FIFTY IMPORTANT JUDGMENTS OF SUPREME COURT OF INDIA

ADVOCATE FOR ADVOCATES

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(1) A.D.M. Jabalpur v. Shiv Kant Shukla (The Habeas Corpus Case), (1976) 2 SCC 521

FACTS IN BRIEF :- On June 25 th, 1975 the President in exercise of powers conferred by clause (1) of Articles 352 (Proclamation of Emergency) of the Constitution declared that a grave emergency existed whereby the security of India was threatened by internal disturbances. On June 27 th, 1975 in exercise of powers conferred by clause (1) of Articles 359 the President declared that the right of any person including a foreigner to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution and all proceedings pending in any court for the enforcement of the abovementioned rights shall remain suspended for the period during which the proclamations of emergency made under clause (1) of Article 352 of the Constitution on December 3 rd, 1971 and on June 25 th, 1975 were in force. The Presidential Order of June 27, 1975 further stated that the same shall be in addition to and not in derogation of any order made before the date of the aforesaid order under clause (1) of Article 359 of the Constitution.

On January 8 th, 1976 there was a notification passed in the exercise of powers conferred by clause (1) of Article 359 of the Constitution whereby the President declared that the right of any person to move any to court for the enforcement of the rights conferred by Article 19 of the Constitution and all proceedings pending in any court for the enforcement of the abovementioned rights would remain suspended for the period during which the proclamation of emergency made under clause (1) of Article 352 of the Constitution on December 3 rd, 1971 and on June 25 th, 1975 were in force. Several illegal detentions were thereupon made across the country, pursuant to which various writ petitions were filed throughout the country. Nine High Courts gave decision in favour of detunes, holding that that though Article 21 cannot be enforced, yet the order of detention was open to challenge on other grounds such as that the order passed was not in compliance of the Act or was *mala fide.* Against these orders, many appeals were filed before the Supreme Court. Disposing of all the appeals together, the Supreme Court set aside that the decisions of the High Courts which had held the declaration and the subsequent detentions as illegal and upheld the declaration and suspension of the said rights.

ARGUMENTS:- Before the Supreme Court, the Attorney General pleaded that Article 21 of the Constitution, fundamental right which provides for security of life and liberty of any person, had been suspended and therefore, the suspension of that Article meant that the detenu had no remedy even against an illegal detention i.e. all the remedy to secure life and the personal freedom ended with the suspension of Article 21. The detunes agued that they had a right to seek remedy under Article 226 (Power of HC to issue Writs) and therefore a remedy against illegal detention was available to them despite the suspension of Article 21 as the remedy under Article 226 which provided for enforcing any other legal right, was not suspended by the Presidential Order.

JUDGMENTS: - Marking the black day of Indian legal history, the Supreme Court rejected the arguments of the Respondents and held that Article 21 of the Constitution was the sole repository of right to life and

liberty and therefore, the suspension of it implied that all the remedies protecting this right under any other law shall also be suspended. The Court while construing Article 21 as the sole repository of life and personal liberty denied all available remedies to the detenus on any ground that any challenge to the detention order for the enforcement of the right to personal liberty under Article 21 could not be so done on account of the presidential order suspending it being in force. The majority further held that even the order of detention could not be challenged even on any other ground, even if the detention order was passed *mala fide*, rendering the detenu without any remedy even against an illegal detention. Therefore, the Court declared, "in view of the Presidential Order dated June 27 th, 1975 no person has any locus standi to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by mala fides factual or legal or is based on extraneous considerations", closing its doors to any sort of relief whatsoever to any person suffering from illegal detention.

FOR COMMON MAN:- Dubbed as *"a scar on Indian Judiciary"*, the judgment exposed the dangers facing the Constitution (read total anarchy) if the judicial wing was unwilling to stand firm and intolerant to violation of constitutional mandate. However Justice Khanna, who gave the dissenting judgment, was praised for his integrity of duty to deliver justice. Later, with the next government came in power, the Constitution was amended whereby it was provided that Article 21 could not be ever suspended, even in case of emergency. Thus the reoccurrence of such a situation has been amended by a Constitutional Amendment where the right of life and personal liberty cannot be suspended in any situation.

(2) Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209

FACTS IN BRIEF :- The Indian Railways issued a circular on February 28 th, 1997 to the effect that the reserved candidates promoted at roster points could not claim seniority over the senior general candidates promoted later. This was done following the law laid down by the Supreme Court - that it was "permissible" to follow that reserved candidates who get promotion at the roster points would not be entitled to claim seniority at the promotional level as against senior general candidates who got promoted at a later point of time to the same level and that "it would be open" to the State to provide that as and when the senior general candidate got promoted to the level to which the reserved candidate was promoted earlier, the general candidate would have to be treated as senior to the reserved candidate at the promotional level as well, unless, of course, the reserved candidate got a further promotion by that time to a higher post. Similarly, the State of Punjab was proceeding to revise seniority lists and make further promotions of the senior general candidates who had reached the level to which the reserved candidates had reached earlier.

At that point of time, another three Judge Bench of the Supreme Court held that the general rule in the Service Rules relating to seniority from the date of continuous officiation would be attracted even to the roster point promotees as otherwise there would be discrimination against the reserved candidates. In light of above two contrary decisions, State was in a quandary what to do and the same was brought before the Supreme Court wherein the issues *inter alia* were;

- Could the roster point promotees (reserved category) count their seniority in the promoted category from the date of their continuous officiation vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted to the same level?
- Whether the 'catch-up' principles claimed by the general candidates are tenable?

JUDGMENT:- The judgment of the Court can be summarized as follows;

- The roster point promotees (reserved category) could not count their seniority in the promoted category from the date of their continuous officiation in the promoted post vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reached the promotional level later but before the further promotion of the reserved candidate would have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level.
- The Apex Court held that decision of *Jagdishlal v. State of Haryana* (AIR 1997 SC 2366) arrived at an incorrect conclusion because of applying a rule of continuous officiation which was not intended to apply to the reserved candidates promoted at roster points. There was no conflict in the principles laid down in the two judgments of *Union of India v. Virpal Singh* (1993) 6 SCC 685 and *Ajit Singh Januja v. State of Punjab* (1996) 2 SCC 215. In *Ajit Singh* the Court had to consider the validity of such a Circular dated 19.7.69 which positively declared that the "roster points were seniority points. Thus, the decision in *Ajit Singh* was correct.

- In case any senior general candidate at initial level (suppose L-3) reached next level before the reserved candidate (roster point promotee) at next level (i.e. L-2) goes further up to higher level (L-1), then the seniority at next level (i.e. L-2) had to be modified by placing such a general candidate above the roster promotee, reflecting their *inter se* seniority at Level 2. Further promotion to higher level (L-1) must be on the basis of such a modified seniority at L-2, namely, that the senior general candidate of L-3 will remain senior also at L-2 to the reserved candidate, even if the latter had reached L-2 earlier
- After decision in *Ajit Singh*, it becomes necessary that a reserved candidate who has been promoted to higher level (say level 2) under reservation quota and the general category candidate (senior to reserved candidate at level 3) who was promoted to same level (i.e. level 2) later and for promotion to next level (level 1) the reserved category candidate was promoted to disregard of general category candidate who was promoted to same level (level 1) later, then in such situations it become necessary to review the promotion of the reserved candidate to level 1 and reconsider the same, without causing reversion to the reserved candidate who reached level 1. As and when the senior reserved candidate was later promoted to level 4, the seniority at level 4 was also to be re-fixed on the basis of when the reserved candidate at level 3 would have got his normal promotion, treating him as junior to the senior general candidate at level 3

FOR COMMON MAN:- After the above decision, it is clear that r eserved Category promotees cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post vis-à-vis general candidates who were senior to them in lower category and were later promoted**.**

(3) Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625

FACTS IN BRIEF :- The respondent was removed from his post as an employee of the appellant council after the relevant disciplinary authorities found him guilty of sexually harassing X, a junior female employee. He filed a writ petition before the High Court challenging his dismissal. A single judge allowed the petition, finding that the respondent's dismissal was unjustified on the grounds that he had only tried to molest X and had not actually established any physical contact with her. The appellant was ordered to be reinstated. This was upheld by a Division Bench of the High Court. This judgment was challenged by the dismissing organisation.

JUDGMENT:- The Supreme Court held as follows;

1. In the absence of procedural irregularity, the High Court was wrong to interfere with the findings of fact recorded by the disciplinary authorities and with the punishment which they had imposed. It is a well-settled principle that, in exercising the power of judicial review, the court is not concerned with the correctness of findings of fact which are reasonably supported by evidence, but with the decision-making process itself.
2. Sexual harassment is a form of sex discrimination projected through direct or implied unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. It is exacerbated when submission to or rejection of such conduct by the female employee may affect her employment, unreasonably interfere with her performance at work and create an intimidating or hostile working environment for her.
3. Each incident of sexual harassment in the workplace is incompatible with the dignity and honour of women and violates the fundamental rights to equality, life and liberty. In this case, the Apex court observed;

" Each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty – the two most precious fundamental rights guaranteed by the Constitution of India. The contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honor of a female and needs to be eliminated and that there can be no compromise with such violations, admits no debate."

1. Rejecting outright the stand taken by the High Court, the Supreme Court held that the respondent's behaviour did not cease to be outrageous for want of physical contact and the observations made by the High Court to the effect that the respondent did not actually molest X because he did not establish such contact with her were highly unacceptable.
2. Consequently the Apex Court held that the respondent's conduct offended against morality, decency and X's modesty. It constituted an act unbecoming of the good conduct and behaviour expected from a superior employee and undoubtedly amounted to sexual harassment. Therefore,

any reduction in punishment was bound to have a demoralizing effect on women employees and is a retrograde step.

(4) Bachan Singh v. State of Punjab (1982) 3 SCC 24

FACTS IN BRIEF : - One Bachan Singh was tried and convicted and sentenced to death under Section 302 of the Indian Penal Code (IPC) for the murder of Desa Singh, Durga Bai and Veeran Bai. The death penalty imposed on him was confirmed by the High Court. Appealing by special leave, he (along with other prisoners) challenged the constitutional validity of the death penalty provided in the Section and the sentencing procedure provided in Section 354(3) of the Code of Criminal Procedure, 1973.

ARGUMENTS:- It was argued by the Appellant that the imposition of death penalty under Section 302 of IPC, read with Section 354 (3) of the Code of Criminal Procedure was arbitrary and unreasonable because (a) it was cruel and inhuman, disproportionate and excessive, (b) it was totally unnecessary and did not serve any social purpose or advance any constitutional value and (c) the discretion conferred on the court to award death penalty was not guided by any policy or principle laid down by the legislature but was wholly arbitrary. On the other hand, the same was defended by the State that the question of constitutional validity of the death penalty had stood concluded by the decision of a Constitution Bench of five Judges in *Jagmohan Singh v. State of U.P.* (AIR 1973 SC 947) and it could not therefore be allowed to be re-agitated. It was also submitted that (a) death penalty was neither cruel or inhuman, neither disproportionate nor excessive, (b) it did serve a social purpose inasmuch as it fulfils two penological goals namely, denunciation by the community and deterrence and (c) that the judicial discretion in awarding death penalty was not arbitrary and the court could always evolve standards or norms for the purpose of guiding the exercise of its discretion in this punitive area.

JUDGMENT:- The Apex Court dismissed the challenge to the constitutionality of Section 302 of IPC in so far as it provided for the death sentence and also the challenge to the constitutionality of Section 354(3) of the Code of Criminal Procedure. The Court propounded the principle of ***"rarest of rare cases"*** in awarding of the death penalty wherein it was stated by the Court that a real and abiding concern for the dignity of human life postulated a resistance to taking a life through law's instrumentality. However, that ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. Therefore the constitutionality of the provisions imposing death penalty was upheld

FOR COMMON MAN:- The apex court laid down the doctrine of ***"rarest of rare case"*** for the purposes of awarding of death penalty. Thus the case laid down a strong foundation for sorting out an extraordinary case with prevailing special circumstances, whereupon death penalty be imposed on the accused, his case being a rarest of rare one. Thus a significant limitation on the arbitrary imposition death penalty was solidifying in the form of the ***"rarest of rare"*** principle which has now become the yardstick for awarding death penalty by Indian Judiciary.

(5) BALCO Employees Union v. Union of India , AIR 2002 SC 350

FACTS IN BRIEF :-During the process of the ongoing economic reforms, the Public Sector Disinvestment Commission advised the Government of India that BALCO, one of the Government Companies, needed to be privatized by transferring 40% of its shares immediately and to bring down its holding to 26% within a period of two years, with the aim to fully disinvest it stake in favour of investors at the appropriate time. Later the recommendation was revised such that 51% of the government's stake in BALCO's would be transferred along with a transfer of management. The same was approved by the Cabinet Committee on Disinvestment.

Consequently, advertisements were issued and a detailed process followed, resulting into the selection of M/S Sterling Co. as the Strategic Partner to whom the 51% stake of the Government would be transferred for Rs. 551 crores. Discussions on the same also took place in the Rajya Sabha and the Lok Sabha wherein motion to disapprove the proposed disinvestment failed. Thereupon the said transfer of stake was challenged before the Supreme Court and other High Courts. Clubbing the claims, the Court framed the following issues;

- Whether Executive Policies are reviewable by the Judiciary?
- Whether the decision to disinvest BALCO is constitutionally valid?

