Akshay N. Patel vs Reserve Bank Of India on 6 December, 2021

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Bench: B V Nagarathna, Vikram Nath, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6522 of 2021

Akshay N Patel ...Appellant

Versus

Reserve Bank of India & Anr. ...Respondents

JUDGMENT Dr Justice Dhananjaya Y Chandrachud, J This judgment has been divided into sections to facilitate analysis. They are:

A Factual background

B Submissions

C A Proportionality Analysis

C.1 Legitimacy

C.2 Suitability

C.3 The necessity of the measure

C.4 Balancing fundamental rights with State aims C.4.1 Regulatory Role of the RBI D Conclusion PART A A Factual background 1 The appeal arises from a judgment and order dated 8 October 2020 of a Division Bench of the High Court of Madhya Pradesh at its Bench at Indore. The High Court upheld Clause 2(iii) of the Revised Guidelines on Merchanting Trade Transactions1 dated 23 January 20202 issued by the first respondent, Reserve Bank of India3, in the exercise of its power under Section 10(4) and 11(1) of the Foreign Exchange Management Act 19994.

2 The appellant is the managing director of a firm that manufactures and trades in pharmaceuticals; herbal and skincare products; and personnel protection equipment products such as masks, gloves,

sanitisers, PPE overalls, and ventilators5. The genesis of the case lies in an international MTT contract which the appellant obtained to serve as an intermediary between the sale of PPE products by a supplier in China to a buyer in the United States. In accordance with the 2020 MTT Guidelines, the appellant wrote to his authorised bank on 1 May 2020 requesting documents (such as a letter of credit) that were required to execute the MTT contract. The bank informed the appellant on 4 May 2020 that RBI had denied permission for his MTT contract, on the basis of Clause 2(iii) of the 2020 MTT Guidelines. Clause 2(iii) is reproduced below:

> "MTT" "2020 MTT Guidelines" - RBI/2019-20/152: A.P. (DIR Series) Circular No 20 "RBI" "FEMA" Collectively, they are being referred to as "PPE products" PART A "iii. The MTT shall be undertaken for the goods that are permitted for exports/imports under the prevailing Foreign Trade Policy (FTP) of India as on the date of shipment. All rules, regulations and directions applicable to exports (except Export Declaration Form) and imports (except Bill of Entry) shall be complied with for the export leg and import leg respectively." At the relevant time, the export of PPE products had been banned by the second respondent, the Union Ministry of Commerce and Industry and the Directorate General of Foreign Trade6, through successive notifications dated 8 February 2020, 25 February 2020 and 19 March 2020, due to the ongoing COVID-19 pandemic.

Therefore, MTT contracts concerning PPE products were considered impermissible under Clause 2(iii) of the 2020 MTT Guidelines.

3 Upon receiving the communication from his bank, the appellant wrote an email to the Ministry of Commerce and DGFT on 12 May 2020, stating that under his MTT contract, there was no actual export of PPE products from India. The appellant claimed that he was only serving as an intermediary in a trade between two other nations. Hence, he requested the Ministry of Commerce and DGFT to issue a notification/clarification/circular exempting MTT contracts in relation to PPE products from the requirements of Clause 2(iii). However, the appellant received no response. The appellant then filed a writ petition7 under Article 226 before the Madhya Pradesh High Court. The writ petition set up a case that Clause 2(iii) of the 2020 MTT Guidelines is unconstitutional since it violates the appellant's right to carry on "Ministry of Commerce and DGFT" PART A business under Article 19(1)(g) and the right to life and livelihood under Article 21 of the Constitution.

4 In its reply before the Madhya Pradesh High Court, the RBI stated that the Union of India8 had prohibited the export of PPE products from India by issuing multiple notifications under Section 3 of the Foreign Trade (Development & Regulation) Act 19929, through which it amended the Foreign Trade Policy 2015- 202010. Hence, in accordance with Clause 2(iii) of the 2020 MTT Guidelines, MTT transactions concerning PPE products were also prohibited since they allowed Indian individuals to assist others in diverting PPE products away from India in the global market. Further, it was clarified that Clause 2(iii) was of a general nature, and the RBI had no jurisdiction to exempt products from its application, since only the UOI determined the nation's FTP.

5 By its judgment dated 8 October 2020, the High Court dismissed the writ petition. In upholding the constitutionality of Clause 2(iii) of the 2020 MTT Guidelines, the High Court held that: (i) Clause 2(iii) only prohibits MTTs for goods that cannot be imported/exported into India. The provision is general in its application and does not specifically prohibit MTT in PPE products; (ii) the decision to modify the FTP to prohibit import/export of goods is a policy decision of the Ministry of Commerce and DGFT under the Foreign Trade Act; (iii) the Ministry of Commerce and DGFT prohibited the export of PPE products due to the COVID-19 "UOI" "Foreign Trade Act" "FTP" PART B pandemic, and consequently, MTTs are also prohibited under Clause 2(iii); and (iv) apart from the fact that the goods do not physically enter Indian territory, an MTT has all the trappings of an import/export transaction. Further, it involves India's foreign exchange. Hence, its regulation needs to be in conformity with the FTP set by the UOI.

B Submissions

6 Mr Aayush Agarwala, learned Counsel for the appellant submitted that:

(i) Clause 2(iii) of the 2020 MTT Guidelines prohibits MTTs for goods whose import/export is banned in India, which results in an absolute prohibition. This violates Articles 14, 19(1)(g) and 21 of the Constitution;

(ii) The RBI has provided no cogent reason why it has linked the ban on MTTs completely to India's FTP, instead of independently deciding it under FEMA, since the objective while prohibiting goods under the FTP may not be fulfilled by also prohibiting MTTs. This is true in the present case, where the export of PPE products was banned to preserve stocks in India during the COVID-19 pandemic; however, MTTs in PPE products do not affect domestic stocks because the goods traded are from outside of India. Therefore, Clause 2(iii) is manifestly arbitrary and violates Article 14;

(iii) There is no entry into or exit of goods from the borders of India in an MTT and the Indian entity only serves as an intermediary in a transaction between two foreign countries. Hence, the appellant's MTT in relation to PART B PPE products would not affect the quantity of PPE products in India during the pandemic, and is not a reasonable restriction. Pertinently, courts should consider the reasonableness of a policy more carefully when it results in an absolute prohibition;

(iv) Further, lesser intrusive policies are possible, such as the following:

a. The RBI can independently decide whether to prohibit an MTT for each product whose import/export has been banned under the FTP. This can be done by delinking the prohibition on MTT with the prohibition under the FTP;

b. The RBI can prohibit MTTs only for goods whose import has been prohibited since the lack of import into India highlights a policy concern in relation to that product. However, for goods whose export is prohibited, the MTT can be allowed because it

does not reduce the stock of that product in India. It is submitted that this was also the intent of RBI's circular dated 24 August 2000 in relation to MTTs; and c. Individuals should be allowed to approach the RBI to seek an exemption for conducting MTTs in relation to products whose import/export is prohibited under the FTP. The RBI can then consider each individual product and decide whether its MTT should be permitted, keeping in mind the reasons for its prohibition under the FTP.

PART B 7 Opposing the above submissions, Mr Ramesh Babu M R, learned Counsel for the RBI submitted that:

(i) The appellant cannot challenge Clause 2(iii) of the 2020 MTT Guidelines without challenging the notifications amending the FTP to prohibit the export of PPE products. Clause 2(iii) is general in its application and was introduced on 23 January 2020, while the first notification prohibiting the export of PPE products was issued by the UOI on 8 February 2020;

(ii) Clauses similar to Clause 2(iii) of the 2020 MTT Guidelines have existed in all previous circulars issued by the RBI to regulate MTTs. These clauses substantially stipulate that MTTs would only be allowed in respect of products whose import/export is allowed in India;

(iii) MTTs are analogous to import/export transactions, except for the fact that the goods never physically enter India. There is an outflow of foreign exchange during the import leg of the MTT and an inflow of foreign exchange during the export leg. Hence, MTTs affect India's foreign reserves, which the RBI has to manage and harmonise with the UOI's FTP. Therefore, the RBI cannot permit MTTs in respect of goods whose import/export has been prohibited by the UOI under the Foreign Trade Act;

(iv) Export of PPE products was prohibited by the UOI in order to ensure that adequate stocks are present in India during the COVID-19 pandemic.

