *Rattan Chand Hira Chand v. Askar Nawaz Jung*[172], *K.S.*

170. 1997 (6) SCC 241
171. 2021 SCC OnLine All 963
172. 1991 SCC (3) 67

Puttaswamy v. Union of India[173], *Vishaka and others Vs State of Rajasthan and others*[174] held as under:

> "59. The fast pace of life in modern times often outstrips the capacity of the legislature to cope with the consequences of social change. There is a limit to human foresight, but the possibilities of life are limitless. The limits of legislation are the constraints of human foresight. The legislative process is complex and even time taking. Human affairs do not wait on the legislative process. These facts frequently create a legislative lag. It is almost inevitable in the nature of things.
>
> 60. The first intersection of life with law, at times happens in courts, even before the legislatures grapple with the problems. The courts are often seized of various emerging issues in social and individual lives, before the legislatures are cognizant of them.
>
> 61. A legislative hiatus or executive lethargy cannot cause a constitutional stasis. The enforcement of fundamental rights cannot be forestalled by a legislative lag or executive inertia or a regulatory void. Constitutional guarantees and Fundamental Rights have to be enforced on demand. Constitutional overhang is perpetual. Law is always in motion and never at a standstill. The Constitution of India is a forever living organism. Constitutional law can never be stone deaf to calls of violations of fundamental rights.
>
> 62. The text of the Constitution contains a conceptual philosophy of fundamental rights, and is not an exhaustive compendium of all fundamental rights. The text of the Constitution is constant, fundamental rights are always evolving. This is the essence of constitutional law jurisprudence.
>
> 63. There is a method in the evolution of constitutional law jurisprudence. Evolution of constitutional law rights are guided and controlled by the text of the constitution, long settled judicial principles of interpretation of the constitution, and judicial precedents in point. The march of law is also assisted by consensus of values in the comity of civilized nations. These universal values are often manifested in international instruments. Another source of such values is comparative international jurisprudence. The felt needs of the times are also factored in by the courts. Development of constitutional law and evolution of fundamental rights happens on these sure foundations. Fundamental rights are thus distilled by the constitutional courts in discharge of their constitutional obligations. This is not judicial activism by courts. It is judging.
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> 64. The Supreme Court in *Vishaka* v. *State of Rajasthan*19, issued various guidelines for the safety of women at working places. The guidelines held the field, till the Parliament enacted a legislation. Judicial directions in that case preceded the legislative enactment.

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173. (2017) 10 SCC 1

174. 1997 (6) SCC 241

Infact the legislature was alerted, to the need of a legislation to cover the field, by the judgment of the constitutional court.

65. This narrative will profit from the observations made in *Rattan Chand Hira Chand* v. *Askar Nawaz Jung*:

> "The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.
>
> All courts have at one time or the other felt the need to bridge the gap between what is and what is intended to be. The courts cannot in such circumstances shirk from their duty and refuse to fill the gap. In performing this duty they do not foist upon the society their value judgments. They respect and accept the prevailing values, and do what is expected of them. The courts will, on the other hand, fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a document or of an action of an individual which is certain to subvert the societal goals and endanger the public good."

66. *K.S. Puttaswamy* (supra) unequivocally set forth that determining different facets of dignified existence which fall within Article 21 of the Constitution of India, is a function of judicial review:

> "127. The submission that recognising the right to privacy is an exercise which would require a constitutional amendment and cannot be a matter of judicial interpretation is not an acceptable doctrinal position. The argument assumes that the right to privacy is independent of the liberties guaranteed by Part III of the Constitution. There lies the error. The right to privacy is an element of human dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfill the liberties and freedoms which are the cornerstone of the Constitution. To recognise the value of privacy as a constitutional entitlement and interest is not to fashion a new fundamental right by a process of amendment

> through judicial fiat. Neither are the Judges nor is the process of judicial review entrusted with the constitutional responsibility to amend the Constitution. But judicial review certainly has the task before it of determining the nature and extent of the freedoms available to each person under the fabric of those constitutional guarantees which are protected. Courts have traditionally discharged that function and in the context of Article 21, as we have already noted, a panoply of protections governing different facets of a dignified existence has been held to fall within the protection of Article 21."