ARGUMENTS:- Those challenging the disinvestment argued that (a) by reason of disinvestment the workmen had lost their right and protection under Articles 14 and 16 of the Constitution and as this was an adverse civil consequence, they had a right to be heard before and during the process of disinvestment and (b) normally in cases of this nature 5% of the shares were disinvested in favour of the employees which was not so done in the present case. Thus the disinvestment was unsustainable. To this the counter argument was, (a) public sector companies were constantly sinking into an increasing difficulties and it

was in public interest to disinvest them, and (b) the wisdom and advisability of economic policies of Government are not amenable to judicial review.

JUDGMENT:- The Apex Court held that (a) it could not look into the executive wisdom which enacts a policy, specially matters regarding economic management and (b) the legal challenges made to the disinvestment of BALCO were not valid and consequently, the decision to disinvest BALCO is constitutionally valid. The reason for the said decision, the Apex Court gave as follows;

- Non-government employees working in a company cannot claim a superior right than a government servant and impugn its change of status in terms of social security measures and protection of their employment and rights.
- In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play which would require a hearing of the workers prior to decision making.
- When the government chooses to run an industry by forming a company and it becomes its shareholder then under the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares.

FOR COMMON MAN:- In the course of delivering this judgment, the Court came down heavily on frivolous Public Interest Litigations (PILs). In fact this case has set the trend for *in lemine* dismissal of PILs if the petitioners are not able to establish that a substantial public interest is involved in the petitions. The Court also declared that public interest is the paramount consideration in national governance and therefore if in the public interest the Government thought it fit to take over a sick company to preserve the productive unit and the jobs of those employed therein, the government can do so reducing the continuing drain on its limited resources. This decision is in tune with the growing recognition of the efficiencies of market mechanism .

(6) Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802

FACTS IN BRIEF :- The Petitioner wa s an organization dedicated to the cause of release of bonded laborers. It made a survey of stone quarries in Faridabad District near Delhi and found that there were a large number of labourers from Maharashtra , Madhya Pradesh, Uttar Pradesh and Rajasthan who were working in these stone quarries under "inhuman and intolerable conditions" and many of whom were bonded labourers. The petitioner therefore addressed a letter to the Supreme Court stating the circumstances and filed a Public Interest Litigation alleging that hundreds of workmen were living in bondage and under inhuman conditions. The Court appointed a Commissioner to look into the matter in 3-4 days and to submit a report to the Court.

JUDGMENT:- Upon a report given by the Commissioner entailing violations of various constitutional and human rights of the poor labourers, the Apex Court declaring that Article 21 of the Constitution assures right to live with human dignity free from exploitation held that State was under a constitutional obligation to ensure that there is no violation of fundamental rights of any person particularly weaker sections of society. It held that State is bound to assure observance of social welfare and labour laws enacted for securing workmen a basic human dignity. Thereupon the Apex Court gave a set of 21 guidelines to Central Government as well as the State Governments to check such gross abuses of citizen's rights in future. The Court also appointed a Joint Secretary in the Ministry of Labour, Government of India as a Commissioner for the purpose of carrying out the job to see that directions are fulfilled.

FOR COMMON MAN:- The concern of the Court in securing the release and rehabilitation of the bonded labourers in the present case set the trend in the Court of ensuring that no such violation of the fundamental and human rights of the citizens re-occur. It is clear now that the Courts in India will not allow any one to be bondage of anyone on account of grave poverty or ill. All citizens have an equal right of survival and it is the duty of the state to ensure the same.

(7) Budhan Choudhary v. State of Bihar, AIR 1955 SC 191

FACTS IN BRIEF :- The present case involved a challenge to the constitutional validity of Section 30 of the Code of Criminal Procedure, 1898 (Cr.P.C.). It provided that in certain states where there were Deputy Commissioners or Assistant Commissioners, the State Government may, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death. Under Section 34, he can try a case and sentence the convict, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years. As regards the appellant, a criminal case was against him and was referred to the Deputy Commissioner by the Sub Divisional Magistrate. The Commissioner, in turn transferred the file to a Magistrate with powers under the said Section 30 of Cr.P.C. wherein a sentence of 5 years rigorous imprisonment was imposed upon him under Section 366 of Indian Penal Code. Thereupon the Appellant challenged the said section which was upheld by the High Court. Thus the matter reached the Supreme Court for final determination

wherein the issue was whether Section 30 of Cr.P.C. was violative of Article 14 of the Constitution which guaranteed right to equality before law and equal protection of law to all.

ARGUMENTS:- It was argued before the Court that (a) a Magistrate under Section 30 is enjoined by to try the case before him as a Magistrate and accordingly he shall follow the warrant procedure which is different from the procedure followed by a Court of Session. In a Court of Session the accused was entitled to the benefit of commitment proceedings before a Magistrate and then a trial before the Sessions Judge with the aid of the jury or assessors. But this was denied under Section 30 and thus it was violative of Article 14 as there was an infraction of the fundamental right of equality in such cases, and (b) the provision was liable to be abused as it discriminated between persons accused of offences of the same kind, as the police had the discretion of sending a person accused of an offence under a particular Section to a Section 30 Magistrate or to send another person accused of the same offence under the same section to a Magistrate who could commit the accused to the Court of Session.

JUDGMENT:- The Apex Court held that Section 30 of the Cr. P.C. did not violate the right to equality guaranteed by Article 14 of the Constitution of India as,

- Article 14 did not prohibit a reasonable classification. The only requirement is that the differentia on the basis of which the classification was made must be intelligible and should have a reasonable nexus with the object sought to be achieved by the Statute. The Court also held that a classification could be based on geographical or territorial considerations.
- The risk of being tried by a Section 30 Magistrate fell alike upon all persons committing such an offence. Therefore, there is no discrimination in the Section itself.
- The discretion to try the offence under Section 30 or otherwise rested with the Magistrate and not with the police as it was upon the Magistrate to commit the accused to the Court of Session, instead of disposing of the case himself if he thought that the ends of justice will be met.
- In case of any intentional or purposeful discrimination against the appellants by the Sub-Divisional Magistrate or the District Magistrate or the Section 30 Magistrate, the law provided for revision by superior Courts of orders passed by the Subordinate Courts.

FOR COMMON MAN:- The importance of this judgment lies in the fact that it establishes that even Judiciary comes within the definition of 'State', as under Article 12 of the Constitution of India, for the purposes of enforcing Fundamental Rights and in case of any infringement on them by the judiciary, the superior courts are entitled to scrutinize such actions.

(8) Chief Forest Conservator (Wild Life) v. Nisar Khan, AIR 2003 SC 1867

Sumit Agrawal, VII Semester

FACTS IN BRIEF :- In the initial proceedings t he respondents had approached the High Court of Allahabad through a writ petition *inter alia* for issuance of a writ in the nature of mandamus directing the appellants to grant a license for carrying on business as a dealer in birds which were bred in captivity. The same was allowed by the High Court. The same was challenged before the Supreme Court.

ARGUMENTS: The contention of the respondent, as also before the High Court was that he had been dealing in birds of several varieties specified in the Schedule IV appended to the Wild Life (Protection) Act 1972, wherefore he had applied for an had been granted a license. But his application for renewal of the said license had been rejected. Since there had been no change in the fact situation, he was entitled to be granted the extension. However the appellants argued that having regard to the Amendment made in Section 9 of the said Act whereby 'hunting' included 'trapping' of birds (specified in Schedule IV of the Act), no license for dealing in them could be lawfully granted. The appellant also stated that although dealing in birds in captivity was as such is not prohibited, no license could be granted in terms of Section 44 of the Act if by reason thereof the licensee would violate any of the provisions of the Act.

JUDGMENT:- The Apex Court, while setting aside the judgment of the High Court, observed that when hunting of birds was prohibited, there remained no doubt that no person could be granted license to deal in birds in captivity which were procured for hunting, a term which also included trapping. The Court distinguishing the two situations observed, "it is one thing to say that by reason of breeding of birds in captivity their population increases, but it is another thing to say that birds are trapped before they are made captive so as to enable the license to deal in them." Thus the Court came to a conclusion that if a finding of the fact having regard to the past transactions of the licensee showed that the purpose of breeding of captive birds was necessarily for hunting, it justified the refusal of a license.

FOR COMMON MAN: Through this judgment the Court declared that 'trapping' of birds is an offence. If any one does it, it is against Wild Life (Protection) Act, 1972 and he can be sent to jail. Also, before granting license for dealing in birds, the licensing authority will have regard to the source and manner in

which supplies are made, the implications of the license on hunting and trade and the past transactions of the licensee.

(9) D.K. Basu v. State of West Bengal ,AIR 1997 SC 3017

FACTS IN BRIEF :- A letter was written by the Chief Executive Chairman of Legal Aid Services, West Bengal to the Chief Justice of India referring to certain newspaper reports wherein mistreatment of prisoners by the police was alleged. This letter was treated as a writ petition and notice was issued to all the State governments seeking their views on the same. Thereupon, the Court gave various guidelines to be observed by the police while securing arrest of persons.

JUDGMENT:- The Apex Court detailed eleven measures to be observed by the police to secure arrest of accused. They can be summerised as,

- Arresting or interrogating official have to bear identification badge.
- There has to be a preparation of memo of arrest in the presence of a family member or local person.
- Arrestee has a right to have his relative or friend informed of his arrest as soon as practicable.
- Details of arrest are to be informed within 8-12 hours to his relative or friend in case the arrestee lives outside the district or town of arrest.
- The arrestee must be told of his rights to have someone informed soon after the arrest.
- The details of arrest and transmission of information to the next friend or relative have to be entered in the police diary.
- In case arrestee requests for examination of bodily injuries at the time of arrest, the request has to be complied with.
- The arrestee has to be subjected to medical examination by a trained doctor every 48 hours during custodial detention.
- The arrestee has to be permitted to meet his lawyer during investigation which is not necessary for throughout the interrogation.
- Copies of all documents seized/procured have to be submitted to magistrate.
- Police control room district or the State Headquarter has to notify in the notice board about the fact of arrest within 12 hours from the moment of arrest.

FOR COMMON MAN:- This judgment of the Supreme Court has given sufficient rights and remedies to have a dignified existence at the time of being imprisoned. The abuse of powers by the police at the time of securing imprisonment has been significantly curtailed by this decision and the Court has in fact also directed that any violation of these guidelines shall be considered as contempt of court and shall be dealt with accordingly.

(10) Daniel Latifi v. Union of India, AIR 2001 SC 3958

FACTS IN BRIEF :- In this case, the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged before the Supreme Court. The Act was passed to appease a particular section of the society and with the intention of making the decision in case of *Mohd. Ahmed Khan v. Shah Bano Begum* ineffective.

In the *Shahbano's case* , the husband had appealed against the judgment of the Madhya Pradesh High Court which had directed him to pay to his divorced wife Rs. 179/- per month, enhancing the paltry sum of Rs. 25 per month originally granted by the Magistrate. The parties had been married for 43 years before the ill and elderly wife had been thrown out of her husband's residence. For about two years the husband paid maintenance to his wife at the rate of Rs. 200/- per month. When these payments ceased she petitioned under Section 125 of the Code of Criminal Procedure (Cr.P.C.). The husband immediately dissolved the marriage by pronouncing a triple *talaq*. He paid Rs.3000/- as deferred *mahr* and a further sum to cover arrears of maintenance and maintenance for the *iddat* period and he sought thereafter to have the petition dismissed on the ground that she had received the amount due to her on divorce under the Musilm law applicable to the parties. The important feature of the case was that wife had managed the matrimonial home for more than 40 years and had borne and reared five children and was incapable of taking up any career or independently supporting herself at that late state of her life - remarriage was impossibility in that case. The husband, a successful Advocate with an approximate income of Rs. 5,000/- per month provided Rs. 200/- per month to the divorced wife, who had shared his life for half a century and mothered his five children and was in desperate need of money to survive.

ARGUMENTS:- T he petitioner argued, (a) that the rationale of Section 125 Cr.P.C. was to offset or meet a situation wherein a divorced wife was likely to be led into destitution or vagrancy. It was urged that Section 125 Cr.P.C. was enacted to prevent such a situation in furtherance of the concept of social justice embodied in Article 21 of the Constitution. (b) That the object of Section 125 Cr.P.C. being to avoid

vagrancy, the remedy thereunder could not be denied to a Muslim woman otherwise it would amount to violation of not only equality before law but also equal protection of laws (Article 14) and inherent infringement of Article 21 as well as basic human values. (c) That the Act was un-Islamic, unconstitutional and had the potential of suffocating the Muslim women while also undermining the secular character, which was the basic feature of the Constitution. And thus there was no rhyme or reason to deprive the Muslim women from the applicability of the provisions of Section 125 Cr.P.C.

Defending the validity of the enactment, it was argued on behalf of the respondents that (a) if the legislature, as a matter of policy, wanted to apply Section 125 Cr.P.C. to Muslims, it also meant that the same legislature could, by necessary implication, withdraw such an application of the Act and make some other provision in that regard. (b) Parliament could amend Section 125 Cr.P.C. so as to exclude it application and apply personal law instead. (c) That the policy of Section 125 Cr.P.C. was not to create a right of maintenance *dehors* the personal law and therefore could not stand in the way of the Act.