Hence, a prohibition of MTTs in respect of PPE products is also important because when an Indian entity facilitates the trade of these products to PART B another nation, it takes away from India's possible stock in the global market; and

(v) Courts should be wary of interfering in the economic policies of the State, which should be left to expert bodies. This proposition is supported by the decisions of this Court in Shri Sitaram Sugar Co. Ltd. v. Union of India11, Prag Ice & Oil Mills v. Union of India12 and P.T.R. Exports (Madras) (P) Ltd. v. Union of India13.

8 Supporting the submissions of the RBI on behalf of the Ministry of Commerce and DGFT, Mr Vikramjit Banerjee, Additional Solicitor General14 submitted that:

(i) The UOI has prohibited the export of PPE products through a series of notifications issued between 31 January 2020 to 16 May 2020, so as to ensure that there is adequate stock in India during the COVID-19 pandemic;

(ii) The appellant cannot be allowed to facilitate a transaction for PPE products between two foreign countries through MTTs since it would be against India's national interest. Given the COVID-19 pandemic, such a restriction is reasonable;

(1990) 3 SCC 223 (1978) 3 SCC 459 (1996) 5 SCC 268 "ASG" PART C

(iii) There is no complete prohibition under Clause 2(iii) of the 2020 MTT Guidelines since the appellant is free to conduct MTTs in respect of goods whose import/export is not prohibited under India's FTP; and

(iv) By a notification dated 25 August 2020, the export of PPE Masks and N-

95/FFP 2 Masks or equivalent has been categorized as "Restricted" (instead of "Prohibited") while medical coveralls of all classes/categories (including PPE overalls) are now under the "Free" category. 9 The rival submissions will now be analysed.

C A Proportionality Analysis

10 The appellant is a citizen of India. He is also the Managing Director of

Herbal Products Private Limited, a corporate body which inter alia, engages in MTTs. In State Trading Corporation v. Commercial Tax Officer15, a nine-judge Bench of this Court has settled the question that corporations are not considered as "citizens" under the Constitution. A corporation cannot claim an infringement of rights under Article 19(1)(g), as this fundamental right is only available to citizens and not to juristic persons. Over the years, shareholders and business persons have filed petitions in their individual capacity, to allege infringement of their fundamental right to carry on business or a profession of their choice16. The appellant argues that the RBI and UOI's prohibition of MTTs in respect of PPE products infringes his AIR 1963 SC 1811 M P Jain, Citizenship, in INDIAN CONSTITUTIONAL LAW (7th edn, Lexis Nexis, 2014) PART C fundamental rights and freedoms under Articles 14, 19(1)(g) and 21 of the Constitution.

11 The appellant has contended that this Court has been circumspect of legislative provisions or executive policies that impose a total prohibition on a citizen's right to conduct business. Since the appellant is engaged in MTTs which facilitate import and export between two different countries, he urges that a complete prohibition on MTTs in relation to PPE products, without a rational distinction of prohibiting their exports alone, is a constitutionally suspect infringement of his freedom to conduct his business. In order to test this claim, we will begin by analysing the precedents of this Court on the ambit of the freedom envisaged under Article 19(1)(g). The relevant freedoms and restrictions with respect to trade under the Indian Constitution are as follows:

> "19. Protection of certain rights regarding freedom of speech, etc.-(1) All citizens shall have the right – [...]
>
> (g) to practise any profession, or to carry on any occupation, trade or business.

[...] (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,— PART C

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."
12 The text of the Constitution clarifies that the right to carry on trade or business is subject to reasonable restrictions which are imposed in the interests of the general public. This Court has propounded several tests for determining "reasonableness" for the purpose of Article 19(1)(g). These have ranged from testing restrictions for arbitrariness17, excessiveness18 and discerning their objective of compliance with the Directive Principles of State Policy19. In Chintaman Rao v. State of Madhya Pradesh,20 a Constitution Bench noted the importance of striking the right balance between social control and individual freedom. Justice K C Das Gupta articulated the limitation under Article 19(6) in the following terms:

> "6. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Dwarka Pd. v. State of Uttar Pradesh, AIR 1954 SC 224; Shree Meenakshi Mills v. Union of India, AIR 1974 SC 366 Chintaman Rao v. State of Madhya Pradesh, AIR 1951 SC 118 Saghir Ahmad v. State of U.P., (1955) 1 SCR 707; Jalan Trading Co. v. D M Aney, AIR 1973 SC 233; M R F Ltd. v. Inspector Kerala Government, (1998) 8 SCC 227; Indian Handicrafts Emporium v. Union of India, (2003) 7 SCC 589 AIR 1951 SC 118 PART C Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

13 In M R F Ltd. v. Inspector Kerala Government,21 a two judge Bench of this Court consolidated the body of precedent of this Court on Article 19(1)(g). Justice S Saghir Ahmed noted the following principles that govern the restrictions under Article 19(6):

> "13. [...] (1) While considering the reasonableness of the restrictions, the court has to keep in mind the Directive Principles of State Policy.
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> (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
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> (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
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> (4) A just balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19.
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> (5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. v. Kaushailiya [AIR 1964 SC 416 :
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> (1964) 4 SCR 1002] .) (6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act (1998) 8 SCC 227 PART C will naturally arise. (See: Kavalappara Kottarathil Kochuni v.

States of Madras and Kerala [AIR 1960 SC 1080 : (1960) 3 SCR 887] ; O.K. Ghosh v. E.X. Joseph [AIR 1963 SC 812 :

> 1963 Supp (1) SCR 789 : (1962) 2 LLJ 615] .)"

14 This Court has also consistently held that restrictions on the freedom to carry on trade and business can take the form of a complete prohibition22. However, in B P Sharma v. Union of India,23 a two judge Bench of this Court has espoused a higher threshold for imposition of a prohibitive restriction. A legitimate object and prejudice to the general public by non-imposition of such prohibition has to be demonstrated by the State, to discharge its burden of demonstrating reasonableness under Article 19(6). Justice Brijesh Kumar held:

> "15. The freedom under Article 19(1)(g) can also be completely curtailed in certain circumstances e.g. where the profession chosen is so inherently pernicious that nobody can be considered to have a fundamental right to carry on such business, trade, calling or profession like gambling, betting or dealing in intoxicants or an activity injurious to public health and morals. It may be useful to refer to a few decisions of this Court on the point at this stage viz. in Saghir Ahmad v. State of U.P. [AIR 1954 SC 728 : (1955) 1 SCR 707] and J.K. Industries Ltd. v. Chief Inspector of

> Factories and Boilers [(1996) 6 SCC 665] . The main purpose of restricting the exercise of the right is to strike a balance between individual freedom and social control. The freedom, however, as guaranteed under Article 19(1)(g) is valuable and cannot be violated on grounds which are not established to be in public interest or just on the basis that it is permissible to do so. For placing a complete prohibition on any professional activity, there must exist some strong reason for the same with a view to attain some legitimate object and in case of non-imposition of such prohibition, it may result in jeopardizing or seriously affecting the interest of the Narendra Kumar v. Union of India, AIR 1960 SC 430 (2003) 7 SCC 309 PART C people in general. If it is not so, it would not be a reasonable restriction if placed on exercise of the right guaranteed under Article 19(1)(g). The phrase "in the interest of the general public" has come to be considered in several decisions and it has been held that it would comprise within its ambit interests like public health and morals...." (emphasis supplied)

15 Various principles have been espoused by this Court to bring about a balance between the perceived interest of the state of social control over the economy, with the rights and freedoms of individuals. The appellant has cited various decisions to argue for heightened scrutiny of legislative or administrative action which places an absolute prohibition on an individual's right to conduct trade or business24. The judicial evolution of a four-pronged analysis of proportionality displaces the varying standards that were prescribed to determine "reasonableness" under Article 19(6). The qualitative nature of a right and the corresponding scrutiny of its violation cannot be a sole function of the degree of restriction. Every violation of rights, irrespective of the degree of the infraction, must be evaluated through a uniform principle that promotes a culture of justification. The decision of a nine-judge Bench of this Court in K S Puttaswamy v. Union of India25 ("K S Puttaswamy (9J)") prescribed a proportionality analysis for determining violations of fundamental rights under Part III. A proportionality analysis can adequately consider the constitutionality of prohibitive measures on commercial activities. Therefore, we will Mohd. Faruk v. State of Madhya Pradesh, 1969 (1) SCC 853; Cellular Operators Association of India v. Telecom Regulatory Authority of India, (2016) 7 SCC 703; Internet and Mobile Association of India v. Reserve Bank of India, 2020 SCC OnLine SC 275 (2017) 10 SCC 1, para 325 PART C structure the judgment on an analysis of the proportionality of RBI's decision to prohibit MTTs in PPE products, in order to determine its constitutionality. 16 An analysis of legitimate social control for the purpose of Article 19(6) has been streamlined by this Court through the lens of proportionality. A two-judge Bench of this Court in Om Kumar v. Union of India26 introduced the test of proportionality for determining the reasonableness of restrictions on freedoms guaranteed under Article 19(1). Justice M Jagannadha Rao traced the historical application of the principle in this Court's precedent and in a comparative context. The judgment defined the concept in the following terms:

> "28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority

> "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality." (2001) 2 SCC 386 PART C The test was made applicable to testing the validity of legislation as well as administrative action:
>
> "53. Now under Articles 19(2) to (6), restrictions on fundamental freedoms can be imposed only by legislation. In cases where such legislation is made and the restrictions are reasonable yet, if the statute concerned permitted the administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restriction etc. In such cases, the administrative action in our country, in our view, has to be tested on the principle of "proportionality", just as it is done in the case of the main legislation. This, in fact, is being done by our courts."