77. The respondent University has neglected to frame Regulations or create appropriate legal instruments to provide for maternity benefits to expectant mothers and new mothers. The failure of the University to perform its statutory functions has left the students bereft of maternity benefits. This inertia of the University betrays its insensitivity to the plight of pregnant students, undermines the rule of law and subverts the ideal of holistic education. The University cannot justify violation of fundamental rights of the petitioner on the foot of its own omissions.

86. By failing to frame Regulations or appropriate legal instruments for grant of maternity benefits and by declining to grant such benefits to the petitioner, the University has violated the fundamental rights of the petitioner as guaranteed under Articles 14, 15(3) and 21 of the Constitution of India and as expounded in the law laid down by Constitutional Courts.

88. A writ in the nature of mandamus is issued to the respondent-University to execute the following directions:

> I. The University shall create Regulations/Ordinances/appropriate legal instruments for grant of pre-natal and post-natal support and other maternity benefits to expectant mothers and new mothers who are pursuing various courses in the University. The maternity benefits shall also include additional chances to clear the exams in an enlarged time frame."

288. The scope of judicial legislation gives rise to various substantial questions as to interpretation of the powers under Article 142 of the Constitution of India and the concept of broad separation of powers under the constitutional scheme.

VI C. High Court & Supreme Court: Relationship

289. The Constitution has created a hierarchy of appellate courts, and a comity of Constitutional Courts.

Under the Constitution, the Supreme Court is the final court of appeal for all citizens of the country. In reality the High Courts are the courts of last resort for a vast majority of litigants. This among other reasons impelled the Constitution makers to vest the status of Constitutional Courts and courts of records in the High Courts and the Supreme Courts. The High Courts and the Supreme Court are thus endowed with congruent powers to serve the overarching common purposes to act ex debito justitiae, uphold fundamental liberties, prevent miscarriage of justice, and interpret the Constitution and the laws. High Courts make access to justice easy and approachable in the first instance to most citizens.

290. The High Courts and the Supreme Court comprise the comity of Constitutional Courts. When judgments of the High Courts are carried in appeal and the Supreme Court hands down the final judgments in the lis, a legal and a constitutional discourse happens between the courts. In this process, the lis arrives at a terminus and the rights of parties are adjudicated with finality.

291. Simultaneously other important transitions happen. The constitutional discourse guides the evolution of constitutional law, and a national consensus of constitutional values emerges. The judicial discourse of this nature cements the unity of the nation. The manner and conduct of the constitutional dialogue amongst the comity of Constitutional Courts is most critical to the

process of evolution of law, defining rights of citizens and ultimately dispensing justice.

292. The relationship between the High Court and the Supreme Court has evolved both by long standing judicial conventions and high authorities in point. (Some aspects of this relationship have been discussed in the earlier part of the judgement.) Reference to some authorities will fortify the narrative.

293. Acknowledging the powers of both Constitutional Courts namely the Supreme Court and High Court to issue writs and also noticing that the powers of High Court under Article 226 of the Constitution of India are wider than Article 32 of the Constitution of India, the Supreme Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*[175] held:

> "52. **It is well-settled that the powers of this Court to issue writs of certiorari under Article 32(2) as well as the powers of the High Courts to issue similar writs under Article 226 are very wide. In fact, the powers of the High Courts under Article 226 are, in a sense, wider than those of this Court, because the exercise of the powers of this Court to issue writs of certiorari are limited to the purposes set out in Article 32(1).** The nature and the extent of the writ jurisdiction conferred on the High Courts by Article 226 was considered by this Court as early as 1955 in *T.C. Basappa* v. *T. Nagappa* [(1955) 1 SCR 250, at pp 256-8] . It would be useful to refer to some of the points elucidated in this judgment. The first point which was made clear by Mukherjea, J., who spoke for the Court, was that "in view of the express provisions in our Constitution, we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law". One of the essential features of the writ, according to Mukherjea, J., is "that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In

175 (1966) 3 SCR 744

granting a writ of certiorari, the superior court does not exercise the powers of an Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The supervision of the superior Court exercised through writs of certiorari goes to two points, one is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess". It is in the light of these principles which have been consistently followed by this Court in dealing with the problem relating to the exercise of the writ jurisdiction by the High Courts under Article 226 or by this Court under Article 32, that we must now proceed to deal with the point before us.