JUDGMENT:- U pholding the validity of the Act, the Supreme Court held as follows;

- A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the *iddat* period must be made by the husband within the *iddat* period in terms of Section 3(1)(a) of the Act,
- Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to *iddat* period,
- A divorced Muslim woman who has not remarried and who is not able to maintain herself after *iddat* period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.
- The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

FOR COMMON MAN:- It is unfortunate to note that the Court did not strike down the Act which purports to exclude Muslim women in particular from the beneficial treatment of Section 125. The legislature to appease the Muslim gentry may have passed the Act on political consideration but that same has rendered an indirect classification of people of the basis of religion, which is against the fundamental aspect of Secularism which we have adopted in out Constitution.

(11) Dr (Mrs.) Vijaya Manohar Arbat v. Kashirao Rajaram Sawai, AIR 1987 SC

FACTS IN BRIEF :- Dealing with Section 125 of the Code of Criminal Procedure (Cr.P.C.), the issue involved in the present appeal was whether Respondent were entitled to claim maintenance from the appellant. The Appellant was a medical practitioner and the married daughter of Respondent by his first wife. Her mother died in 1948. Thereafter, the Respondent remarried and was living with his second wife. He filed an application before the Judicial Magistrate claiming maintenance from the appellant on the ground that he was unable to maintain himself.

ARGUMENTS:- The A ppellant had argued that under clause (d) of Section 125(1) a father was not entitled to claim maintenance from his daughter whether married or out. She contended that the use of the word “his” in clause (d) clearly indicated that it was only the son who was burdened with the obligation to maintain his parents. It was submitted that if the legislature had intended that the maintenance could be claimed from the daughter as well, it would not have used the pronoun 'his'.

JUDGMENT:- The Apex Court held that Section 125(1) Cr.P.C. conferred power on the Magistrate to order a person to make a monthly allowance for the maintenance of some of his close relations like wife, children, father and mother under certain circumstances. The Court held that while there was no doubt that it was the moral obligation of a son or a daughter to maintain his or her parents, it was not desirable that even though a son or a daughter had sufficient means, his or her parents would starve. The use of the word “his” did not exclude the parents claiming maintenance from their daughter. The Court took clue from Section 8 of the Indian Penal Code and Section 13(1) of the General Clauses Act wherein “he” was interpreted to include “she” as well. Therefore the Court held that the pronoun 'his' as used in clause (d) of Section 125(1) Cr.P.C. included both male and female and thus the parents were entitled to claim maintenance against their daughter under the said Section provided that other conditions of the Section were fulfilled.

FOR COMMON MAN:- This case clearly lays down that a daughter, even after her marriage, does not cease to be a daughter of the father or mother. It is the moral obligation of the children to maintain their parents and this has been concretized into a legal duty by Section 125(1) (d) of Cr.P.C which imposes a

legal duty on both the son and daughter to maintain their father or mother who are unable to maintain themselves.

(12) Mahachandra Prasad Singh v. Hon. Chairman, Bihar Legislative Council, AIR 2005 SC 69

FACTS IN BRIEF :- The petitioner was elected as a member of the Bihar Legislative Council (BLC) as a candidate of Indian National Congress. Thereafter the notification for holding elections the Lok Sabha was issued. The petitioner contested the said election from another constituency as an independent candidate. One Salman Rageev, a member of BLC, sent a petition to the Chairman of the Legislative Council stating that the petitioner, who was a member of the Congress Party, had contested the parliamentary election as an independent candidate and consequently in view of the provisions of the Tenth Schedule to the Constitution had become disqualified for being a member of the House. Thereupon the petitioner was asked to submit his explanation. After considering the explanation tendered by him, the Chairman of the Legislative Council passed an order holding that the petitioner that by contesting election as an independent candidate while he was already a member from Congress, he had voluntarily given up his membership of the Congress party and therefore he was disqualified from being a member of the House in view of paragraph 2(1)(a) of the Tenth Schedule read with Article 191 (2) of the Constitution and the seat held by him in the House has become vacant. This was contested before the Supreme Court.

ARGUMENTS:- The petitioner argued that, (a) in the absence of compliance of Rules 6 and 7 of the Bihar Legislative Council Members (Disqualification on ground of Defection) Rules, 1994, the assumption of jurisdiction by the Chairman in initiating the proceedings whereunder the petitioner was held to be disqualified for being a member of the House, was illegal, (b) there was a violation of the principles of natural justice as the material relied upon by the Chairman was not disclosed to the petitioner nor a proper opportunity of personal hearing was afforded to him, (c) it could not be assumed that the petitioner had voluntarily given up membership of a political party by contesting the Lok Sabha Election as an independent candidate and, therefore, he had not incurred any disqualification within the meaning of paragraph 2(1)(a) of the Tenth Schedule.

JUDGMENT:- The Apex Court held that the Chairman of the Legislative Council has held that since the fact that the petitioner had been elected to the Legislative Council on the ticket of the Indian National Congress and he had contested the parliamentary election as an independent candidate was established and in fact was also accepted by the Petitioner, there could be no escape from the conclusion that the petitioner has incurred the disqualification under paragraph 2(1)(a) of the Schedule and therefore the decision of the Chairman was correct.

FOR COMMON MAN:- Giving full support towards reducing this menacing element of political clout in the Indian political arena, the Supreme Court declared in this case in categorical terms that prohibitive restrictions such as the anti-defection law shall be interpreted in widest terms. The analogy accepted by the Court of implied change in party affiliated shows the concern of the Court towards curbing such unhealthy practices on the part of the politicians.

(13) Dr. Pradeep Jain v. Union of India , AIR 1984 SC 1420

FACTS IN BRIEF :- The issue for consideration before the Apex Court in this case was whether admissions to a medical college or any other institution of higher learning situated in a state could be confined to those who had their 'domicile' within the State or those who were resident within the State for a specified number of years or could any reservation in admissions be made for them so as to give them precedence over those who do not possess 'domicile' or residential qualification within the State, irrespective of merit.

ARGUMENTS:- The Petitioners challenged the said policy of admission on the ground of domicile pressing the equality clause as provided for under Article 14, 15, 19 and Art.301 of the Constitution of India. It was argued that the residential requirement as a condition of eligibility for employment or appointment to an office under the State was unconstitutional having regard to the expansive meaning given to the word 'State' in *Ramana Dayaram Shetty v. International Airport Authority of India*.

The Respondents defended the said policy on the ground that Article 16(2) had no application so far as admissions to an educational institution such as a medical college were concerned. It was argued that what Article 16(2) provided was invalidation of discrimination on ground of place of birth and since the condition in the present case was as regards residence, it was not hit by the said Article.

JUDGMENT:- Dismissing the petition, the Apex Court held that e ach and every kind of discrimination was not a violation of the constitutional concept of equality and did not necessarily undermine the unity of India . The validity of any discrimination was to be tested on the touchstone of Article 14 of the Constitution wherein appropriate classification may form the very core of equality and promote unity in the true sense amidst diversity. Thereby the Court upheld reservation to seats on the grounds of domicile.

FOR COMMON MAN:- The message of the Court in this case is loud and clear. While an arbitrary and irrational discrimination between people shall not be tolerated at any cost, there can be reasonable classification in order to promote equality in true sense of the term. Thus reservation of seats on the grounds of domicile, being meant to promote a particular class of backwards or under-developed area, shall be allowed so as to promote and achieve equality in true sense.

(14) Ex-Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45

FACTS IN BRIEF :- The issue for deliberation in the present case was, whether lawyers have a right to strike and/or give a call for boycotts of Court/s? The Petitioners sought a declaration that such strikes and/or calls for boycott were illegal.

ARGUMENTS:- The Petitioners submitted that strike as a means for collective bargaining was recognized only in industrial disputes and lawyers who were officers of the Court could not use strikes as a means to blackmail the Courts or the clients. They further argued that the call for strike by lawyers was in effect a call to breach the contract which lawyers have with their clients. On the other hand, the legal fraternity submitted that lawyers retained the right to strike in rare cases in order to get their concerns communicated in the event of improper treatment being given to them.

JUDGMENT:- The Supreme Court declared that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, could only be made by giving press statements, TV interviews carrying out of the Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protect marches outside and away from Court premises, going on dharnas or relay facts etc. The Court, acknowledging the fact that even those lawyers willing to attend the Court could not attend owing to the strike or boycott, asked the lawyers to boldly refuse to abide by any call for strike or boycott. The Court also declared that no lawyer could be visited with any adverse consequence by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out in an event of his refuse to attend to the strike/boycott.

The Court also observed that an Advocate is an officer of the Court and enjoys special status in society. They have obligations and duties to ensure smooth functioning of the Court and they also owe a duty to their client. Strikes are an interfere with administration of justice, disrupt Court proceedings and put interest of their clients in jeopardy. Thus the Court imposed a blanket ban on strikes by lawyers.

FOR COMMON MAN:- In consequence of this decision the legal position is that lawyers cannot go on strike. This judgment has given relief to thousands of helpless people involved in litigation. This case clearly lays down that if an advocate does not appear before a court by reason of a call for strike or boycott, then on a complaint from a client against an advocate for non-appearance, the Supreme Court can take disciplinary action under Section 38 of Advocates Act.

(15) Forum, Prevention of Envn. and Sound Pollution v. Union of India, (2005) 5 SCC 733

FACTS IN BRIEF :- In this case a public interest litigation was filed before the Supreme Court complaining of noise created by the use of the loudspeakers being used in religious performances or singing *bhajans* and the like in busy commercial localities on the days of weekly offs. It was submitted that such musical interruptions had become nuisance for residential areas and had made life miserable.

JUDGMENT:- Agreeing with the menacing level of noise pollution prevailing even in the Residential areas, the Supreme Court discussed the legal issues dealing with noise pollution in India, the level of in-effectivity of the environmental laws in India, the methodology of how it was dealt with in other jurisdictions, the environmental standards and rules in India and thereupon issued directions to deal with the situation at hand. These deal with (a) firecrackers, (b) loudspeakers, (c) vehicular noise, (d) creating awareness in the Indian masses etc. Some of the them in particular are,

- A complete ban on bursting sound emitting firecrackers between 10 pm and 6 am .
- The noise level in a public place not to exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.
- No beating of drums or tom-tom or blow a trumpet or any instrument or use of any sound amplifier at night (between 10. 00 p.m. and 6.a.m.) except in public emergencies.
- No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential area except in exceptional circumstances.
- Suitable chapters be added in the text-books which teach civic sense to the children and youth at the initial/early level of education. Special talks and lectures be organised in the schools to highlight the menace of noise pollution and the role of the children and younger generation in preventing it.
- Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions whereat firecrackers are likely to be used to be carried out.

The Court also declared the said guidelines to be issued in exercise of power conferred on this Court under Articles 141 and 142 of the Constitution and consequently the law of the land, applicable and in force until modified by the Court or superseded by an appropriate legislation.

FOR COMMON MAN:- A landmark case in Environment Law, it has made creating noise at night (between 10 p.m. and 6 a.m.) as an offence punishable and also given stringent guidelines as to the reduction of noise pollution in the country as a whole wherein regard has been made to each noise creating source in particular. The Court has played its part, however, much depends upon the ability of the executive to get the directions implemented.

(16) Gaurav Jain v. Union of India, AIR 1997 SC 3021

FACTS IN BRIEF :- Coming as a public interest litigation, the petition was filed by a public spirited advocate, Mr. Gaurav Jain, seeking a declaration that prostitutes in India had a (a) right to be free citizens, (b) right not to be trapped again, and (c) the right of readjustment by economic empowerment, social justice, self sustenance, equality of status, dignity of person in truth and reality and social integration.

Earlier in a similar case (*Gaurav Jain v. Union of India*, 1990 Supp SCC 709) the Court had not accept the plea for hostels of children of such prostitutes, though it agreed to the view that such children must be segregated from their mothers and environment thereto. Hence the issue addressed in this case was a two-fold aspect, firstly the rights of children of 'fallen women' especially girls; and secondly in this process eradication of the prostitution itself.

ARGUMENTS:- The Petitioner relied on various legal instruments namely, the Constitutional provisions (Articles 14, 15(3), 16(1), 21, 23, 24 38 39(f), 45 and 46), Universal Declaration of Human Rights, 1948 (Article 1, 4 and 6) and Declaration of Right of Child (to which India is a signatory) etc. Stressing on the above instruments, an attempt was made to draw the attention of the judicial system towards this hard truth of society which had been persisting in different forms since ages sometimes in name of religion like devdasi or jogin, and sometimes for commercial aspects.