17 A Constitution Bench, in Modern Dental College and Research Centre v. State of Madhya Pradesh27 ("Modern Dental College"), validated the test of proportionality for determining the reasonableness of a restriction under Article 19(6). Justice A K Sikri accepted the Canadian Supreme Court's analysis of the doctrine of proportionality and held it to be applicable to constitutional rights in India. The Court noted:

> "63. In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of "proportionality", which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to (2016) 7 SCC 353 PART C achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in R. v. Oakes [R.v. Oakes, (1986) 1 SCR 103 (Can SC)] , in the following words (at p. 138):
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> "To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom ... Second ... the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of

> proportionality test…" Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."
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> 64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests." (emphasis supplied) PART C

18 The decision in K S Puttaswamy (9J)28 (supra) introduced the proportionality standard in determining violations of fundamental rights, particularly the right to privacy. This doctrine was affirmed in the judgments of five out of the nine judges on the Bench. Subsequently, a Constitution Bench in K S Puttaswamy v. Union of India29 ("Aadhar (5J)") fleshed out the contours of a proportionality analysis and applied it to determine the constitutionality of the Aadhar Scheme and the Aadhar Act 2016. Justice A K Sikri conducted a comparative analysis of the types of proportionality analysis globally and elucidated a four-pronged approach that could be suitable for the Indian Constitution. This test was laid down in the following terms:

> "319. …This discussion brings out that following four sub- components of proportionality need to be satisfied:
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> 319.1. A measure restricting a right must have a legitimate goal (legitimate goal stage).
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> 319.2. It must be a suitable means of furthering this goal (suitability or rational connection stage).
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> 319.3. There must not be any less restrictive but equally effective alternative (necessity stage).
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> 319.4. The measure must not have a disproportionate impact on the right holder (balancing stage)."

19 This Court has thus propounded a four-pronged test of proportionality. This can now be utilised to determine the constitutionality of Clause 2(iii) of the 2020 MTT Guidelines.

Para 325 (2019) 1 SCC 1 PART C 20 Before our analysis proceeds along the above direction, it is important to note that the appellant has challenged the constitutionality of Clause 2(iii) of the 2020 MTT Guidelines by alleging a violation of his rights under Articles 14, 19(1)(g) and

21. Hence, this Court has to determine if the RBI's restriction to prohibit MTTs in PPE products is restrictive of the appellant's right to equality under Article 14 on the ground that it is arbitrary, whether it is a reasonable restriction on the appellant's freedom to conduct trade under Articles 19(1)(g) read with Article 19(6), and if it violates the appellant's liberty and right to livelihood under Article 21. 21 Allegations involving a violation of each of these rights are often considered independently and within the framework of their own prescribed limitation by the precedents of this Court. However, the substance of the enquiry behind each of the limitations under these Articles is similar to a proportionality analysis. In essence, the rights' limitation is considered justified if it pursues a legitimate aim, has a rational nexus to the objective and there is a balance between the limitation of the right and the public interest which the rights-limitation aims to achieve. This analysis has been considered similar to a proportionality inquiry, with the "necessity" prong being considered missing30.

22 Some academic commentators have suggested that the Courts can adopt the proportionality analysis, even when considering rights with different limitations. They state this for three reasons: (i) litigation of rights can often be open-ended, which Aparna Chandra, "Proportionality in India: A Bridge to Nowhere" (2020) 3(2) University of Oxford Human Rights Hub Journal 55 PART C risks the analysis becoming inconsistent across different cases. Hence, a formal balancing procedure, such as the proportionality analysis, is useful in providing a structure to the arguments; (ii) in multiple jurisdictions, the provision of the right itself contains a limitation clause (such as Article 19 in the Indian Constitution) and even then, the courts have opted to use the proportionality analysis. In such circumstances, the courts use the proportionality analysis to test the application of the limitation clause; and (iii) the proportionality analysis is particularly helpful when the dispute between a right and its limitation is recast as one between a right and a measure which limits that right but only to promote a different right31. 23 On the other hand, in an illuminating article in the Yale Law Journal, Professor Vicki Jackson has pointed out that there are structural differences between various rights, due to which a proportionality analysis may not be suitable for some of them. While Professor Jackson agrees with the principle of balancing that underlies proportionality as a principle, she issues a note of caution that the protection of certain rights may be better suited to categorical rules. Even so, Professor Jackson supports the use of proportionality analysis wherever possible and notes its benefits in the following passage32:

> "Using proportionality to define violations, of course, does not dictate remedies or exclude definitions of rights based on separate deontological or historical questions. However, greater use of proportionality, as a principle and as a structured form of review, has several potential benefits. It Alec Stone Sweet and Jud Mathews, "Proportionality Balancing and Global Constitutionalism" (2008-2009) 47 Columbia Journal of Transnational Law 72 Vicki C Jackson, "Constitutional Law in an Age of Proportionality" (2015) 124(8) Yale Law Journal 3094 PART C could enhance judicial reasoning by clarifying justifications for limitations on freedoms. Proportionality

> might also improve the outcomes of adjudication by bringing...constitutional law closer to...conceptions of justice, in ways consistent with the demands of effective government. Finally, proportionality may be democracy-enhancing, both in providing a shared discourse of justification for action clamed to limit rights and in providing more sensitivity to serious process-deficiencies reflecting entrenched biases against particular groups."

24 Adopting the proportionality analysis not only provides a formal structure through which abstract rights litigations can be analysed, but it also (when applied properly) has the potential to improve the quality of judicial reasoning while protecting individual rights. As noted in Aadhar (5J) (supra), the use of proportionality analysis reflects the shift from a culture of authority to a culture of justification33 where State action is best held accountable for its violation of fundamental rights. Justice Albie Sachs, a judge of the Constitutional Court of South Africa, in his memoir The Strange Alchemy of Life and Law34, also described this shift from a culture of authority to a culture of justification in South Africa with the introduction of their Constitution:

> "The negotiated revolution which saw South Africa move from being an authoritarian, racist state to becoming a constitutional democracy led Professor Etienne Mureinik to make a memorable statement as far as the character of legal adjudication was concerned. He pointed out that we were crossing a bridge from a culture of authority to a culture of justification...The implications for the judicial function turned out to be enormous. And it was our Court that was made responsible for guiding the legal community to embrace and internalize the necessary changes. Much more was Para 1276 Albie Sachs, The Strange Alchemy of Life and Law (Oxford University Press, 2009) PART C involved than simply making a technical shift from what the lawyers call a literalist to a purposive approach to interpretation. The Constitution brought about a seachange in the very nature of the judicial function...[It] necessitated moving beyond an approach based on the application of purportedly inexorable rules towards accepting the duty in most matters for the judges to exercise constitutionally-controlled discretion. The transformation involved a journey from preoccupation with classification and strict adherence to formal rules to focussing on principled modes of weighing up the competing interests as triggered by the facts of the case and assessed in the light of the values of an open and democratic society..." (emphasis supplied) Therefore, this Court must unhesitatingly use the proportionality analysis while assessing the violation of the appellant's rights under Articles 14, 19(1)(g) and 21.