(emphasis supplied)

59. There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior court of record and under Article 215, shall have all powers of such a court of record including the power to punish contempt of itself. One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in *Special Reference No. I of 1964* [(1965) 1 SCR 413 at p 499] . In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from *Halsbury's Laws of England* where it is observed that "prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol 9, p. 349] ". If the decision of a superior court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior court on such a point is set aside by adopting the appropriate course, it

> would not be open to be corrected by the exercise of the writ jurisdiction of this Court."

294. The judicial relationship between the High Court and Supreme Court reflected in the judgements of Constitutional Courts impacts the functioning of the High Courts. Exploring various facets of the relationship of the Supreme Court and the High Court, the former in *Tirupati Balaji Developers (P) Ltd. And Others Vs. State of Bihar and Others*[176] propounded:

> "16. The Founding Fathers of the Constitution devised a justice-delivery system in the country as one homogeneous in content, taking care of independence and hierarchy both, and holding the scales of balance even while doing so. The Union judiciary and the State judiciary are undoubtedly independent of each other except for a few areas relating to jurisdiction as we have very briefly indicated hereinbefore. However, at the same time, we cannot resist laying emphasis on the appellate hierarchy which, examined in the correct perspective, is a factor strongly contributing towards the independence of the judiciary and securing finality in adjudication within the system and its insulation from any outside interference or correction. The delicate balance has been carefully crafted and sought to be achieved by independence and interconnection — both existing simultaneously — of the Supreme Court and the High Courts. There are "relationships of tension as well as those of cooperation", to borrow the expression employed by Frank M. Coffin in his work *On Appeal — Courts, Lawyering, and Judging*. He says, "on the sensitive and sophisticated application of the various doctrines governing these relationships depends in large part the effective functioning of our unique form of federalism". (at pp. 52-53)
>
> 18. How the Supreme Court and the High Court have to deal with each other specially when the Supreme Court is exercising its appellate jurisdiction over a decision by, or proceedings — concluded or pending — in the High Court? The Constitution has clearly divided the jurisdiction between the two institutions and while doing so these institutions have to have mutual respect for each other. The framers of the Constitution did not think it necessary to specifically confer power on the Supreme Court to give a command to the High Court for they were men of vision and foresight. They knew that all the constitutional functionaries and institutions would act in the best interest of norms and traditions consistent with democracy and constitutionalism, set down in and discernible from the Constitution and as handed down by history and generations of judges. Everyone would, it was expected, keep within its bounds and would not overstep its limits so that the ideals and the values remain a living reality and do not become either

176 (2004) 5 SCC 1

an intrusion or an illusion. The constitutional and democratic institutions, complementing and supplementing each other, would lend strength to these handed-down traditions and would also contribute to developing such rich traditions as would be respected and hailed by posterity. This would result in strengthening the working of the Constitution. In the realms of constitutionalism the values of mutual trust and respect between the functionaries, nurtured by tradition, alleviate the need to codify the rules of the relationship. Experience shows that any rigid codification of such delicate relationship is advantageous to those bent upon vilification. A rigid written law makes it difficult to maintain that dignity which is better and rightly left to be perceived by right-minded people who zealously uphold the dignity of others as they do their own.

19. An institution dealing with another institution under the Constitution shall have to observe grace and courtesy. No judge shall criticise another judge and certainly not strongly. Any departure therefrom needs to be corrected at the earliest and in the larger interest. It is obligatory on an appellate forum to correct such deviation from rule brought to its notice as having been committed by a jurisdiction subject to appeal and if it does not do so it fails in its duty. Undoubtedly, the corrective step too is taken carefully with courtesy and respect and not by way of harsh criticism. An instance quoted by David Pannick is worthy of reference and reverence. In a 1971 case Mr Justice Lawson gave his reasons for doubting the correctness of an earlier decision of the Court of Appeal. Nevertheless, he concluded, ‘I am bound by the decision in [the earlier case], although I am compelled to say, again with the greatest respect, that I believe it to have been wrongly decided’. The Court of Appeal was very unhappy. Lord Justice Davies replied, ‘with the greatest respect to Lawson, J.’, that he thought that ‘those observations were out of place. It is unusual, and, I am bound to say, undesirable, in my opinion, for a judge sitting at first instance… to express the opinion, although accepting that he is bound by it, that a decision, and a fairly recent decision, of this court was wrong.’ (*Judges*, pp. 127-28)