JUDGMENT:- The court after study of the variant statistical data and factual situation in society, went on to offer solution from two objectives- (a) through the Juvenile Justice Act, it proposed to better the condition of these children by bringing them within the manifold of *neglected children*; recognizing the cause behind such state of the children to be family tradition, custom, illiteracy, coercive trapping, ignorance, poverty, scare of social stigma, and also the recent trend of ladies from high strata of society entering into this job to sustain their luxury demands, the court recommended the scheme for children of prostitutes and children associating with prostitutes and prostitution- Child Development and Care Centers for management and coordination of entrustment to NGOs so as also to promote voluntary initiatives against this germ of society. (b) The aspect of prostitutes was sought to be cured, apart from action by NGOs, through the Immoral Traffic (Prevention) Act, 1956 by expanding the horizon of the term 'prostitution' by adding the word 'abuse' so as to cover any act contrary to good order; also the legislation was understood widely even to address a 'brothel' as any premise wherein a female indulges in act of offering her body for promiscuous sexual intercourse for hire, thereby actual intercourse or repeated visits were not made pre-requisites, even a single instance proved by surrounding circumstances was held to be sufficient to invoke the law.

For Common Man -: The judiciary took a serious note of the widespread disease of prostitution which has being continuing in the society in a vicious cycle. A prostitute in the course of catering to customers gives birth to an innocent infant, and to bear the costs of child and to bring her up as a responsible citizen, she incurs high debt from her customers, but finally she leaves the burden of those unsatisfied debt on the shoulders of the child who grows up in that environment and compulsion to repeat her mothers life. Thus the court relied on the concept of 3C's i.e. counseling, cajoling and coercion to enforce the legislations as well as voluntary initiatives to curb the menace before it engulfs the social fabrics.

(17) Hoechst Pharmaceuticals Ltd. v. State of Bihar , (1983) 4 SCC 45

FACTS IN BRIEF :- The Appellant was a company engaged in the manufacture and sale of various medicines and life saving drugs throughout India including the State of Bihar . It had branch or sales depot at Patna registered as a dealer and effected sales of their manufactured products through wholesale distributors/stockists in the districts of Bihar who in turn sold them to retailers through whom the medicines and drugs reached the consumers. Almost 94% of the medicines and drugs sold by them were at the controlled price exclusive of local taxes under the Drugs (Price Control) Order, 1979, issued by the Central Government under Section 3(1) of the Essential Commodities Act and they were expressly prohibited from selling these medicines and drugs in excess of the controlled price so fixed by the Central Government from time to time which allows the manufacturer or producer to pass on the tax liability to the consumer.

Sub-section (1) of Section 5 of the Bihar Finance Act, 1981 provided for the levy of surcharge on every dealer whose gross turnover during a year exceeds Rs. 5 lakhs, in addition to the tax payable by him, at such rate not exceeding 10 per centum of the total amount of the tax, and of Sub-section (3) of Section 5 of the Act which prohibited such dealer from collecting the amount of surcharge payable by him from the purchasers. The Appellant challenged the constitutional validity of the said sections, placing on record their printed price-lists of their well-known medicines and drugs manufactured by them showing the price at which they sell to the retailers as also the retail price, both inclusive of excise duty. It appeared from the terms of the contract that sales tax and local taxes would be charged wherever applicable. The High Court upheld the constitutional validity and the same was challenged in appeal.

ARGUMENTS:- The Appellants argued,

- Sub-section (3) of Section 5 of the Act providing that no dealer shall be entitled to collect the surcharge levied on him must yield to Section 6 of the Essential Commodities Act which provided that any order made under Section 3 of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment. It was argued that applying the doctrine of occupied field and the concept of federal supremacy, it was clear that the Union legislation shall prevail in a case of conflict between List II and List III.
- Sub-section (3) of Section 5 of the Act, which provided that no dealer shall be entitled to collect the amount of surcharge levied on him, clearly falls within Entry 54 of List II of Schedule VII and was repugnant to the scheme of the Drug (Price Control) Order 1979 so far as price fixation of drugs was concerned and particularly with para 21 which enabled the manufacturer of drugs to pass on the liability to pay sales tax to the consumer. In this event of repugnance between the Control Order (made under Section 6 of the Essential Commodities Act i.e. a central enactment) State law must prevail.
- The provision contained in Sub-section (3) of Section 5 of the Act were ex facie and patently discriminatory.
- The restriction imposed by Sub-section (3) of Section 5 of the Act which prevented the manufacturers/producers of medicines and drugs from passing on liability to pay surcharge was confiscatory and casted a disproportionate burden on such manufacturers/producers and stipulated an unreasonable restriction on the freedom to carry on their business guaranteed under Article 19(1)(g).
- Sub-section (1) of Section 5 of the Act was ultra varies the State Legislature of Bihar in so far as it took into account the manufacturer's gross turnover as defined in Section 2(j) of the Act, which included transactions relating to sale or purchase of goods which had taken place in the course of inter-State trade or commerce or outside the territory of India.

Submitting that there was no inconsistency between Sub-section (3) of Section 5 of the Act and para 21 of the Control Order and both the laws are capable of being obeyed, the State argued that the question of repugnance under Article 254(1) between a law made by Parliament and a law made by the State Legislature arose only in case both the legislations occupied the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws and it was only where both there requirements were fulfilled that the State law would, to the extent of repugnance, become void and since this was not the case, the question was to be determined not by the 'doctrine of occupied field' but by the rule of 'pith and substance'.

It was submitted that the appellants being manufacturers or producers of drugs were not governed by para 21 of the Control Order which relates to retail sale but by para 24 thereof which dealt with sale by a manufacturer/producer to a wholesale distributor. Under para 24 of the Control Order, the manufacturer/producer was not entitled to pass on the liability to pay sales tax and the price charged to the wholesaler distributor was inclusive of sales tax. It was argued that since the rationale of controlled prices of an essential commodity fixed by a Control Order by the Central Govt. under the Essential Commodities Act was only to fix the maximum price of the commodities and there was nothing to prevent a manufacturer or producer of medicines and drugs to sell it at a price lower than the controlled price, a levy of surcharge under Sub-section (1) of Section 5 of the Bihar Act would only cut down the profits of the manufacturer/producer but that would not make the State law inconsistent with the Central law and since the surcharge was borne by the manufacturers/producers under Sub-section (3) of Section 5 of the Act, the controlled price of such medicines and drugs to the consumer remained the same.

JUDGMENT:- The Apex Court held that the constitutional validity of Sub-section (1) of Section 5 of the Bihar Act, which provided for the classification of dealers whose gross turnover during a year exceeded Rs. 5 lakhs for the purpose of levy of surcharge in addition to the tax payable by him, was not assailable. So long as sales in the course of inter State trade and commerce or sales outside the State and sales in the cause of import into, or export out of the territory of India was not taxed, there was nothing to prevent the State Legislature while making a law for the levy of surcharge under entry 54 of the List II of the Seventh Schedule to take into account the total turnover of the dealer within the State and provide, as has been done by Sub-section (1) of Section 5 of the Act. The Court also observed that since the liability to pay a surcharge was not on the gross turnover including the transaction covered by Article 286 but was only on sales within the state, and the surcharge was sought to be levied on dealers who had a position of economic superiority. Since the definition of "gross turnover" in the Bihar Act was adopted not for the purpose of bringing to surcharge inter-State sales or outside sales or sales in the course of import into, or export of goods out of, the territory of India, but was only for the purpose of classifying dealers within the State and to identify the class of dealers liable to pay such surcharge, it was not hit ultra vires, the underlying object being to classify dealers into those who were economically superior and those who were not. Also declaring that sufficiency of territorial nexus involved a consideration of two elements, viz., (a) the connection must be real and not illusory, and (b) the liability sought to be imposed must be pertinent to that territorial connection, the Court held that there was sufficient territorial nexus between the persons sought to be charged and the State seeking to tax them.

FOR COMMON MAN:- The Apex Court declared that the doctrine of pith and substance, employed to ascertain legislative competence, was applicable only to legislations under List III of the Schedule VII. Therefore the decision that a law was repugnant to state was to be held valid only by ascertaining the character of the legislation by reference to the Doctrine of Pith and Substance.

(18) I.C. Golak Nath v . State of Punja, AIR 1967 SC 1643

(Overruled by *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461)

FACTS IN BRIEF :- The question before the Supreme Court was a challenge to the constitutional validity of an Act passed by the legislature taking away the fundamental rights in an estate. The precise issue was whether any part of the fundamental rights guaranteed by the Constitution could be abrogated or changed by a constitutional amendment even if it was passed by the requisite two-thirds majority of Parliament, as provided for in Article 368. Earlier, in *Sankari Prasad Singh* v. *Union of India* (AIR 1951 SC 458) a Constitutional Bench of 5 Judges had unanimously held that Parliament had unfettered power to amend the Constitution and in *Sajjan Singh* v. *State of Rajasthan* (AIR 1965 SC 845) the Court had upheld the power of Parliament to amend any part of the Constitution including one affecting the fundamental rights of citizens.

The law in question in the instant case with in view of reforming land ownership and tenancy structures, implementing the socialistic goals of the Constitution (Article 39 (b) and (c) of the Directive Principles of State Policy) that required equitable distribution of resources of production among all citizens and prevention of concentration of wealth in the hands of a few. This was opposed to the fundamental right to acquire hold and dispose of property (Article 19(f)) and Article 31 wherein one could not be deprived of his property unless it was acquired by the State and for public purposes only, upon payment of compensation determined by the law.

ARGUMENTS:- There were multifarious arguments from both the sides. The Petitioners contended;

- The Constitution was intended to be permanent and therefore could not be amended in a way so as to injure, maim or destroy its indestructible character.
- The word ''amendment'' implied an addition or change within the lines of the original instrument as would effect an improvement or better carry out the purpose for which it was framed and could

not be so construed as to enable the Parliament to destroy the permanent character of the Constitution.

- The fundamental rights were a part of the basic structure of the Constitution and therefore the power of amendment could be exercised only to preserve rather than destroy the essence of those rights.
- The limitations on the power to amend were implicit in Article 368 itself as the use of words such as “repeal” and “re-enact” in other Articles meant that the expression “amend” had a limited meaning. This indicated that Article 368 only enabled a modification of the Articles within the framework of the Constitution and not a destruction of them.
- The Constituent Assembly Debates, particularly the speech of Mr. Jawahar Lal Nehru and the reply of Dr. Ambedkar, who piloted the Bill, disclosed clearly that it was never the intention of Constitution framers to enable the Parliament to repeal the fundamental rights by use of the power under Article 368. The circumstances under which the amendment moved by Mr. H. V. Kamath (one of the members of Constituent Assembly) was withdrawn and Article 368 was finally adopted clearly showed that amendment of Part III was outside the scope of Article 368.
- Part III of the Constitution was a self-contained Code and its provisions were elastic enough to meet all reasonable requirements of changing situations. Therefore no amendment was warranted for them.
- Article 368 only lays down the procedure to amend, but the power to amend is only the legislative power conferred on the Parliament under Articles 245, 246 and 248 of the Constitution.
- The definition of 'law' in Article 13(2) of the Constitution includes every branch of law, statutory or constitutional and therefore the power to amend, in whichever branch it may be classified, if it takes away or abridges the fundamental rights, would be void thereunder.

In defence, the arguments for the State were;

1. A constitutional amendment is made in exercise of the sovereign power and not legislative power of the Parliament. Therefore it partakes the quality and character of the Constitution itself, becoming an integral part of it.
2. The provisions of Article 368 are clear and unequivocal with there being no scope for invoking implied limitations on that power. Also, this limitation on the doctrine of implied power had been expressly rejected by the American Courts.
3. The object of the amending clause in a flexible Constitution was to enable the Parliament to amend the Constitution in order to express the will of the people according to the changing course of events and if amending power was restricted by implied limitations, the Constitution itself might be destroyed by revolution. Therefore the amending procedure was a safety valve and an alternative for a violent change by revolution.
4. There were no basic and non-basic features of the Constitution; everything in the Constitution was basic and could be amended in pursuance of future growth and progress of the country.
5. Debates in the Constituent Assembly could not be relied upon for construing Article 368 and even if they could be, there was nothing in the debates to prove positively that fundamental rights were excluded from the purview of amendment.
6. Since amendments were made out of political necessity, they involved questions such as how to exercise power, how to make the lot of the citizens better and the like and therefore, not being judicial questions, they were outside the Court's jurisdiction.
7. The language of Article 368 was clear, categorical and imperative while the language of Article 13(2) admitted qualifications or limitation and, therefore the Court must construe the latter in a manner that it could not control Article 368.
8. In order to enforce the Directive Principles, the Constitution had been amended from time to time and the great fabric of the Indian Union had been built since 1950 on the basis that the Constitution could be amended and therefore, any reversal of the previous decisions would introduce economic chaos in the country and therefore the burden on the Petitioners was very heavy to establish that the fundamental rights could not be amended under Article 368.

JUDGMENT:- Presided over by Chief Justice Subba Rao, this eleven judge bench by 6:5 majority held that the fundamental rights were not amenable to the amending power under Article 368. T he Court held that Article 368, which contained provisions relating to the amendment of the Constitution, merely laid down the amending procedure. It did not confer upon the Parliament the power to amend the Constitution. The amending power (or the constituent power) of Parliament arose from other provisions contained in the Constitution (i.e. Articles 245, 246 and 248) which gave it the power to make laws (i.e. plenary legislative power) only. Thus, the Apex court held that the amending power and legislative powers of Parliament were essentially the same. Therefore, any amendment of the Constitution was deemed to be law as understood in Article 13 (2) and consequently was to be struck down it violative of fundamental rights.