25 The present case poses another issue, which is whether an integrated proportionality analysis can be undertaken for assessing the violation of all three rights. It is a settled principle that fundamental rights in Part III are not understood in silos, but as an inter-related enunciation of rights and freedoms that uphold the basic rubric of human rights. An eleven-judge Bench of this Court in Rustom Cavasji Cooper v. Union of India35, speaking through Justice J C Shah, had observed:

> "52...it is necessary to bear in mind the enunciation of the guarantee of fundamental rights which has taken different forms. In some cases it is an express declaration of a guaranteed right: Articles 29(1), 30(1), 26, 25 and 32; in others to ensure protection of individual rights they take specific forms of restrictions on State action — legislative or executive — Articles 14, 15, 16, 20, 21, 22(1), 27 and 28; in some others, it takes the form of a positive declaration and (1970) 1 SCC 248 PART C simultaneously enunciates the restriction thereon: Articles 19(1) and 19(2) to (6); in some cases, it arises as an implication from the delimitation of the authority of the State, e.g. Articles 31(1) and 31(2); in still others, it takes the form of a general prohibition against the State as well as others:
>
> Articles 17, 23 and 24. The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them: they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: they do not attempt to enunciate distinct rights." (emphasis supplied)

26 Conceptualising constitutional rights is incomplete without analysing their corresponding limitations. This Court has also noticed that an underlying thread of reasonableness defines fundamental rights in Part III of the Constitution. A Constitution Bench in Shayara Bano v. Union of India36 disavowed the view that challenges under every Article must strictly be considered in a disjoint, water-tight fashion. Justice Kurian Joseph had observed:

> 84. The second reason given is that a challenge under Article 14 has to be viewed separately from a challenge under Article 19, which is a reiteration of the point of view of A.K. Gopalan v. State of Madras [A.K. Gopalan v. State of Madras, 1950 SCR 88 : AIR 1950 SC

27 : (1950) 51 Cri LJ 1383] that fundamental rights must be seen in watertight compartments. We have seen how this view was upset by an eleven-Judge Bench of this Court in Rustom Cavasjee Cooper v. Union of India[Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248] and followed in Maneka Gandhi [Maneka (2017) 9 SCC 1 PART C Gandhi v. Union of India, (1978) 1 SCC 248] . Arbitrariness in legislation is very much a facet of unreasonableness in Articles 19(2) to (6), as has been laid down in several judgments of this Court, some of which are referred to in Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 :

> 2001 SCC (L&S) 1039] and, therefore, there is no reason why arbitrariness cannot be used in the aforesaid sense to strike down legislation under Article 14 as well.
>
> [...]

> 87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable.

All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution." (emphasis supplied) 27 The Constitution Bench in Aadhar (5J) (supra) also undertook an integrated proportionality analysis to determine the proportionality of the State's interference in the rights to privacy, dignity, choice and access to basic entitlements37. Hence, the Court can adopt an integrated proportionality analysis where the limitation on each of the rights is common and affects them in a similar way. In the present case, the Para 1277 PART C limitation (i.e., Clause 2(iii) of the 2020 MTT Guidelines) is what affects the appellant's rights under Articles 14, 19(1)(g) and 21. Further, the appellant has submitted that the limitation is arbitrary, not a reasonable restriction and violative of his liberty because the RBI has, without application of mind, linked the prohibition on import/export of a product to the prohibition of MTTs in relation to that product. It is thus clear that the appellant's submissions for challenging the constitutionality of Clause 2(iii) rest on similar grounds, and hence an integrated proportionality analysis can be adopted. However, this Court must issue a note of caution – while an integrated proportionality analysis has been adopted for assessing the limitation on rights (under Articles 14, 19(1)(g) and 21) in this case, it may not be true for all cases where such limitations occur because the alleged violation of rights may be characteristically different or the alleged limitation may affect the rights in different ways.

28 The appellant has submitted that the precedents of this Court indicate that once the citizen can demonstrate that the restriction directly or proximately interferes with the exercise of their freedom of trade or to carry on a business, it is the State's burden to demonstrate the reasonableness of the restriction and that it is in the interest of the general public38. The authority of the RBI in issuing the impugned notification is not in challenge. Additionally, the legitimacy of the aim – of ensuring adequate domestic supplies of PPE products – is also not in challenge. The appellant assails the suitability of the measure restricting MTTs in ensuring domestic Sukhnandan Saran Dinesh Kumar v. Union of India, AIR 1982 SC 902; Laxmi Khandsari v. State of Uttar Pradesh, AIR 1981 SC 860 PART C supplies and for being overbroad in its ambit, since an Indian entity acting as an intermediary in an MTT between two different countries does not impact the availability of PPE products in India. Thus, this Court will be relying on the justification furnished by the RBI in determining the proportionality of the impugned measure (Clause 2(iii) of the 2020 MTT Guidelines). This analysis will be structured along with the following questions:

(i) Is the measure in furtherance of a legitimate aim?;

(ii) Is the measure suitable for achieving such an aim?;

(iii) Is the measure necessary for achieving the aim?; and

(iv) Is the measure adequately balanced with the right of the individual?

C.1 Legitimacy

29 This prong of the test entails an evaluation of the legitimacy of an aim

purportedly violates a fundamental right. The measure must be designated for a proper purpose, i.e., a legitimate goal. Five of the judges in the nine-judge Bench decision in K S Puttaswamy (9J) (supra) adopted the threshold of a "legitimate state interest" as the first prong for assessing proportionality. This state interest must also be of sufficient importance to override a constitutional right or freedom39. In this case, the ban on exports, imports and MTTs of PPE products is to ensure the availability of adequate domestic supplies during a global health pandemic.

Aadhar (5J) (supra), paras 321-322 PART C Adequate stocks of PPE products are critical for the healthcare system to combat the COVID-19 pandemic. The State's aim of ensuring supplies is in furtherance of the right to life under Article 21 and the Directive Principles of State Policy mandating the State's improvement of public health as a primary duty under Article

47. The appellant has not challenged the legitimacy of this aim of ensuring adequate PPE in India. The RBI, at the time of filing its affidavit on 30 January 2021, had elaborated on the state of the pandemic in the country and the necessity of ensuring adequate stock of PPE products. The executive's aim to ensure sufficient availability of PPE products, considering the ongoing pandemic, is legitimate. Accordingly, we hold that the impugned measure is enacted in furtherance of a legitimate aim that is of sufficient importance to override a constitutional right of freedom to conduct business.

C.2 Suitability 30 In examining the aim of ensuring adequate supplies in India, we will now evaluate the suitability of the prohibition of MTTs in relation to PPE products. This would entail an analysis of whether the proposed measure can further the stated objective. To understand whether the prohibition of MTTs in relation to PPE products was suitable, we must first analyse the framework under which the RBI regulates MTTs in India.

31 MTTs are regulated by the RBI under FEMA, which came into force on 1 June 2000. Under FEMA, it is the duty of the RBI to manage, regulate and supervise the PART C foreign exchange in India. Section 340 of FEMA provides, inter alia, that no person can deal in foreign exchange without the permission of the RBI. In accordance with Section 10(1)41, the RBI can grant permission to an

entity to become an "authorized person" who can deal in foreign exchange. Further, Section 10(4) provides that such authorized persons shall comply with all directions issued by the RBI while dealing in foreign exchange. Section 10(4) reads as follows:

> "10. Authorised person.—... (4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section." The RBI is granted the power to issue directions to authorized persons under Section 11(1). Section 11(1) provides:
>
> "11. Reserve Bank's powers to issue directions to authorised person.—(1) The Reserve Bank may, for the
>
> 3. Dealing in foreign exchange, etc.—Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—
>
> (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;

Explanation.—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person. Explanation.—For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

10. Authorised person.—(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner

as it deems fit. PART C purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security." 32 It is in the exercise of its powers under Section 10(4) read with Section 11(1), that the RBI issued a circular42 dated 24 August 2000, which provided guidance to authorized dealers in relation to FEMA. The relevant part of the circular in relation to MTTs is extracted below:

> "Part B - Merchanting Trade Authorised dealers may take necessary precautions in handling merchant trade transactions or intermediary trade transactions to ensure that (a) goods involved in the transaction are permitted to be imported into India,
>
> (b) such transactions do not involve foreign exchange outlay for a period exceeding three months, and (c) all Rules, Regulations and Directions applicable to export out of India are complied with by the export leg and all Rules, Regulations and Directions applicable to import are complied with by the import leg of merchanting trade transactions. Authorised dealers are also required to ensure timely receipt of payment for the export leg of such transactions." (emphasis supplied) From the above, it is clear that an MTT could only be in respect of goods whose import was permitted into India. A similar direction was retained in the circular 43 dated 19 June 2003.