25. Harry T. Edwards, Chief Judge, US Court of Appeals for the DC Circuit emphasises self-restraint as helping build up the courts' constitutional legitimacy overtime inasmuch as judicial self-restraint helps both to generate and to preserve judicial independence. In the context of dealing of judges by judges, he uses the term “collegiality” and then he mentions the relationship between collegiality and independence by saying:

> “… an aspect of judicial practice that has seemed increasingly important to me over the last decade: the practice of collegiality. By collegiality I mean an attitude among judges that says, we may disagree on some substantive issues, but we all have a common interest and goal in getting the law right. … We are, in a word, one another's colleagues. An attitude of collegiality means, in practice, that we respect one another's views, listen to one another, and, where possible, aim to identify areas of agreement. … Collegiality does mean, however, that, even when I disagree with another judge, I recognize that we are part of a common endeavor, and that

> each of us is, almost always, acting in good faith according to his or her own view of what the law requires. … Because I see myself as engaged in a common endeavor with my judicial colleagues, it follows that I have the interests of the judiciary as a whole at heart. … When there is little or no judicial collegiality, there is less incentive for judges to exercise self-restraint. … Collegiality is important not only for working together effectively, but also at a deeper structural level. An attitude of judicial collegiality helps reinforce judges' incentives to behave in a principled and responsible fashion. I think that any discussion of judicial independence, either at the level of institutions or individuals, should take this practice of collegiality into account."

27. Cooperation can be achieved and tension avoided between two judicial institutions if only judicial collegiality is learnt, nobility prevails and Holmes' humility rules.

29. While quoting the several authorities and references as hereinabove we should not be misunderstood as calling "the Supreme Court a superior court and the High Court an inferior court"; all that we wish to say is that jurisdictionally, and in the hierarchical system, so far as the exercise of appellate jurisdiction is concerned, undoubtedly, the Supreme Court is a superior forum and the High Court an inferior forum in the sense that the latter is subjected to jurisdiction, called "appellate jurisdiction", of the former.

30. The very existence of appellate jurisdiction obliges the lower jurisdiction to render all of its assistance to the higher jurisdiction to enable the exercise of appellate jurisdiction fully and effectively. The lower forum may be called upon to certify its record of case and proceedings to the superior forum. The superior forum may stand in need of some information which being in the possession or knowledge of the subordinate forum, shall have to be made available only by it. The superior forum may issue a stay order or restraint order or may suspend, expedite or regulate the proceedings in the subordinate forum. During or at the end of exercise of the appellate jurisdiction any direction made by the higher forum shall have to be complied with by the lower forum, otherwise the hierarchy becomes meaningless."

295. The constitutional status of the High Courts is most invaluable. But experience shows that it can be equally fragile. The constitutional status and autonomy of the High Courts will thrive when shepherded with care in discourse between Constitutional Courts and buttressed in constitutional law and honoured in constitutional conventions.

296. The constitutional vision will make a tryst with its destiny when in conventions and practices, in law and in speech the Constitutional Courts follow the discipline of the hierarchy of appeals and foster the collegiality in the comity of courts.

297. The Supreme Court in *Shankar Kumar Jha vs. State of Bihar & Others*[177] made the following observations depicting enduring constitutional wisdom in crisp words:

> "The only prayer made in this petition filed under Article 136 of the Constitution of India is to direct the High Court of Judicature at Patna to decide the pending writ petition of the petitioner within a time bound schedule.
>
> **It may be noted here that the High Court is also a Constitutional Court and is not subordinate to this Court. Every High Court has a different scenario when it comes to pendency of old cases.**
>
> It is ultimately for the concerned High Court to fix its own priorities considering the pendency of cases. The remedy of the petitioner is to apply to the High Court for giving priority to the hearing of his case.
>
> No relief can be granted in this petition. Accordingly, the same is dismissed. Pending applications(s), if any, shall stand disposed of."
>
> (emphasis supplied)