FOR COMMON MAN:- The judgment invoked the concept of implied limitations on Parliament's power to amend the Constitution. The Court held that the Constitution give a place of permanence to the

fundamental freedoms of the citizen; in giving the Constitution to themselves, the people had reserved the fundamental rights for themselves. Another aspect of the judgment is that it introduced in India the doctrine of prospective overruling wherein, in order not to disturb the hitherto concluded transactions under previously invalid laws, all invalidations would be operative from future. Therefore the Court declared that henceforth all laws violative of fundamental rights would be void ab initio.

(19) In re, Vinay Chandra Mishra, (1995) 2 SCC 584

[Overruled by *Supreme Court Bar Association* v. *Union of India* , (1998) 4 SCC 409]

FACTS IN BRIEF :- Shri Vinay Chandra Mishra, the then President of the Bar Council of India, was accused of abusing a judge of the Allahabad High Court. The said incident occurred while the Court was in session and the applicant Judge was in the process of hearing a case in which the contemnor was appearing on behalf of one of the parties. According to the applicant judge [Justice SK Keshote], the contemnor had started shouting in reply to a question and had threatened that he would get the judge transferred and even impeached. The judge further complained that the contemnor had insulted him in open Court. The matter was referred to the Supreme Court of India for decision.

ARGUMENTS:- Before the Supreme Court, the following was argued by the Contemnor;

- That the applicant judge had treated him unfairly and had proceeded to set aside an order of the lower court without even hearing the arguments.
- That he was being 'roughed' up by the judge for taking a fearless stand to protect the freedom of the Bar.
- That an investigation must be ordered into the incident to find out whether contempt had been committed punishable under Article 215 of the Constitution or under Section 16 of the Contempt of Courts Act.
- That his conduct did not amount to contempt as normally altercations take place between a Judge and the arguing advocate, which may technically be contempt on either side but there being no intention, provisions of contempt were not attracted.
- That the Supreme Court did not have the jurisdiction to punish for an act of contempt committed in respect of another Court of Record which was invested with identical and independent power for punishing for contempt of itself.

JUDGMENT:- The Supreme Court rejecting the contention of the contemnor that the Court could not take cognizance of the contempt committed in respect of another Court held that being a Court of Record, the Court had the power to punish for contempt of High Courts also. The Apex Court also did not accept the subsequent unconditional apology of the contemnor for the reasons, (a) it was a free and frank admission of misdemeanor and (b) as the Court did not find any sincere regret for his act of disrespect shown to the applicant. Instead, the apology was concealed in such a garbed language that justified his conduct. Thus t he Supreme Court, exercising its power to do complete justice under Article 142 read with Article 129, found the contemnor guilty of criminal contempt of court.

FOR COMMON MAN:- The important aspects of the judgment can be summarized as follows;

- The Supreme Court held that under Articles 129, 215 and 142 of the Constitution, the Court had the power to take *suo moto* cognizance of contempt proceedings.
- It also held that Article 129 vested the Supreme Court not only with the power to punish for contempt of itself but also of lower courts and tribunals in its capacity as the highest court of the land.
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(20) In Re: Death of Sawinder Singh Grover, 1995 Supp (4) SCC 450

FACTS IN BRIEF :- In the instant case, one Sawinder Singh Grover had died in the custody of the Central Bureau of Investigation (CBI). It was contended that he had jumped to his death while in the said custody. Thus the question before the Supreme Court was whether he had actually jumped to his death, thereby committing suicide? The inquiry report of the trial judge was considered by the Court wherein the following facts were evident; (a) the death was under suspicious circumstances, (b) the deposition of the CBI officer as regards the circumstances leading to the death were found to be a false, (c) that the jump leading to the death was certainly not a suicidal one, (d) that there was a high chance of ' torture' and ' sour misfeasance' on the part of the CBI officials

JUDGMENT:- Upon consideration of the facts submitted by the trial judge, the Apex Court ordered the prosecution of CBI officials responsible for the said offence and awarded a sum of Rs. 2,00,000 as *ex gratia* interim relief to the widow of the deceased.

FOR COMMON MAN:- Through this judgment the Court has made it clear that it will not tolerate any abuse of power of the executive leading to violation of their rights during the time of their detention. The fact that compensation was awarded as an interim relief reveals the stand of the Court that it will stand tall for the protection of the rights of the affected parties even if it requires enforcement against high officials of the executive.

(21) Indian Council and Enviro-Legal Action v. Union of India, AIR 1996 SC

FACTS IN BRIEF :- In a small village, Bichhri, in Rajasthan a cluster of chemical industries were located some of which manufactured highly toxic pollutant acid 'H' and other similar toxic chemicals. This 'H' acid give rise to enormous quantities of highly toxic effluents with iron-based and gypsum-based sludge in particular, which in the absence of proper treatment were poisoning earth, water and destroying the ecological setup. A study by the Rajasthan Pollution Control Board revealed that these chemical units had already turned out about 2400-2500 M.T. of highly toxic sludge. Since this toxic untreated waste water was allowed to flow out freely and thrown in open in and around the complex, the toxic substances had percolated deep into earth polluting the aquifers and the sub-terranean supply of water. The water in the wells and streams had turned toxic rendering it unfit for human consumption and even for irrigating the land. The soil had also grown unfit for cultivation. Upon these facts, a public interest litigation was filed in August 1989 seeking for the removal of industries creating a havoc to life of the local inhabitants and a proper cleaning of the damage caused.

ARGUMENTS:- Opposing the process adopted by the Rajasthan Pollution Control Board, the Respondents submitted that the officials had throughout been hostile to them and since no opportunity to file objections to the said Report or to produce material to contradict the statements was allowed to be made, the said Report could not be acted upon. They further argued, that they being no falling within the meaning of the term 'state' as under Article 12, were not amenable to the jurisdiction of the Supreme Court under Article 32 of the Constitution.

JUDGMENT:- Considering the enormity of the situation, the Supreme Court directed as follows;

- The Central Government shall determine the amount required for carrying out the remedial measures including the removal of sludge in the area affected in village Bichhri and other adjacent villages.
- On account of their continuous and persistent violations of law, their attempts to conceal the sludge, the discharge of toxic effluents and the non-implementation of the orders of the Court, as reflected from the expert committees Reports, the Respondents were characterized as 'rogue industries'. Accordingly, Court ordered the closure of all their plants and factories located in Bichhri village.
- The Court allowed any organization on behalf of the villagers to claim for damages for the loss suffered by them in the affected area.
- The Court directed the Central Government and the State Pollution Control Board to file quarterly reports before the Court with respect to the progress in the implementation of directions.
- The respondents were directed to pay compensation for the pollution caused by them,

FOR COMMON MAN:- The judgment in the instant case concretized the principle of " Polluter Pays" in order to discourage such activities on the part of the polluting enterprises and to impose heavy costs for the reversal of the damage caused by them.

(22) Indra Sawhney v. Union of India, AIR 1993 SC 477

FACTS IN BRIEF :- Complying with the mandate under Article 340 of the Constitution, the Central Government appointed a Backward Class Commission on January 29, 1953 for the determination of the backward classes in the country. The Commission, popularly known as Kaka Kalelkar Commission submitted its report but being not satisfied with the approach adopted by the Commission in determining the criteria for identifying the backward classes under Article 15(4), its recommendations were not

accepted. Thereupon, a second Backward Class Commission was appointed, popularly known as the Mandal Commission, to investigate the conditions of socially and educationally backward classes within the territory of India . The recommendations of this Commission were accepted and implemented by the Central Government. Several writ petitions were filed against this order of the Government implementing the recommendations.

As the matter of reservation had been settled by various earlier decisions of the Court, which were sought to be affected by this order, the present Bench of nine judges was constituted to finally settle the legal position relating to reservations and also to decide the issues relating to the interpretation of Article 16 of the Constitution of India.

JUDGMENT:- The Apex Court held as follows;

- The word 'provision for the reservation' in Article 16(4) refers to the provision to be made by the executive wing of the state and not the legislature. Therefore the executive is competent to provide for any determination of backwardness.
- The executive orders made by the government made in terms of Article 16(4) are enforceable forthwith without there being a need for a law by the Parliament on it.
- Article 16(4) is not an exception to but an explanation and facet of Article 16(1).
- Article 16(4) is exhaustive of the concept of reservation for the backward classes but is not exhaustive of the concept of reservation itself under the constitutional precincts.
- The interpretation that Article 16(1) does not permit reservation is erroneous.
- That neither the Constitution prescribed nor was it is possible for the court to lay down any procedure for the determination of 'backward class.' It is better left to the authority appointed to identify, which could adopt such method or procedure as it thought convenient and so long as it covered the entire populace, no objection could be taken to it.
- The Scheduled Castes and Scheduled Tribes were covered within the ambit of the term 'backward classes' while other socially and economically backward classes were also covered.
- Economic criterion could not be the only criterion for the determination of 'Backward class'.
- There could not be any further categorization in the backward class so identified.
- The reservation provided under Article 16(4) should not exceed 50% of the total posts.
- The carry forward rule (for unfilled vacancies) was not subject to the 50% limit.
- Article 16(4) does not permit rule of reservation even in promotion.

FOR COMMON MAN:- This judgment has the following facets;

- The Court did not give definite interpretation to the term 'backward class' and directed the Government to come out with a definition to this regard. Thus the main issue stills remains undecided as to for whom the protection has been granted under Article 16(4) and who all can avail the same.
- This arduous exercise by the Court to give a definite standpoint to the interpretation of Article 16 went in vain as it did not seek to resolve the conflict of reservation and also because majority of the propositions settled in the decision have been either overruled in later judgments or set aside by legislative amendments.

(23) L. Chandra Kumar v. Union of India, AIR 1997 SC 1125

FACTS IN BRIEF :- This seven judge bench was constituted to decided upon a controversial issue relating to the power of judicial review of the High Courts and Supreme Court as under Article 226 (along with Article 227) and 32 of the Constitution respectively vis-à-vis clause (1) of Article 323A and clause (2) of Article 323B, wherein power was conferred on the Parliament and the State Legislatures to exclude this power of judicial review. Though the principal facts and issues in consideration in the matters pending before the various High Courts as regards the two clauses were diverse, yet the Bench was only concerned with three important issues namely;

- The power conferred (by Article 323A and 323B) upon the Parliament and the State Legislatures to exclude the jurisdiction of all courts including the power of judicial review of the High Courts and the Supreme Court under the Constitution.
- The competence of the Tribunals, created under those Articles, to test the constitutional validity of a statutory provision/rule
- The question if those Tribunals could be said to be effective substitutes for the High Courts in discharging the power of judicial review.

Interalia , the Court also had the reconsider it earlier decision in *S. P. Sampath Kumar v. Union of India* , (1987) 1 SCC 124 wherein it was held that though judicial review is a basic feature of the Constitution, the vesting of the power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court.

ARGUMENTS:- The Petitioners argued as follows;

- Clause (1) of Article 323A and clause (2) of Article 323B were unconstitutional as Parliament could not exclude the constitutional jurisdiction conferred on the High Courts and these provisions were violative the basic structure of the Constitution as they took away the power of judicial review vested in the Supreme Court under Article 32 of the Constitution and the High Courts under Articles 226 and 227.
- Though the decision in *Sampath Kumar's case* was founded on the hope that the Tribunals would be effective substitutes for the High Courts, that position was neither factually nor legally correct and thus the position needed to be changed.
- The impugned constitutional provisions violated the basic structure as they sought to divest the High Courts of their power of superintendence over all Tribunals and Courts within their territorial jurisdiction.

In its defence, the Union submitted,

- Tribunals were not substitutes but supplemental to the High Courts in the wake of the problem of enormous increase in the volume of fresh institution of suits coupled with massive arrears.
- The decision of *Sampath Kumar* should be upheld as there the Court had actually monitored and directed the amendments to the Administrative Tribunals Act and was satisfied that there was no need to strike it down.
- That the essence of the power of judicial review was only that judicial power must always remain with the judiciary and must not be surrendered to the executive or the legislature and since the impugned provisions saved the jurisdiction of the Supreme Court under Article 136, thereby allowing the judiciary to have the final say in every form of adjudication, judicial review could not have been said to be violated.

JUDGMENT:- The Apex Court decided as follows;

- The impugned clause 2(d) of Article 323A and Clause 3(d) of Article 323B were unconstitutional to the extent that they excluded the jurisdiction of the High Courts and the Supreme Court under Articles 226, 227 and 32 of the Constitution.
- The power of judicial review over legislative action, vested in the High Courts under Article 226, 227 and the Supreme Court under Article 32 of the Constitution, was a part of the basic structure and therefore could never be excluded.
- The Tribunals created under Article 323A and Article 323B of the Constitution possessed the competence to test the constitutional validity of statutory provisions and rules.
- The adjudicatory decision of the Tribunals were subject to the jurisdiction of the High Courts wherein a a new procedure was to be followed. The Apex Court prescribed that no appeal from the decision of a Tribunal was to lie directly before the Supreme Court under Article 136 of the Constitution but instead, the aggrieved party was entitled to move the High Court under Articles 226 or 227 of the Constitution and only from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

FOR COMMON MAN:- The decision is consequential on account of the following important implications it carries;

- The Court warned that the constitutional safeguards which ensure the independence of the Judges of the superior judiciary were not available to the Judges of the subordinate judiciary or to the members of the Tribunals created by ordinary legislations. Consequently. Judges of the latter category could never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation.
- The Court observed that so long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 was retained, there was no reason why the power to test the validity of legislations against the provisions of the Constitution could not be conferred upon the Tribunals. Thus a case for the existence of the Tribunals and endowing them with judicial powers was made out by the Court.