A.P. (DIR Series) Circular No 9 A.P. (DIR Series) Circular No 106 PART C 33 Thereafter, the RBI issued a circular44 dated 17 January 2014 titled "Merchanting Trade Transactions", which revised the MTT guidelines in light of the recommendations of the Technical Committee on Services/Facilities to Exporters. Clause 2(i) of the circular noted:

> "i) Goods involved in the merchanting or intermediary trade transactions would be the ones that are permitted for exports/imports under the prevailing Foreign Trade Policy (FTP) of India, at the time of entering into the contract and all the rules, regulations and directions applicable to exports (except Export Declaration Form) and imports (except Bill of Entry) are complied with for the export leg and import leg respectively;" Hence, the circular modified the earlier requirement and now clarified that MTTs could not be conducted in respect of goods whose import and export are prohibited under the FTP. It is important to note that this was based on a suggestion made by the Technical Committee on Services/Facilities to Exporters, which stated as follows:
>
> "Issues Associated with Merchanting Trade [...] 4.9 Goods covered under Merchanting trade should be allowed to be exported/imported into the country as per the prevailing Foreign Trade Policy (FTP) at the time of entering into the contract with the overseas suppliers, in order to avoid entering into trading contracts that are not permitted to be imported/exported under the FTP. To safeguard the interest of the exporter, the export leg of the transaction can be recommended to be covered by

Letter of Credit (or) through insurance from ECGC." PART C

34 These guidelines were soon revised through a circular45 dated 28 March 2014. However, there was no material change to the requirement that MTTs cannot be conducted in respect of goods whose import/export is prohibited under the FTP. The relevant clause of the circular is extracted as follows:

> "ii) Goods involved in the merchanting trade transactions would be the ones that are permitted for exports/imports under the prevailing Foreign Trade Policy (FTP) of India, as on the date of shipment and all the rules, regulations and directions applicable to exports (except Export Declaration Form) and imports (except Bill of Entry), are complied with for the export leg and import leg respectively;"

35 Subsequently, this circular was modified by the 2020 MTT Guidelines which introduced the impugned Clause 2(iii). On an analysis of the above circulars, it is clear that the RBI has never attempted to permit/prohibit MTTs into specific goods. Rather, from the very first circular, it has relied upon the goods' position under India's FTP to regulate MTTs. Till 2013, MTTs were prohibited in relation to goods whose import was not allowed under the FTP. Since 2013, they have also been prohibited in relation to goods whose export is not allowed under the FTP. 36 The RBI is responsible for issuing guidelines to authorized persons under FEMA. FEMA was introduced as an "Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange A.P. (DIR Series) Circular No.115 PART C market in India". Hence, the role of the RBI under FEMA is directed towards ensuring that India's foreign exchange market is regulated, with a view to preserving India's foreign exchange reserves. On a review of the guidelines which have been issued by the RBI in respect of MTTs since 2000, it is clear that most of them are technical in nature and seek to regulate the manner in which India's foreign reserves are traded. Consequently, the RBI has not made the policy decision to classify products for which MTTs are impermissible but has opted to rely on the decision made by the UOI under the FTP.

37 Such a decision, regarding the products in which import or export is prohibited in India, is made by the UOI under Section 3(2) of the Foreign Trade Act. Section 3(2) provides as follows:

> "3. Powers to make provisions relating to imports and exports.—... (2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology:
>
> Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies."

38 While exercising its powers under Section 3(2), the UOI issued multiple notifications commencing from 8 February 2020, which prohibited the export of all PPE products due to the need to maintain their domestic stock during the COVID-19 pandemic. Mr Vikramjeet Banerjee, learned ASG appearing on behalf of the Ministry PART C of Commerce and DGFT, has pointed out that the notification46 dated 25 August 2020 now categorizes the export of PPE Masks and N-95/FFP 2 Masks as "Restricted" (instead of "Prohibited") and limits their export to 50 lakh units per month, while medical coveralls of all classes/categories (including PPE overalls) are categorized under the "Free" category, i.e., they are freely exportable. 39 The appellant has challenged the suitability of the RBI's decision to link the MTT of goods with their prohibition under India's FTP by arguing that the objectives behind the two are entirely different. To support their argument, the appellant has relied on the nature of an MTT, where the goods do not enter or leave Indian territory and the Indian entity acts as an intermediary in an exchange between two foreign countries.

40 In its affidavit, the RBI has explained the genesis of MTTs in the following terms:

> "7. It is submitted that under the Merchanting Trade Transactions (hereinafter referred to as "MTT") an Indian Citizen facilitates the export of good or material from a Company or individual of an exporting country (other than India) and then import/supply the said good or material to a Company or individual in another country, which is also other than India. In short, by MTT the Indian citizen while acting as intermediary, facilitates an international trade between two different countries. It is submitted that the MTTs are very closely analogous to, and have all the elements of, export as well as import except the fact that the goods are physically not located in India. The first leg of the transaction, known as import leg, requires outlay of foreign exchange by the entity located in India carrying on the transaction, for the purpose of making payment for the goods being purchased overseas.

Notification No 29/2015-2020 PART C The payment is made by the Indian Entity by drawing foreign exchange or obtaining a letter of credit in India from its banker, authorised dealer of foreign exchange (i.e. authorised dealer bank) also located in India. Thus, there is a clear nexus of the first leg of the transaction to India and the involvement of its foreign exchange reserves. It is further submitted that in a successful trade, the Indian entity so purchasing the goods overseas recovers its money in the second leg of transaction, known as export leg, by selling the goods to its buyer, also located overseas, but the money is under the law to be repatriated to India to the credit of Indian entity, which is located in India, within a strict time frame." From the above extract, the following salient features of MTTs emerge: (i) the original supplier and ultimate buyer of the goods are foreign entities, with the Indian entity acting as an intermediary between them; (ii) the goods do not enter the territory of India while shifting hands between the supplier and the buyer; (iii) Indian foreign reserves are implicated when payment is remitted outside India when the Indian entity initially pays the supplier for the goods; and (iv) foreign exchange is remitted to India when the Indian entity receives the payment from the buyer of the goods.

41 The respondents have argued that the above features make MTTs analogous to imports/exports, while the appellant has attempted to differentiate them by noting that the goods never enter India's

territory during an MTT. To resolve this, we must understand how MTTs are considered internationally. PART C 42 The International Monetary Fund47 in its sixth edition of the Balance of Payments and International Investment Position Manual48 defines MTT in the following terms:

> "10.41 Merchanting is defined as the purchase of goods by a resident (of the compiling economy) from a nonresident combined with the subsequent resale of the same goods to another nonresident without the goods being present in the compiling economy. Merchanting occurs for transactions involving goods where physical possession of the goods by the owner is unnecessary for the process to occur." Thereafter, it considers how MTTs should be recorded by noting:
>
> "10.44 The treatment of merchanting is as follows:
>
> (a) The acquisition of goods by merchants is shown under goods as a negative export of the economy of the merchant;
>
> (b) The sale of goods is shown under goods sold under merchanting as a positive export of the economy of the merchant;
>
> (c) The difference between sales over purchases of goods for merchanting is shown as the item "net exports of goods under merchanting." This item includes merchants' margins, holding gains and losses, and changes in inventories of goods under merchanting. As a result of losses or increases in inventories, net exports of goods under merchanting may be negative in some cases; and
>
> (d) Merchanting entries are valued at transaction prices as agreed by the parties, not FOB." "IMF" Pages 157-159, available at <https://www.imf.org/external/pubs/ft/bop/2007/pdf/BPM6.pdf> accessed on 25 November 2021 PART C This makes it clear that while the goods involved in an MTT never enter the territory of the intermediary, they are still recorded as negative and positive exports from the territory of intermediary during the import and export leg of the MTT, which is similar to how ordinary imports and exports would be recorded.