VII(A). ARTICLE 132

298. The submissions made at the Bar are persuasive and even commend themselves for acceptance.

299. It was also urged that this Court should decide the controversy in light of the judgments in *K.S. Subramanian(supra)* and *Ganga Saran(supra).*

300. However, the facts and circumstances arising out of *Asian Resurfacing(supra)* are rather unprecedented. The extraordinary situation being faced by this Court

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has no parallel in living or archival memory of the institution. The imperative directions in Para 34, 36, 37 of *Asian Resurfacing(supra)* which were emphatically reiterated in *Asian Resurfacing-II (supra)*, and also in *Asian Resurfacing-III (supra)* create a unique predicament for this Court for which past authorities are not reliable guides. In this wake, it would not be apposite to adjudicate submissions made at the Bar on merits. However, there is no denying the fact that the questions raised in the controversy go to the heart of constitutional interpretation and the root of *raison detre* of the High Court. Constitutional repose is not an option when faultlines have travelled to the very edifice of justice.

301. Recourse to Article 132 of the Constitution of India provides the most dignified and constitutionally decorous way out of the dilemma. Judicial discipline instructs all courts to comply with the directions of *Asian Resurfacing (supra).* Constitutional obligation mandates this Court to frame substantial questions as to the interpretation of the Constitution which arise out of the directions in *Asian Resurfacing (supra).*

302. The breadth of Article 132 of the Constitution of India underscores the importance of settling constitutional issues with decisive pronouncements of the Supreme Court through an inclusive judicial discourse amongst Constitutional Courts. The High Courts have their ears to the ground and are first to be alerted to issues of constitutional importance which start

affecting the common citizens in a significant manner, or impacting the legitimacy of constitutional organs, or impeding the administration of justice.

303. Article 132 of the Constitution of India assigns a pre-eminent role to the High Courts in initiating the constitutional discourse on vital issues of constitutional interpretation. The provision accords the paramount role to the Supreme Court in deciding the questions pertaining to interpretation of the Constitution so framed by the High Court.

304. When the High Courts frame substantial questions as to interpretation of the Constitution arising in the facts and circumstances of various cases, they lay down the framework of a constitutional debate. The process creates a repository of constitutional thought where ideas survive or perish on their merits, and the discourse is essential to enlightened opinion in the legal fraternity.

305. Article 132 envisages an internal mechanism of discourse of legal ideas and issues between the Constitutional Courts which augments the capacity of the judicial process to address the myriad challenges faced by the courts.

306. The framers of the Constitution by inserting Article 132 clearly envisioned free exchange and frank speech in the discourse between Constitutional Courts. It is a core value of the Constitution which ensures that evolution of law is responsive to the needs of justice and in conformity with Basic Structure of the

Constitution. If the Basic Structure of the Constitution is to remain inviolable, the Core Values of the Constitution have to be indestructible.

VII. (B) <u>SUBSTANTIAL QUESTIONS OF LAW AS TO INTERPRETATION OF THE CONSTITUTION:</u>

307. In the wake of the preceding narrative the following substantial questions of law as to the interpretation of the Constitution arise for consideration.

I. Whether the directions in paras 34, 36, 37 of *Asian Resurfacing (supra)* run contrary to the law laid down by the Five Judges Bench of the Supreme Court in *A. R. Antulay (supra)* and the Seven Judges Bench of the Supreme Court in *P. Ramachandra Rao (supra)?*

II. Whether in view of non consideration of the judgments rendered by Constitution Benches in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)* in *Asian Resurfacing (supra)*, the directions issued in paras 34, 36, 37 of the *Asian Resurfacing (supra)* require reconsideration? As a corollary, whether the judgments rendered by Larger Benches in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)* are liable to be followed in preference to the judgment by a Bench of lesser strength in *Asian Resurfacing (supra)?*

III. Whether the directions in paras 34, 36, 37 of the *Asian Resurfacing (supra)* satisfy the ingredients of law laid down by the Supreme Court under Article 141 of the Constitution of India?

IV. Whether the directions in paras 34, 36, 37 of the *Asian Resurfacing (supra)* are an instance of "judicial legislation" and are relatable to Article 142 of the Constitution of India?