- The Court opined that tribunals were established with the objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice and thus the framework of the tribunal was to retain its basic judicial character and inspire public confidence but it could not supplant, in this process, the High Courts and the judicial review itself. Thus the limits for the Tribunals as regards their judicial powers were drawn.
- It was held that though the Tribunals were competent to hear matters where the vires of statutory provisions were in question, in discharging this duty they could not act as substitutes for the High Courts and the Supreme Court which were specifically entrusted with such an obligation. Their function in this regard was only supplementary and all such decisions of the Tribunals were to be subject to scrutiny of the High Courts.
- The Court entrusted the Tribunals with the power to test the vires of subordinate legislations and rules but an exception to this was drawn whereunder, tribunals could not entertain any question regarding the vires of their parent statutes for the reason that a Tribunal which itself was creature of an Act could not declare that very Act to be unconstitutional.
- The direct approach to the High Courts and Supreme Court, in matters dealt with by the Tribunals, was barred and they could be approached only in appellate jurisdiction except when the parent statute itself was in question or for a related matter.

(24) Laxmi Kant Pandey v. Union of India, AIR 1984 SC 469

FACTS IN BRIEF :- This writ petition was initiated on the basis of a letter addressed by the petitioner complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents, who according to the petitioner are being used for illegal purposes like child sexual abuse, cheap labor and other similar works. The petitioner accordingly sought relief restraining the Indian based private agencies from carrying out further activity of routing children for adoption abroad.

JUDGMENT:- The Court, expressed its concern that children needed special protection owing to their tender age and physique mental immaturity and incapacity to look after themselves. It also observed that they must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life.

Commenting upon the practice of adoption, the court held that it was the well being of the child which was of utmost importance and if the foreigner who wanted to take the child in adoption was found to be genuinely interested, the child may be given in adoption to him. However the Court also warned that while supporting the practice of inter-country adoption it was necessary to ascertain that the primary object of giving the child in adoption being the welfare of the child, great care was to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labor or experimentation for medical or other research and may be placed in a worse situation than that in his own country.

Thereon the Court laid down the procedure for giving a child in adoption to foreign parents, which is summerised as follows;

- Every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognized or licensed by the Government of the country in which the foreigner is resident.
- Before a decision is taken by the biological parents to surrender the child for adoption, they should be helped to understand all the implications of adoption including the possibility of adoption by a foreigner and they should be told specifically that in case the child is adopted, it would not be possible for them to have any further contact with the child.
- It should not be open to any and every agency or individual to process an application from a foreigner for taking a child in adoption and such application should be processed only through a social or child welfare agency licensed or recognized by the Government of India or the Government of the State in which it is operating.
- The entire procedure including preparation of child study report, making of necessary enquiries and taking of requisite steps leading up to the filing of an application for guardianship of the child proposed to be given in adoption, must be completed expeditiously so that the child does not have to remain in the care and custody of social or child welfare agency without the warmth and affection of family life, longer than is absolutely necessary.
- If a child is to be given in inter-country adoption, it would be desirable that it is given in such adoption as far as possible before it completes the age of 3 years. The reason is that if a child is

adopted before it attains the age of understanding, it is always easier for it is to get assimilated and integrated in the new environment in which it may find itself on being adopted by a foreign parent

FOR COMMON MAN:- This judgment reflects the concern towards the special protection of the children. This case is also illustrated for the fact that it marked the trend of the Court in framing guidelines and providing procedure, a task ear-marked for the executive, in the absence of any statutory rules for the same being provided for by the executive.

(25) M/s Modi Cements Limited v. Kuchil Kumar Nandi, AIR 1998 SC 1057

FACTS IN BRIEF:- The case arose out of a complaint filed by the Appellant company under Section 138 of the Negotiable Instruments Act, 1881. The respondent had to settle the monetary liability resulting from the transaction of cement purchase from the appellant company. In partial discharge of the said liability the respondent drew three cheques in favour of the appellant company, which were returned by the bank with the endorsement "payment stopped by the drawer". Thus the precise issue for consideration before the Apex Court was, ' Whether return of cheque from the bank because of stop payment instruction amounted to dishonour of cheque under Section 138 of the Negotiable Instruments Act, 1881.'

ARGUMENTS:- It was argued that since the fact, that the cheque was dishonoured because of the amount of money standing to the credit of that account was insufficient to honour the cheque or that it exceeded the amount arranged to be paid from that account by an agreement made with that Bank, was not sufficed, an offence under Section 138 of the Act was not made out.

JUDGMENT:- The Supreme Court observed that in the event of holding that if after the cheque was issued to the payee or to the holder in due course and before it was presented for encashment, notice was issued to him not to present the same for encashment and yet the payee or holder in due course present the cheque to the bank for payment and when it was returned on instruction Section 138 was not attracted, then the very object of introducing Section 138 would be defeated. Thus it was contrary to the spirit and object of Sections 138 and 139 of the Act to give instructions to the Bank to stop the payment immediately after issuing a cheque against a debt or liability the drawer as it would allow the drawer to easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed.

FOR COMMON MAN:- The judgment is of seminal importance to the commercial world as the Court held that Section 138 of the Negotiable Instruments Act, 1881 was not based upon the presumption of dishonesty against the drawer of the cheque and that the cheque would be considered dishonoured under the said Section if the bank refused to honour the cheque on the instruction of stop payment, immediately after issuing a cheque against a debt or liability.

(26) M/s Shantistar Builders v. Narayan Khimalal Totame, AIR 1990 SC 630

FACTS IN BRIEF:- This Writ Petition was filed under Article 226 of the Constitution before the Bombay High Court challenging the permission granted to certain builders to escalate the rates in respect of construction permitted on exempted land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976. The State of Maharashtra was considering the formulation of certain guidelines in respect of constructions over exempted lands covered under Sec. 20 of the Act. Under the scheme of the Act, urban agglomerations were divided into four classes and a ceiling was prescribed for each classification. The vacant land in excess of the ceiling under the provisions of Sec. 10 of the Act vested in the State by way of acquisition and the vacant sites thus acquired by the State were intended to be utilized for purposes of housing and Secs. 23 and 24 of the Act provide for disposal of vacant land. The Act, therefore, purported to take away the excess land from the holders thereof and to utilize the same for purposes of housing and other public purposes.

JUDGMENT:- Considering the gravity of the situation at hand and the alleged malafide, t he Court directed that the genuineness of the claims to be scrutinized by an efficient judicial officer not below the rank of an Additional District Judge in respect of the schemes in every agglomeration undertaken and even those which the State Government may undertake in future. The Court observed that in the event of the claims being found tenable, the builders shall have a direction to provide accommodation in terms of the scheme for those who are found to be acceptable. Further, in order to ensure implementation of the said direction the builders were called upon not to make any commitment or allotments for flats until the claims of the 1420 applicants were scrutinized and allotment of accommodation for such number of persons as are found entitled was provided.

FOR COMMON MAN:- The Court in this case laid down measures to impress upon every committee that fulfillment of the laudable purpose of providing a home to the poor homeless depends upon its commitment to the goal and every effort should be made by it to ensure that the builder does not succeed in frustrating the purpose.

(27) Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa, AIR 1987 SC 1281

FACTS IN BRIEF :- The Respondent before the Supreme Court was an erstwhile employee of the Appellant company, who during the period of her employment with the Appellant was working as a 'confidential lady stenographer' complaining that during the period of her employment after the Equal Remuneration Act, 1976 came into force, she was being paid remuneration at the rates less favourable than those at which remuneration was being paid by the company to the Stenographer to the male sex in its establishment for performing the same or similar work. She, therefore, made a claim for recovery of an amount equivalent to the difference between the remuneration which she was being paid and the remuneration paid to the male sex Stenographers who had put in the same length of service during the period of the operation of the Act.

ARGUMENTS:- The company opposed the petition on the grounds that the lady stenographers who had been doing the duty as confidential stenographers attached to the senior executives of the company were not doing the same work which the male were discharging and that there was no discrimination on account of sex. It was also contented that the difference in salary was due to the settlement that has been reached between the union and the company.

JUDGMENT:- The Supreme Court, considering the impact caused by Convention Concerning Equal Remuneration for Man and Woman Workers for Work of Equal Value (adopted by the General Conference of the International Labour Organization) of which India was one of the parties and also the Equal Remuneration Act, 1976, observed that that whether a particular work was same or similar in nature to another work could be classified on three considerations. These were; (a) the authority should take a broad view; (b) in ascertaining whether any differences were of practical importance, the authority should take an equally broad approach, for the very concept of similar market implies differences in detail. These small differences should not defeat a claim of equality on trivial grounds; (c) One should look at the duties actually performed and not at those theoretically possible.

Upon these considerations, the Court held that the Confidential Lady Stenographers were doing the same work or work of similar nature as defined by Sec. 2(h) of the Act as the male stenographers were performing and therefore her claim was entitled to succeed.

FOR COMMON MAN:- The Supreme Court coming harshly upon the employer declared in categorical terms that it shall not accept any discrimination between males and females as regards payment of wages was concerned when they were performing the same tasks. The Court declared that in view of mandate under Articles 14 and 39(d) of the Constitution and the Equal Remuneration Act, 1976, the liability to pay irrespective of sex was mandatory on the employer. If an employer violated it, could be prosecuted for the same.

(28) Maneka Gandhi v. Union of India, AIR 1978 SC 597

FACTS IN BRIEF :- The Petitioner was the holder of a passport issued to her under the Passports Act, 1967. Later she received a letter from the Regional Passport Officer, Delhi intimating to her that it has been decided by the Government of India to impound her passport under Section 10(3)(c) of the Act in public interest and requiring her to surrender the passport. The petitioner in reply requested the Officer to furnish a copy of the statement of reasons for making the said order. To this a reply was sent by the Ministry of External Affairs that the Government has decided 'in the interest of the general public' not to furnish her a copy of the statement of reasons. The petitioner thereupon filed the present petition challenging the action of the Government in impounding her passport and declining to give reasons for doing so.

ARGUMENTS:- The action of the Government was impugned on several grounds. These were;

- The order passed against here was actuated with mala fides
- Section 10(3)(c), insofar as it empowered the Passport Authority to impound a passport 'in the interests of the general public' was violative of the equality clause enshrined in Article 14 of the Constitution as the condition 'in the interests of the general public' limiting the exercise of the power was vague and undefined and therefore was excessive and suffered from the vice of 'over-breadth'.

- That the order under Section 10(3)(c) impounding a passport could not be made without giving an opportunity to the holder of the passport to be heard in defence and since this was not so done in the instant case, the order was null and void. Also, if Section 10(3)(c) were read in such a manner so as to exclude the right of hearing, the Section would be infected with the vice of arbitrariness and it would be void as offending Article 14.
- That impounding of passport was violative of the fundamental right enshrined in Article 19(1) (a), (g) in so far as right to go abroad being read into freedom of speech and expression and occupation or business respectively.

JUDGMENT:- The conjoined reading of fundamental rights was upheld in the present case as was declined in the *Gopalan's case* (AIR 1950 SC 27) and it was held that each Fundamental Right did not form a separate code and thus a mere sufficing of an express right did not relax the test on other rights supplementing the case. Hence mere satisfaction of procedure was not sufficient; rather the principle of reasonableness, which legally as well as philosophically, was an essential element of equality or non-arbitrariness pervaded Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14; and this lead to the significance of enshrinement of natural justice in such procedure. The Court went on further to lay the law that as regards the test of applicability of the doctrine of natural justice, there could be no distinction between a quasi-judicial function and an administrative function for that purpose.

The Court held that as the law under Section 10(3) allowed the Central Government (a) to take such action having no right of appeal (b) to curtail the right to seek reasons, under the law which provided for the passport authority to do so if it is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy hence having followed the procedure established by law without any deviance, the implementation by the administrative body could not be challenged.

As regards the allegation of mala fides, it was held that as she was to be inquired before Commissions of Inquiry and the Ministry had acted on confidential information of her leaving the country, such order had to be moved. Discussing the concept further, law enunciated was that merely because a statutory provision empowering an authority to take action in specified circumstances is constitutionally valid as not being in conflict with any fundamental rights, it does not give a carte blanche to the authority to make any order it likes so long as it is within the parameters laid down by the statutory provision. Every order made under the statutory provision must not only be within the authority conferred by the statutory provision, but must also stand the test of fundamental rights. Parliament cannot be presumed to have intended to confer power on an authority to act in contravention of fundamental rights. It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights.

The Court held that the Right to go abroad was not covered by the rights guaranteed under Article 19(1) (a), (g). The Court observed that the test to be applied in such cases was the 'doctrine of direct and inevitable effect'. Thus what was necessarily to be seen was, ' whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right'. This being not established in the instant case, the Court held that the right to go abroad could not in all circumstances be regarded as included in freedom of speech and expression.