43 This conclusion is also supported by the IMF's accompanying Balance of Payments Compilation Guide49, which notes:

> "Merchanting 11.29 Merchanting transactions—that is, the purchase of goods by a resident (of the compiling economy) from a nonresident combined with the subsequent resale of the same goods to another nonresident without the goods being present in the compiling economy—should be recorded in the balance of payments as transactions in goods. This a change from the BPM5, where merchanting was to be recorded as a service. The change in treatment is in line with the change of ownership rule that underpins the balance of payments conceptual framework. If there is a change in the physical form of the goods during the period they are owned by the

> merchant, as a result of manufacturing services, then the transaction should be classified as general merchandise, and not as merchanting.
>
> 11.30 For the economy of the merchant, goods acquired under merchanting should be recorded as a negative credit in the balance of payments in the period the merchant acquires the goods, and when they are sold they should be recorded in that period as goods sold under merchanting as a positive credit…" (emphasis supplied) Page 184, available at <https://www.imf.org/external/pubs/ft/bop/2014/pdf/BPM6_11F.pdf> accessed on 25 November 2021 PART C It is evident that the role of an intermediary in MTTs was earlier only considered as providing a service. However, this has now evolved, where the intermediary is considered to be the owner of the goods during their transit from the supplier to the buyer. Hence, goods under MTTs are recorded as negative and positive exports from the intermediary's resident country, even when they never physically enter their territory.

44 Therefore, the international opinion favours the position taken by the respondents that MTTs are analogous to traditional imports and exports. Therefore, it was suitable for the RBI to link the permissibility of MTT in goods to the permissibility of their import/export under the FTP. As noted earlier, the appellant has not challenged notifications prohibiting the export of PPE products under the FTP. Hence, the prohibition of their MTT under Clause 2(iii) of the 2020 MTT Guidelines is also considered suitable.

C.3 The necessity of the measure

45 The prong evaluating necessity is often conflated with the prong evaluating

the suitability of a measure. The analysis of necessity is an extension of evaluating the suitability of a restriction, coupled with an analysis of whether the proposed measure is the least restrictive manner of arriving at the intended legitimate State PART C interest. This prong has traces of the "narrowly tailored" state interest50 that has often been used by this Court in evaluating claims of infringement of fundamental rights under Part III.

46 The appellant has contended that a prohibition of exports in PPE products was sufficient to achieve the objective of ensuring adequate supplies, and it was not necessary to also prohibit MTTs. Further, it is argued that the appellant facilitating an MTT of PPE products between two countries does not impact their stock in India. In any event, the appellant has argued that a less-intrusive alternative would be to ban MTTs only for goods whose imports have been prohibited under the FTP or allow individuals to seek exemptions from the RBI in relation to goods whose import/export has been prohibited by the FTP where the RBI can assess, on a case- by-case basis, whether their MTT should also be prohibited. While these measures have been suggested on a general basis, the appellant has limited his challenge in the present case only to the prohibition of PPE products. Hence, we shall be limiting our analysis in relation to that.

47 Having considered the nature of MTTs in Section C.2, we reject the appellant's arguments for two reasons. First, while MTTs in PPE products may not directly reduce the stock of these products in India, it still does contribute to their trade between two foreign nations. In doing so, it directly reduces the available quantity of PPE products in the international market, which may have been bought by India, if so required. As such, MTTs contribute to reducing the available stock of Aadhar (5J) (supra), paras 420 and 424 PART C PPE products in the international market that India could have acquired. Second, the UOI's policy to ban the export of PPE products reflects their stance on the product's non-tradability during the COVID-19 pandemic. It highlights a clear policy choice under which Indian entities shall not be allowed to export these products outside of India, in all probability to the highest buyers across the globe who may end up hoarding the global supply. Hence, banning MTTs in PPE products was critical in ensuring that Indian foreign exchange reserves are not utilized to facilitate the hoarding of PPE products with wealthier nations. A mere ban on exports would not regulate the utilisation of Indian foreign exchange. Hence, in order to keep India's policy position consistent across the board, the prohibition of MTTs in respect of PPE products was necessary and the only alternative of ensuring the realisation of legitimate State interest.

C.4 Balancing fundamental rights with State aims 48 The fourth and final prong of the proportionality analysis involves the crucial task of conducting a balancing exercise. The Court is called upon to legitimise the "social importance of the limitation on a constitutional right"51. A measure that fails to justify its existence on this prong is considered to have a disproportionate impact on the right-holder52.

Aadhar (5J) (supra), paras 335 and 369 Ibid PART C 49 Before we commence our analysis on the balancing of this right, we think it is critical for the Court to elaborate on the purpose and duties of the RBI, in order to better appreciate the objective behind its seemingly onerous restrictions and regulations.

C.4.1 Regulatory Role of the RBI 50 The RBI was established by the Reserve Bank of India Act 193453. By way of an amendment in 201654, the preamble of the statute was amended to reflect the importance of a modern monetary policy framework in an increasingly complex economy. The RBI has been entrusted with the exclusive authority to operate the monetary policy framework of India55.

51 A Constitution Bench in Joseph Kuruvilla Vellukunnel v. Reserve Bank of India56 considered a challenge to certain statutory provisions introduced in the Banking Companies Act 1949 which vested the RBI with the powers to file an application for winding-up of any company. Before conducting an analysis of the constitutional challenge under Articles 14 and 19, the Constitution Bench prefaced its analysis with the raison d'etre and importance of the RBI as a regulatory body. Justice M Hidayatullah (as the learned Chief Justice then was) observed the following:

> "RBI Act" Act 28 of 2016 Sections 45Z to 45Z0 of the RBI Act AIR 1962 SC 1371 PART C "16. Before we consider the arguments of the two sides in detail, we wish to say a few words about the position of the Reserve Bank in the financial affairs of India and

also about its place in the scheme of the law. The Reserve Bank of India was established on April 1, 1935 by the Reserve Bank of India Act, 1934. Even before the establishment of the Reserve Bank, suggestions were made that there should be a central bank in India, and the Royal Commission on Indian Currency and Finance had recommended in 1926 that the currency and credit of the country could only be put on a firm foundation, if a central bank was established. The first Bill introduced in 1927 by Sir Basil Blackett was dropped. The Indian Central Banking Inquiry Committee, however, reported in 1931 that there was a need for a central banking institution in India "for securing the development of the Indian banking and credit system on a sound and proper basis". The Committee pointed out that some of the Provincial Committees had also suggested the establishment of the Reserve Bank. The Committee ended by saying:

"We accordingly consider it to be a matter of supreme importance from the point of view of the development of banking facilities in India, and of her economic advancement generally, that a Central or Reserve Bank should be created at the earliest possible date. The establishment of such a bank would by mobilization of the banking and currency reserves of India in one hand tend to increase the Vol. of credit available for trade, industry and agriculture and to mitigate the evils of fluctuating and high charges for the use of such credit caused by seasonal stringency." (Vol. I, Part I. Chap. XXII, para 605) The White Paper on Indian Constitutional Reforms also recommended the establishment of a Reserve Bank "free from political influence". As a result of these findings, when a fresh Bill was introduced by Sir George Schuster on September 8, 1933 it was accepted and received the assent of the Governor-General on March 6, 1934.

17. The functions of the Reserve Bank were generally indicated in the preamble as the regulation of the issue of the Bank notes and the keeping of the reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. But to enable the Reserve Bank to PART C function in this manner, it had to be given other powers, so that it may function effectively as a central bank. To this end, the Reserve Bank was given the right to hold the cash balances of important commercial banks, a right to transact Government business in India which was also its obligation, and to enter into agreements with State Governments to transact their business.

[.....]