V. Whether the directions contained in paras 34, 36, 37 in *Asian Resurfacing (supra)* can be issued by the Supreme Court under Article 142 of the Constitution of India and would such directions not contravene the law laid down by the Supreme Court under Article 141 of the Constitution of India in *A. R. Antulay (supra)* and *P. Ramachandra Rao (supra)?* Alternatively whether there is conflict between Articles 142 and 141 of the Constitution of India arising in the context of *Asian Resurfacing (supra)* and whether Article 142 will control Article 141?

VI. Whether the directions in paras 34, 36, 37 of *Asian Resurfacing (supra)* can be said to be in conformity with Part III of the Constitution of India, when a similar parliamentary legislation (Section 254 (2-A) of the Income Tax Act) was held to be violative of Article 14 of the Constitution of India, and struck down by the Delhi High Court in *Pepsi Foods Pvt. Ltd. Vs Deputy Commissioner of Income Tax and Anr.*[178] and read down by the Bombay High Court in *Narang Overseas Pvt. Ltd. Vs Income Tax Appellate Tribunal and others*[179], the Gujarat High Court in *CIT Vs Vodafone Essar Gujarat Ltd.*[180], and finally read down by the Supreme Court in

178. 2015 SCC Online Del 9543
179. 2007 SCC Online Bom 671
180. 2015 SCC Online Guj 6235

DCIT Vs Pepsi Foods Ltd.[181]*?* If the answer is in the negative whether the said directions in *Asian Resurfacing (supra)* are liable to be implemented?

VII. Alternatively whether "judicial legislation" made under Article 142 vide *Asian Resurfacing (supra)* can be judicially reviewed on the grounds on which legislative enactments are tested? What are the remedies for citizens who claim violation of Fundamental Rights by operation of "judicial legislation" made under Article 142?

VIII. Whether in view of the fact that while all legislations or enactments made by the legislature can be subjected to judicial review, but the absence of remedy of judicial review against judicial legislations made under Article 142 of the Constitution, impacts the broad separation of powers between the legislature and the judiciary?

IX. Whether in view of the fact that the powers vested in the High Courts by virtue of Articles 226 and 227 of the Constitution of India are part of the Basic Structure of the Constitution in light of the law propounded by the Supreme Court in *L. Chandra Kumar (supra)*, the directions in paras 34, 36, 37 of *Asian Resurfacing (supra)* by prescribing a strict time limit of interim orders and curtailing the powers of High Courts under Articles 226 and 227 of the Constitution of India to extend interim orders beyond that period damage the Basic Structure of the Constitution of India?

X. Whether in view of the findings of this Court that compliance of directions in paras 34, 36, 37 of *Asian*

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181. 2021 (7) SCC 413

Resurfacing (supra) is not realistically feasible, and automatic vacation of stay orders in compliance of the said directions in *Asian Resurfacing (supra)* is visiting litigants with adverse consequences for no fault of theirs, and that the trial courts are disregarding interim orders passed by this Court, paired with the inability of the High Court to provide redress to the litigants is adversely impacting administration of justice by the High Court, the said directions issued in *Asian Resurfacing (supra)* are liable to be reconsidered?

VIII. Orders on Applications & Grant of Certificate For Appeal to the Supreme Court

308. In light of our deliberations and discussions held above, the applications filed by various applicants are rejected. However, in view of the substantial questions formulated for consideration by the Hon'ble Supreme Court under Article 132 of the Constitution of India, we grant Certificate For Appeal to the Supreme Court to the applicants before us and all other persons who are similarly circumstanced. The Registry is directed to forthwith issue necessary certificates directly to such parties, as and when the parties approach the Registry.

309. Before concluding, this Court would like to place its appreciation on record for the efforts of the members of the Bar who assisted the Court with scholarship and eloquence. In the highest traditions of the Bar the counsels effectively raised the plight of litigants to ensure that citizenry does not lose faith in the capacity of this Court to serve justice. We had recounted the

glorious traditions of this Court. But after hearing the young members of the Bar we are assured that the finest hour of this Court is not in the past.

Order Date: 03.11.2023
Dhananjai/Vandit/Ashish/Pravin

(Pritinker Diwaker, CJ.)

(Ashwani Kumar Mishra, J.)

(Ajay Bhanot, J.)