FOR COMMON MAN:- This judgment re-establishes arbitrariness is antithesis to the fundamental right of equality (under Article 14). It also establishes that the procedure talked of in Article 21 ought to be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

(29) Minerva Mills v. Union of India, AIR 1986 SC 2030

FACTS IN BRIEF :- The Petitioner was Company owning textile undertaking, which were subsequently nationalized and taken over by the Central Government under the Sick Textile Undertakings (Nationalisation) Act, 1974. The Petitioners contended that Section 4 and 55 of 42 nd Amendment Act, 1976 to the Constitution of India were constitutional invalid. Section 4 substituted the words in Article 31C as 'all or any of the principles laid down in part IV' which earlier was restricted to only Article 39; which thereby took away judicial review of any law on any alleged violation of Fundamental Rights guaranteed by Article 14 and 19 if it supposedly seems to further the principles of the Directive Principles of State Policy. Section 55 inserted clause (4) and (5) in Article 368 which swept away judicial review from any amendment made to the Constitution by legislature including Part III (Fundamental Rights) of the Constitution.

ARGUMENTS:- Relying on the decision in *Keshavananda Bharati v. State of Kerala* (AIR 1973 SC 1461) that 'Constitution is heritage, hence do not destroy its identity', it was contended by the petitioners that since Constitution itself provided limited powers of amendment, Parliament could not, under the exercise of that limited power, enlarge that limited power to absolute power and hence Section 55 was unconstitutional. Also regarding Section 4 it was argued that though Directive Principles were mandatory as the ends of government, they could be achieved only by permissible means i.e. by reading them in harmony to Fundamental Rights but Section 4, which made the Fundamental Rights subordinate to the Directive Principles was not agreeable by the structure of the Constitution.

Defending the impugned Sections, the Attorney General argued that when a law was enacted to further social and economic justice as advocated under the Directive Principles, it could never cause any injustice or violate any fundamental right for that matter. Moreover Section 4 did not snatch away judicial review totally, rather questions like reasonable and actual nexus of the law with the essence of Directive Principles supposed to be furthered etc. would still be exposed to judicial scrutiny and hence is not unconstitutional.

JUDGMENT:- Accepting the challenges made, the Court declared both Section 4 and 55 as unconstitutional. The Court observed that by virtue of Section 55, Parliament was doing something in garb of an authority which was not permissible by the mandate of the Constitution. Also Section 4 attempted to legitimize all future laws hitting onto fundamental rights, yet judiciary would be paralysed to the extent of only drawing out and stretching the law to meet the nexus with principles of Directive Principles.

FOR COMMON MAN:- Owing to this decision, while the text of Constitution of India bears the words 'principles of Part IV' in Article 31C, the same has been declared invalid by this case. The case therefore shows the extent the judiciary would go in order the preserve the inherent character (basic feature) of the Constitution. Further in the case of *Tinsukhia Electric Supply Co*. v. *State of Assam* (AIR 1990 SC 123) the Court read the 'doctrine of reasonable nexus' to enunciate that it was not that every statute which has been enacted with the dominant object of giving effect to the Directive Principles is entitled to protection, but only those statutes which are basically and essentially necessary for giving effect to Directive Principles are protected.

(30) Mr. X v. Hospital Z, AIR 1999 SC 495

FACTS IN BRIEF :- The appellant was a doctor in the Nagaland State Medical Services who accompanied his Uncle, a patient of Aortic Aneurism, to Chennai in whose surgery he was required to donate blood. Before the donation his blood samples were sent for testing, wherein he was found to be HIV+, which was communicated to his patient uncle. The appellant was engaged to be married on 12.12.1995. The appellant's uncle let his brother-in-law know that the Appellant was HIV+ one month before the scheduled date of marriage on which ground the marriage was being called off. He also mentioned that the information, as to the HIV+ status, was furnished to him by the Doctor (respondent 2) of Hospital Z (respondent 1).

Consequently, the brother-in-law called off the marriage the next day. The Appellant tried to contact the Respondents about the unauthorized disclosure by the Hospital as to his health status but got no satisfactory reply from the Management. Thereupon he went before the National Consumer Disputes Redressal Commission seeking compensation interim relief for the breach of duty to maintain confidentiality, and the consequent discrimination, loss of earning and social ostracism. The Appellant alleged that as a result of the calling off of his marriage, the whole community had come to know about his HIV+ status, as a result whereof he was facing social ostracism.

ARGUMENTS:- The appellant contended that,;

- The principle of medical ethics of the '*Duty to take care*' also included the '*Duty to maintain confidentiality*' and the Respondent having breached the same by informing the uncle of the Appellant on their own accord had breached the same.

- The duty to maintain secrecy as vested with the medical professionals had a correlative right vested on the patient that whatever come to the knowledge of the Doctor would not be divulged.
- The duty to maintain Confidentiality as to the health of the patient was also enforceable, being provided for in the Code of Medical Ethics, formulated to regulate the conduct of the medical practitioners by the Indian Medical Council.
- That the disclosure of the fact that the Appellant was HIV+ positive was violation of his Right to Privacy.

JUDGMENT:- The Appeal is dismissed on the ground that the fact that the Appellant was found HIV+ and subsequent disclosure was not violative of the Right to Privacy or the Rule of Confidentiality as the prospective bride of the Appellant was saved in time by the disclosure, or else she would also have been infected by the deadly disease, had the marriage not been called off.

In coming to such conclusion, the Court held, (a) the argument of Duty to maintain Confidentiality was not acceptable as the proposed marriage carried with it a health risk to an identifiable person who could be protected from being infected by the said disease, which is communicable and incurable, (b) Hippocratic Oath, from which the Duty to maintain Secrecy terminates, was not enforceable in the court of law, (c) in certain circumstances such as, the investigation or prosecution of a serious crime or where there was an immediate or future risk of health hazard to others, the Duty to maintain Secrecy was overridden by Public Interest, (d) the right to privacy was subject to compelling public interest (as held in *Govind* v. *State of Madhya Pradesh*, AIR 1975 SC 1295), (e) the fact that the Doctor is morally and ethically bound to maintain the secrecy as to the information imparted by the patient is subject to the Rights of another person to be informed that may clash with those of the patient's right to be informed. Thus the one more important takes precedence, (f) the lady to whom the Appellant was getting married had the Fundamental Right of 'Right to Life' under Article 21 of the Constitution, which included the "Right to Healthy Life". Therefore the Right to Life of another individual took precedence over the Right to Privacy and Confidentiality of the patient. (g) That the presence of venereal disorders was a valid ground for divorce. Thus if the disease that the Appellant was suffering from, constituted a valid ground for divorce, being concealed from her that the man she was marrying was suffering from virulent venereal disease, then the marriage needs to be injuncted from being entered into to prevent the man from spoiling the health and consequently the life of an innocent human being (h) the Right to marry also vested on the very same person the Duty to duly inform the future partner about a virulent ailment. That 'Right to Marry' could not be enforced in a Court of law unless the person was cured of the disease and till then it remained a 'Suspended Right' (i) that the spread of a virulent disease dangerous to life was a penal offence under Sec. 269 and 270 of the Indian Penal Code. Had the Respondents kept silent about the ailment of the Appellant, then they would have actually aided the penal offence, thereby becoming *participient criminis*.

FOR COMMON MAN:- An important judgment on the rights of AIDS patients, the judgment shows the clash of interests between the rights of such patients and the rights of the world at large to be informed of the same in order to take adequate precautions from getting affected by it. No doubt the judgment exposes the AIDS patients to the world at large and leaves out a scope of a dignified life away from social ostracism but it seems to be justified on the ground that such right cannot be allowed to get other person affected from the same. Therefore the Court justified the act of the Hospital to inform the prospective bride of the fact of the Appellant being HIV+.

(31) Nandini Satpathy v. P.L. Dani, AIR 1978 SC 1025

FACTS IN BRIEF :- This case questioned the constitutional dimensions of the failure to answer in interrogation by the police. The case expounded the precincts of Article 20(3) of the Constitution and Section 161(2) of the Code of Criminal Procedure (Cr.P.C). The Appellant was a former chief minister of Orissa who was directed to appear at the Vigilance Police Station, Cuttack for being examined in connection with a case registered under the Prevention of Corruption Act. Certain questions were asked from her, which she refused to answer, terming them self-incriminatory. Upon her refusal, she was charged with the offences under the Indian Penal Code for refusing to assist the public officer in performance of his duty. This act of the police was challenged by the Appellant, calling to enforce her 'right of silence'. Thus the following issues arose for consideration before the Supreme Court;

1. Whether a person likely to be accused of crimes i.e. a suspect, entitled to the right to keep silence as available to the accused of an offence?
2. Whether the bar against self-incrimination operates merely with reference to a particular accusation in regard to which the police investigator interrogates, or does it extend also to other pending or potential accusations outside the specific investigation which has led to the questioning?
3. Does the constitutional shield of silence swing into action only in court or can it barricade the 'accused' against incriminating interrogation at the stages of police investigation also?
4. What is the ambit of the cryptic expression 'compelled to be a witness against himself' occurring in Article 20(3) of the Constitution? Does 'compulsion' involve physical or like pressure or duress of an unlawful texture or does it also cover the crypto-compulsion or psychic coercion, given a tense situation or officer in authority interrogating an accused person, armed with power to insist on an answer?
5. Does being 'a witness against oneself' include testimonial tendency to incriminate or probative probability of guilt flowing from the answer?

6. What are the parameters of Section 161(2) of the Criminal Procedure Code? Does tendency to expose a person to a criminal charge embrace answers which have an inculpatory impact in other criminal cases actually or about to be investigated or tried?
7. Does 'any person' in Section 161 Criminal Procedure Code include an accused person or only a witness?
8. When does an answer self-incriminate or tend to expose one to a charge? What distinguishing features marks off nocent and innocent, permissible and impermissible interrogations and answers? Is the setting relevant or should the answer, in vacuo, bear a guilty badge on its bosom?
9. Does *mens rea* form a necessary component of Section 179 of the Indian Penal Code (IPC), and if so, what is its precise nature? Can a mere apprehension that any answer has a guilty potential salvage the accused or bring into play the exclusionary rule?
10. Where do we demarcate the boundaries of benefit of doubt in the setting of Section 161(2) Cr.P.C. and Section 179 IPC?

ARGUMENTS:- It was argued before the Supreme Court that if it was permissible in law to obtain evidence from the accused person by compulsion, what was the need to tread the hard path of laborious investigation and prolonged examination of other men, materials and documents? It was well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law "to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunting up evidence". Therefore it was requested before the Court to strike a balance between the needs of law enforcement on one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other hand.

JUDGMENT:- The Court held that 'any person supposed to be acquainted with the facts and circumstances of the case' included an accused person who filled that role because the police supposed him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that did not repel the Section. Therefore the Court declared that suspects, though not yet formally charged but embryonically were accused on record, could also swim into the harbour of Article 20(3).

The Court observed that a constitutional provision received its full semantic range and so it followed that wider connotation was to be imparted to the expressions 'accused of any offence' and 'to be witness against himself'. In Article 20(3), the expression 'accused of any offence' must, therefore, mean formally accused *in praesenti* and not *in futuro*. The expression 'to be witness against himself' meant more than the court process. Any giving of evidence, any furnishing of information, if likely to have an incriminating impact, answered the description of being witness against oneself. Not being limited to the forensic stage by express words in Article 20(3), the Court construed the expression to apply to every stage where furnishing of information and collection of materials took place.

The Court also observed;

- 'Compelled testimony' was evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like – not legal penalty for violation. So, the legal perils following upon refusal to answer or answer truthfully could not be regarded as compulsion within the meaning of Article 20(3).
- "The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes 'compelled testimony', violative of Article 20(3). Frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Article 20(3). Legal penalty may by itself not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion.
- Accused is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation under way is not with reference to that.
- The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that person who is not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation.
- In determining the incriminatory character of an answer the accused is entitled to consider - and the Court while adjudging will take note of - the setting, the totality of circumstances, the equation, personal and social, which have a bearing on making an answer substantially innocent but in

effect guilty in import. However, fanciful claims, unreasonable apprehensions and vague possibilities cannot be the hiding ground for an accused person. He is bound to answer where there is no clear tendency to criminate.

FOR COMMON MAN:- The judgment is significant for all the citizens on the account of the following that is lays;

1. The protection of Article 20(3) is available even at the police interrogation stage. In simple words even a suspect accused has a right to remain silent while being interrogated by the police for gathering information about the offence.
2. The accused not only has a right to remain silent against interrogations pertaining to the offence in question but also against questions which might have incriminatory effect as regards any other offence.
3. Elements of compulsive interrogation include not only physical threats or violence but also psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods.
4. The manner of mentioning legal consequences to the victim of interrogation in case of failure to answer may introduce an element of tension and tone of command perilously hovering near compulsion.
5. The accused has the right to consult his lawyer even at the police interrogation stage.

(32) Narayan Prasad Lohia v. Nikunj Kumar Lohia [2002] 38 SCL 625 (SC)

FACTS IN BRIEF :- The present case dealt with the issue concerning the composition of arbitral tribunal. The Appellant that Section 10 of the Arbitration and Conciliation Act, 1996 was a mandatory provision which could not be derogated. Sub-section (1) of Section 10 provided that the parties were free to determine the number of arbitrators, provided that such number should not be an even. Sub-section (2) provided that in case the parties failed to determine the number of arbitrators, then the arbitral tribunal shall consist of a sole arbitrator.