18. But the most important function of the Reserve Bank is to regulate the banking system generally. The Reserve Bank has been described as a Bankers' Bank. Under the Reserve Bank of India Act, the scheduled banks maintain certain balances and the Reserve Bank can lend assistance to those banks "as a lender of the last resort". The Reserve Bank has also been given certain advisory and regulatory functions. By its position as a central bank, it acts as an agency for collecting financial information and statistics. It advises Government and other banks on financial and banking matters, and for this

purpose, it keeps itself informed of the activities and monetary position of scheduled and other banks, and inspects the books and accounts of scheduled banks and advises Government after inspection whether a particular bank should be included in the Second Schedule or not. [.....]" (emphasis supplied) 52 A two-judge Bench of this Court in Peerless General Finance and Investment Co. Limited v. Reserve Bank of India57 considered an alleged constitutional infringement of Article 19(1)(g) in the context of RBI's regulation of savings schemes run by Residuary Non-Banking Companies. The thrust of the impugned regulation was to regulate deposit investment schemes issued by Residuary Non-Banking Companies, in order to ensure the security of deposits made by consumers. Justice N M Kasliwal elaborated on the role of the Courts with (1992) 2 SCC 343 PART C specific reference to the regulatory powers of the RBI. The decision highlighted the importance of judicial abstinence from matters of economic policy requiring expertise:

> "30. Before examining the scope and effect of the impugned paragraphs (6) and (12) of the directions of 1987, it is also important to note that Reserve Bank of India which is bankers' bank is a creature of statute. It has large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country [....]
>
> 31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts." (emphasis supplied) In his concurring opinion, Justice V Ramaswamy noted the statutory importance of the RBI and held that directions validly issued by the RBI are in the nature of statutory regulations:
>
> "51. This Court in Joseph Kuruvilla Vellukunnel v. Reserve Bank of India [1962 Supp 3 SCR 632 : AIR 1962 SC 1371 : (1962) 32 Comp Cas 514] held that the RBI is "a bankers' PART C bank and lender of the last resort". Its objective is to ensure monetary stability in India and to operate and regulate the credit system of the country. It has, therefore, to perform a delicate balance between the need to preserve and maintain the credit structure of the country by strengthening the rule as well as apparent creditworthiness of the banks operating in the country and the interest of the depositors. In underdeveloped country like ours, where majority population are illiterate and poor and are not conversant with banking operations and in

> underdeveloped money and capital market with mixed economy, the Constitution charges the State to prevent exploitation and so the RBI would play both promotional and regulatory roles. Thus the RBI occupies place of "pre-eminence" to ensure monetary discipline and to regulate the economy or the credit system of the country as an expert body. It also advices the government in public finance and monetary regulations.

The banks or non-banking institutions shall have to regulate their operations in accordance with, not only as per the provisions of the Act but also the rules and directions or instructions issued by the RBI in exercise of the power thereunder. Chapter 3-B expressly deals with regulations of deposit and finance received by the RNBCs. The directions, therefore, are statutory regulations.

[...]

65. No one can have fundamental right to do any unregulated business with the subscribers/depositors' money. [....]Thus there is a reasonable nexus between the regulation and the public purpose, namely, security to the depositors' money and the right to repayment without any impediment, which undoubtedly is in the public interest.

(emphasis supplied) Justice V Ramaswamy further articulated the role of judicial review in matters of economic legislation and the democratic necessity of judicial abstinence:

> 68. It is well settled that the court is not a tribunal from the crudities and inequities of complicated experimental economic legislation. The discretion in evolving economic measures, rests with the policy makers and PART C not with the judiciary. Indian social order is beset with social and economic inequalities and of status, and in our socialist secular democratic Republic, inequality is an anathema to social and economic justice. The Constitution of India charges the State to reduce inequalities and ensure decent standard of life and economic equality. The Act assigns the power to the RBI to regulate monetary system and the experimentation of the economic legislation, can best be left to the executive unless it is found to be unrealistic or manifestly arbitrary.

Even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibilities from those on whom a democratic society ultimately rests. The Court has to see whether the scheme, measure or regulation adopted is relevant or appropriate to the power exercised by the authority. Prejudice to the interest of depositors is a relevant factor. Mismanagement or inability to pay the accrued liabilities are evils sought to be remedied. The directions are designed to preserve the right of the depositors and the ability of RNBC to pay back the contracted liability. It is also intended to prevent mismanagement of the deposits collected from vulnerable social segments who have no knowledge of banking operations or credit system and repose unfounded blind faith on the company with fond hope of its ability to pay back the contracted amount. Thus the directions maintain the thrift for saving and streamline and strengthen the

monetary operations of RNBCs." (emphasis supplied) 53 A three-judge Bench of this Court in Internet and Mobile Association of India v. Reserve Bank of India58 ("Internet & Mobile Association") recently considered a challenge to the RBI's ban of trading in cryptocurrencies. In examining this challenge, the Court detailed the regulatory importance of the RBI through a historical and textual analysis of the RBI Act. Justice V Ramasubramanian, speaking (2020) 10 SCC 274 PART C on behalf of the Court, observed that the RBI assumes a special role, compared to other statutory bodies. Its decisions are reflective of its expertise and guide the monetary policy of the country. Hence, a policy decision of the RBI warrants deference from this Court. The Court held:

> "84. A careful scan of the RBI Act, 1934 in its entirety would show that the operation/regulation of the credit/financial system of the country to its advantage, is a thread that connects all the provisions which confer powers upon RBI, both to determine policy and to issue directions.
>
> [...]
>
> 189. It is contended by Shri Ashim Sood, learned Counsel for the petitioners that the impugned Circular does not have either the status of a legislation or the status of an executive action, but is only the exercise of a power conferred by statute upon a statutory body corporate.

Therefore, it is his contention that the judicial rule of deference as articulated in R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , Balco Employees' Union v. Union of India [Balco Employees' Union v. Union of India, (2002) 2 SCC 333] and Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] will not apply to the decision taken by a statutory body like RBI. If, a legislation relating to economic matters is placed at the highest pedestal, an executive decision with regard to similar matters will be placed only at a lower pedestal and the decision taken by a statutory body may not even be entitled to any such deference or reverence.

190. But given the scheme of the RBI Act, 1934 and the Banking Regulation Act, 1949, the above argument appears only to belittle the role of RBI. RBI is not just like any other statutory body created by an Act of legislature. It is a creature, created with a mandate to get liberated even from its creator. This is why it is given a mandate — (i) under the Preamble of the RBI Act, 1934, to operate the currency and credit system of the country to its advantage and to operate the monetary policy framework in the country;

(ii) under Section 3(1), to take over the management of the currency from the Central Government; (iii) under Section 20, PART C to undertake to accept monies for account of the Central Government, to make payments up to the amount standing to the credit of its account and to carry out its exchange, remittance and other banking operations, including the management of the public debt of the Union; (iv) under Section 21(1), to have all the money, remittance, exchange and banking transactions in India of the Central Government entrusted with it; (v) under Section 22(1), to have the sole right to issue bank notes in India and (vi) under Section 38, to get rupees into circulation

only through it, to the exclusion of the Central Government. Therefore, RBI cannot be equated to any other statutory body that merely serves its master. It is specifically empowered to do certain things to the exclusion of even the Central Government. Therefore, to place its decisions at a pedestal lower than that of even an executive decision, would do violence to the scheme of the Act.

[....]

192. But as we have pointed out above, RBI is not just any other statutory authority. It is not like a stream which cannot be greater than the source. The RBI Act, 1934 is a pre-

constitutional legislation, which survived the Constitution by virtue of Article 372(1) of the Constitution. The difference between other statutory creatures and RBI is that what the statutory creatures can do, could as well be done by the executive. The power conferred upon the delegate in other statutes can be tinkered with, amended or even withdrawn. But the power conferred upon RBI under Section 3(1) of the RBI Act, 1934 to take over the management of the currency from the Central Government, cannot be taken away. The sole right to issue bank notes in India, conferred by Section 22(1) cannot also be taken away and conferred upon any other bank or authority. RBI by virtue of its authority, is a member of the Bank of International Settlements, which position cannot be taken over by the Central Government and conferred upon any other authority. Therefore, to say that it is just like any other statutory authority whose decisions cannot invite due deference, is to do violence to the scheme of the Act. In fact, all countries have Central banks/authorities, which, technically have independence from the Government of the country. To ensure such independence, a fixed tenure is granted to the Board of Governors, so that they are not bogged down by political expediencies. [.....]Therefore, we do not accept the PART C argument that a policy decision taken by RBI does not warrant any deference.

(emphasis supplied) In further analysing the wide-ranging powers entrusted with the RBI, the Court noted that its regulatory powers would be tested against the cornerstone of proportionality:

> "224. It is no doubt true that RBI has very wide powers not only in view of the statutory scheme of the three enactments indicated earlier, but also in view of the special place and role that it has in the economy of the country. These powers can be exercised both in the form of preventive as well as curative measures. But the availability of power is different from the manner and extent to which it can be exercised. While we have recognised elsewhere in this order, the power of RBI to take a pre-emptive action, we are testing in this part of the order the proportionality of such measure, for the determination of which RBI needs to show at least some semblance of any damage suffered by its regulated entities. But there is none. When the consistent stand of RBI is that they have not banned VCs and when the Government of India is unable to take a call despite several committees coming up with several proposals including two draft Bills, both of which advocated exactly opposite positions, it is not possible for us to hold that the impugned measure is proportionate." (emphasis supplied) 54 Thus, it is settled that the RBI is a special, expert regulatory body that is insulated from the political arena. Its decisions are

reflective of its expertise in guiding the economic policy and financial stability of the nation. Adverting to the facts of this case, the RBI is empowered by FEMA to manage, regulate, and supervise the foreign exchange of India. It is trite law that courts do not interfere with PART C the economic59 or regulatory60 policy adopted by the government. This lack of interference is in deference to the democratically elected government's wisdom, reflecting the will of the people. As held by a three-judge Bench of this Court in Internet & Mobile Association (supra), the regulations introduced by RBI are in the nature of statutory regulation and demand a similar level of deference that is accorded to executive and Parliamentary policy.

55 This Court must be circumspect that the rights and freedoms guaranteed under the Constitution do not become a weapon in the arsenal of private businesses to disable regulation enacted in the public interest. The Constituent Assembly Debates had carefully curated restrictions on rights and freedoms, in order to retain democratic control over the economy. Regulation must of course be within the bounds of the statute and in conformity with executive policy. A regulated economy is a critical facet of ensuring a balance between private business interests and the State's role in ensuring a just polity for its citizens. The Constitution Bench in Modern Dental College (supra) had remarked on the role of regulatory mechanisms in liberalized economies. Speaking for the Bench, Justice A K Sikri had observed:

"87. Regulatory mechanism, or what is called regulatory economics, is the order of the day. In the last 60-70 years, economic policy of this country has travelled from laissez faire to mixed economy to the present era of liberal economy with regulatory regime. With the advent of mixed economy, there R K Garg v. Union of India, (1981) 4 SCC 675; Balco Employees Union v. Union of India, (2002) 2 SCC 333 Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17; Ebix Singapore v. Committee of Creditors of Educomp Solutions (P) Ltd., 2021 SCC OnLine SC 313 PART C was mushrooming of the public sector and some of the key industries like aviation, insurance, railways, electricity/power, telecommunication, etc. were monopolised by the State. Licence/permit raj prevailed during this period with strict control of the Government even in respect of those industries where private sectors were allowed to operate. However, Indian economy experienced major policy changes in early 90s on LPG Model i.e. liberalisation, privatisation and globalisation. With the onset of reforms to liberalise the Indian economy, in July 1991, a new chapter has dawned for India. This period of economic transition has had a tremendous impact on the overall economic development of almost all major sectors of the economy.

88. When we have a liberal economy which is regulated by the market forces (that is why it is also termed as market economy), prices of goods and services in such an economy are determined in a free price system set up by supply and demand. This is often contrasted with a planned economy in which a Central Government determines the price of goods and services using a fixed price system. Market economies are also contrasted with mixed economy where the price system is not entirely free, but under

> some government control or heavily regulated, which is sometimes combined with State led economic planning that is not extensive enough to constitute a planned economy.
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> 89. With the advent of globalisation and liberalisation, though the market economy is restored, at the same time, it is also felt that market economies should not exist in pure form.

Some regulation of the various industries is required rather than allowing self-regulation by market forces. This intervention through regulatory bodies, particularly in pricing, is considered necessary for the welfare of the society and the economists point out that such regulatory economy does not rob the character of a market economy which still remains a market economy. Justification for regulatory bodies even in such industries managed by private sector lies in the welfare of people. Regulatory measures are felt necessary to promote basic well being for individuals in need. It is because of this reason that we find regulatory bodies in all vital industries like, insurance, electricity and power, telecommunications, etc." PART C 56 Regulating the economy is reflective of the compromise between the interests of private commercial actors and the democratic State that represents and protects the interests of the collective. Scholars across the world have warned against the judiciary constitutionalising an unregulated marketplace61. This Court must be bound by a similar obligation, in order to preserve its fidelity to the Constitution. With the transformation in the economy, the Courts must also be alive to the socio-economic milieu. The right to equality and the freedom to carry on one's trade cannot inhere a right to evade or avoid regulation. In liberalized economies, regulatory mechanisms represent democratic interests of setting the terms of operation for private economic actors. This Court does not espouse shunning of judicial review when actions of regulatory bodies are questioned. Rather, it implores intelligent care in probing the bona fides of such action and nuanced deference to their expertise in formulating regulations. A casual invalidation of regulatory action in the garb of upholding fundamental rights and freedoms, without a careful evaluation of its objective of social and economic control, would harm the general interests of the public. 57 In the instant case, the RBI has demonstrated a rational nexus in the prohibition of MTTs in respect of PPE products and the public health of Indian citizens. The critical links between FTP and MTTs have been established by the respondents. Facilitating MTTs in PPE products between two distinct nations may prima facie appear as having no bearing on the availability of domestic stocks. However, the RBI has carefully established the connection between the use of Robert Post & Amanda Shanor, Adam Smith's First Amendment, 128 HARVARD LAW REVIEW FORUM 165, 167 (2015), available at <https://harvardlawreview.org/2015/03/adam-smiths-first-amendment/> PART C Indian foreign exchange reserves, MTTs and the availability of domestic stocks (as noted in Sections C.2 and C.3). As a developing country with a sizeable population, RBI's policy to align MTT permissibility with the FTP restrictions on import and export of PPE products cannot be questioned. Thus, this Court is constrained to defer to the regulations imposed by RBI and the UOI, in the interests of preserving public health in a pandemic. This deference is by no means uncritical. In fact, one of us (Justice D Y Chandrachud), in a three-judge Bench of this Court in Gujarat Mazdoor Sabha v. State of Gujarat62 had decried the State's tenuous claim of a public health emergency to dilute welfare conditions in labour laws. This Court had stressed that balancing individual rights against measures adopted to

combat the public health crisis must continue to satisfy the test of proportionality. Justice D Y Chandrachud noted:

> "30. Even if we were to accept the respondent's argument at its highest, that the pandemic has resulted in an internal disturbance, we find that the economic slowdown created by the Covid-19 Pandemic does not qualify as an internal disturbance threatening the security of the State. The pandemic has put a severe burden on existing, particularly public health, infrastructure and has led to a sharp decline in economic activities. The Union Government has taken recourse to the provisions of the Disaster Management Act, 2005. [Ministry of Home Affairs, Order No. 40-3/2020-DM- I(A) dated 24-3-2020.] However, it has not affected the security of India, or of a part of its territory in a manner that disturbs the peace and integrity of the country. The economic hardships caused by Covid-19 certainly pose unprecedented challenges to governance. However, such challenges are to be resolved by the State Governments within the domain of their functioning under the law, in coordination with the Central Government. Unless the threshold of an economic (2020) 10 SCC 459 PART C hardship is so extreme that it leads to disruption of public order and threatens the security of India or of a part of its territory, recourse cannot be taken to such emergency powers which are to be used sparingly under the law.

Recourse can be taken to them only when the conditions requisite for a valid exercise of statutory power exist under Section 5. That is absent in the present case.

[...]

40. The need for protecting labour welfare on one hand and combating a public health crisis occasioned by the pandemic on the other may require careful balances. But these balances must accord with the rule of law. A statutory provision which conditions the grant of an exemption on stipulated conditions must be scrupulously observed. It cannot be interpreted to provide a free reign for the State to eliminate provisions promoting dignity and equity in the workplace in the face of novel challenges to the State administration, unless they bear an immediate nexus to ensuring the security of the State against the gravest of threats." Thus, it is not this Court's stance that judicial review is stowed in cold storage until a public health crisis tides over. This Court retains its role as the constitutional watchdog to protect against State excesses. It continues to exercise its role in determining the proportionality of a State measure, with adequate consideration of the nature and purpose of the extraordinary measures that are implemented to manage the pandemic. Democratic interests that secure the well-being of the masses cannot be judicially aborted to preserve the unfettered freedom to conduct business, of the few.

D Conclusion

58 Therefore, we find that the judgment dated 8 October 2020 of the Madhya

Pradesh High Court was correct in holding that Clause 2(iii) of the 2020 MTT Guidelines was a proportionate measure in ensuring the availability of sufficient domestic stock of PPE products. The measure was validly enacted, in pursuance of legitimate state interest and did not disproportionately impact the fundamental rights of the appellant. Hence, Clause 2(iii) passes muster under Articles 14, 19(1)(g) and

21. For the reasons noted in this judgment, we see no need to interfere. 59 For the above reasons, we find no merit in the appeal. The appeal accordingly stands dismissed.

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

……..…..…….J. [Dr Dhananjaya Y Chandrachud] ……J. [Vikram Nath] ……J. [B V Nagarathna] New Delhi;

December 06, 2021