It was pointed out that even though the parties were free to determine the number of arbitrators, such number could not be an even number. It was also submitted that any agreement which permitted the parties to appoint an even number of arbitrators would be contrary to the mandatory provision of the Act.

ARGUMENTS:- It was argued that such an agreement would be invalid and void as the Arbitral Tribunal would not have been validly constituted. Therefore, the Appellant submitted that in such circumstances, composition of the Arbitral Tribunal itself being invalid, the proceedings and award, even if one be passed, would be invalid and unenforceable. On the other hand, it was argued on behalf of the respondents that Sections 4, 10 and 16 being part of the integrated scheme provided in the said Act, the provisions had to be read in a manner whereby there was no conflict between any of them or by which any provision was not rendered nugatory. It was pointed out that Section 10 started with the words, 'The parties are free to determine the number of arbitrators'. So it was submitted that arbitration was a matter of agreement between the parties and as such the parties were free to determine the number of arbitrators and the procedure. It was further argued on behalf of the respondents that (a) the parties were free to agree upon an even number of arbitrators, (b) even after a party had agreed to an even number of arbitrators, it could still have objected to the composition of the Arbitral Tribunal, (c) such an objection could be taken even though the parties had appointed or participated in the appointment of the arbitrator Section 16(2), and (d) the wording of Section 16 was wide enough to cover even an objection to the composition of the Arbitral Tribunal. It was submitted that an award could be challenged on ground of composition of the Arbitral Tribunal only, provided that an objection was first taken before the Arbitral Tribunal under Section 16, and the Arbitral Tribunal had rejected such an objection. In other words, it was necessary that such a challenge was made as soon as possible before the Arbitral Tribunal.

In fact, it was also contended on behalf of the respondents that section 34(2) (a) (v) did not permit the setting aside of an award on the ground of composition of the Arbitral Tribunal if the composition was in accordance with the agreement of the parties. In the case under consideration, it was claimed that the composition was in accordance with the agreement of the parties

JUDGMENT:- The apex court observed that a conjoint reading of Sections 10 and 16 of the Act showed that an objection to the composition of the Arbitral Tribunal was a matter which was derogable because a party was free not to object within the time prescribed in Section 16(2). The Court held that Section 10 had to be read along with Section 16 and was, therefore, a derogable provision. The court also observed that such a challenge could be taken even though the party may have participated in the appointment of the arbitrator and/or may have himself appointed the arbitrator.

The Supreme Court also refused to accept the appellant's argument that, as a matter of public policy, Section 10 should be held to be non-derogable. In the opinion of the Supreme Court, an arbitration being a creature of agreement between the parties, it would be impossible for the Legislature to cover all aspects.

FOR COMMON MAN:- Going against the spirit of the text of the enactment, the law which stands today is that parties are free to appoint even number of arbitrators and if any objection on that score has to be taken, it should be done by the concerned parties, as soon as possible, before the Arbitral Tribunal itself. Thus after the decision in the Court, despite the provisio in the Section, the law has been restated by the Supreme Court as to be holding what the text states.

(33) Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751

FACTS IN BRIEF :- In 1946 the then Government of Central Provinces and Berar and the Government of Bombay requested the Central Waterways, Irrigation and Navigation Commission (CWINC) to take up investigations on the Narmada river system for basin-wise development of the river with flood control, irrigation, power and extension of navigation as the objectives in view. The study was commenced in 1947 and most of the sites were inspected by engineers and geologists who recommended detailed investigation for seven projects. Thereafter in 1948, the Central Ministry of Works, Mines & Power appointed an Ad-hoc Committee headed by Shri A.N. Khosla, Chairman, CWINC to study the projects and to recommend the priorities. This Ad-hoc Committee recommended as an initial step detailed investigations for the following projects keeping in view the availability of men, materials and resources. Based on the recommendations of the aforesaid Ad-hoc Committee, estimates for investigations of the Bargi, Tawa, Punasa (Narmadasagar) and Broach Projects were sanctioned by the Government of India in March, 1949.

The Tribunal framed 24 issues which included the issues relating to the Gujarat having a right to construct a high dam with FRL 530 feet and a canal with FSL 300 feet or thereabouts. Issues 1(a), 1(b), 1(A), 2,3, and 19 were tried as preliminary issues of law and by its decision dated 23rd February, 1972, the said issues were decided against the respondents herein. It was held that the Notification of the Central Government dated 16th October, 1969 referring the matters raised by the State of Rajasthan by its complaint was ultra vires of the Act but constitution of the Tribunal and making a reference of the water dispute regarding the Inter-State river Narmada was not ultra vires of the Act and the Tribunal had jurisdiction to decide the dispute referred to it at the instance of State of Gujarat. It further held that the proposed construction of the Navagam project involving consequent submergence of portions of the territories of Maharashtra and Madhya Pradesh could form the subject matter of a "water dispute" within the meaning of Section 2(c) of the 1956 Act.

Against the aforesaid judgment of the Tribunal on the preliminary issues, the States of Madhya Pradesh and Rajasthan filed appeals by special leave to this Court and obtained a stay of the proceedings before the Tribunal to a limited extent. Therein the Supreme Court directed that the proceedings before the Tribunal should be stayed but discovery, inspection and other miscellaneous proceedings before the Tribunal may go on. The State of Rajasthan was directed to participate in these interlocutory proceedings. The present Writ Petition under Article 32 of the Constitution was filed by the Narmada Bachao Andolan to challenge the said decision.

ARGUMENTS:- The Petitioner argued (a) that it was necessary for some independent judicial authority to review the entire project, examine the current best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project is required in its present form in the national interest or whether it needs to be re-structured/modified, (b) that no work should proceed till environment impact assessment had been fully done and its implications for the projects viability being assessed in a transparent and participatory manner. This could at best be done only as a part of the comprehensive review of the project. This contention was partly supported by the State of Madhya Pradesh insomuch as it also pleaded for reduction in the height of the dam so as to reduce the extent of submergence and the consequent displacement.

This was refuted by the Respondent states. While accepting that initially the relief and rehabilitation measures had lagged behind, they argued that now adequate steps had been taken to ensure proper implementation of relief and rehabilitation at least as per the Award. The Respondents also questioned the bona fides of the petitioners in filing this petition. It is contended that the cause of the tribals and environment was being taken up by the petitioners not with a view to benefit the tribals but the real reason for filing this petition is to see that a high dam is not erected per se. It was also submitted that at this late stage this Court should not adjudicate on the various issues raised specially those which have been decided by the Tribunal's Award.

JUDGMENT:- The Supreme Court held (a) that the petitioners were not guilty of any laches in that regard, (b) given what had been held in respect of the environmental clearance, when the public interest was so demonstrably involved, it would be against public interest to decline relief only on the ground that the Court was approached belatedly. The Court declared that if for any reason the work on the Project, now or at any time in the future, could not proceed and the Project was not completed then all the oustees who have been rehabilitated shall have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they shall not be made at all liable in monetary or other terms on this account. Thus the writ petition was allowed

FOR COMMON MAN:- The decision clearly lays that t he Court will not take any step-in such direction without examining the Environmental Impact Assessment Report of the said project. The consequences of the projects and the effect are the most important factor without which it cannot be given clearance.

(34) Poonam Verma v. Dr. Ashwin Patel, AIR 1996 SC 2111

FACTS IN BRIEF :- One Mr. Promod Verma was treated for fever by Dr. Ashwin Patel, a Homeopathic doctor, He used certain allopathic medicines such as Inj Dictofenae sodium, Tab Ciprofloxacin 500mg, Tab paracctamol, Tab Diavol, Tab Bcomplex. Even after Nine days of treatment the patient did not improve and the patient was taken to allopathic doctors who also treated the patient but the patient died on Tenth day. The widow of the deceased, Poonam Verma, filed a case against the doctor. The judge did not proceed against allopathic doctors because they had practiced their own system of medicine. The judge declared that any doctor who practiced and prescribed medicines about which he did not study and was not registered with the Council constituted by law was a mere pretender to the knowledge in that system and is a Quack. This was challenged before the Supreme Court.

ARGUMENTS:- The Appellant sought to establish the liability of the doctor under (a) Consumer Protection Act, 1986, (b) Indian Medical Council Act, 1956, (c) Maharashtra Medical Council Act, 1965 and (d) Bombay Homeopathic Practitioners Act 1960. It was argued that “Like Cures Like" is the basis of Homeopathy whereas Allopathic is quite opposite to this. Pharmacology, which is the study of allopathic drugs, is not taught to homeopathic students.

JUDGMENT:- The Supreme Court held that ‘Registered Homeopathic Practitioner’ must be mentioned in every clinic of homeopathic doctor. Thus the appeal was upheld and the court fined Rs.3 lakhs payable to the wife of the deceased. Further the Medical Council of India was directed to punish the Homeopathic doctor for violating Indian Medical Council Act, 1956. In consequence thereof the Respondent was sentenced for period of 3 years.

FOR COMMON MAN:- This judgment holds that ‘ Cross practicing’ by doctors of different systems of medicine is illegal. Even Allopathic doctors must not practice Ayurveda and vice versa. If any doctor prescribes medicines on the subject, which is not taught to him, can be imprisoned by virtue of this case. However, this judgment seems to have been partially overruled by *Jacob Matthew v. State of Punjab*, (2005) 6 SCC 1 wherein it has been held that a doctor is not liable unless gross negligence is proved against him.

(35) Pt. Parmanand Katara v. Union of India, AIR 1989 SC 2039

FACTS IN BRIEF :- The petitioner was a 'small human right activist and fighting for the good causes for the general public interest' and filed an application under Article 32 of the Constitution. The case was filed on the basis of a report entitled 'Law helps the injured to die' published in the Hindustan Times. In the said publication it was alleged that a scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital. The doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 kilometers away authorised to handle medico-legal cases. The Samaritan carried the victim and lost no time to approach the other hospital but before he could reach, the victim succumbed to his injuries.

ARGUMENTS:- It was contended by the Union of India that the prevailing police rules and Criminal Procedure Code necessitated the fulfillment of several legal formalities before a victim could be rendered medical aid. The rationale behind this complicated procedure was to keep all evidence intact. In case the formalities were not observed, the doctors were harassed by the police and they were, therefore, reluctant to accept medico-legal cases.

The petitioner argued that it was a part of the professional ethics to start treating the patient as soon as he was brought before the doctor for medical attention inasmuch as it was the paramount obligation of the doctor to save human life and bring the patient out of the risk zone at the earliest with a view to

preserving life. He also submitted that the formalities under the Criminal Procedure Code or any other local laws should not stand in the way of the medical practitioners attending an injured person, that it should be the duty of a doctor in each and every casualty department of the hospital to attend such person first and thereafter take care of the formalities under the Criminal Procedure Code. The "life of a person is far more important than the legal formalities."

JUDGMENT:- The Court held that there can be no second opinion that preservation of human life was of paramount importance. That is so on account of the fact that once life is lost, the *status quo ante* could not be restored as resurrection was beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasized and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.

The court directed that the decision shall be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media as also through the Doordarshan and the All India Radio.

The Court also directed the persons in the medical profession that the apprehensions, about being a witness and facing police interrogation and spending a long time facing unnecessary cross-examination and humiliation, even if have some foundation, should not prevent them from discharging their duty as a medical professional to save a human life. Direction was also issued to the police to take greater care and see to it that the medical practitioners are not unnecessarily harassed in such cases. The Court further held that when on such occasions a man of the medical profession is approached and if he finds that whatever assistance he could give is not sufficient really to save the life of the person but some better assistance is necessarily is also the duty of the man in the medical profession so approached to render all the help which he could and also see that the person reaches the proper expert as early as possible.

FOR COMMON MAN:- This case has brought the 'right to get medical care' within the purview of Article 21 of the constitution as a fundamental right as a result of which, every person in India gets the right to approach any hospital and get medical aid even when the legal formalities have not been complied with. As a result, the number of deaths occurring due to refusal of the doctors to treat the patients if it is a case of an accident or any criminal case, will go down and the doctor will be justified in being regarded as the savior of human life.

(36) People's Union for Civil Liberties v. Union of India, (2002) 5 SCC 294

FACTS IN BRIEF :- The petition questioned before the Supreme Court, 'Whether, before casting votes, voters have a right to know relevant particulars of their candidates? In short Court was to consider "whether or not an elector, a citizen of the country has a fundamental right to receive the information regarding the criminal activities of a candidate to the Lok Sabha or Legislative Assembly for making an estimate for himself--as to whether the person who is contesting the election has a background making him worthy of his vote, by peeping into the past of the candidate."

This contention was raised by Association of Democratic Reforms firstly before Delhi HC basing their argument on (a) Report of the Vohra Committee of the Government of India Ministry of Home Affair and; (b) the 170 th Law Commission Report where the Delhi High Court held that "for making a right choice, it is essential that the past of the candidate should not be kept in the dark as it is not in the interest of the democracy and well being of the country."

Aggrieved by this decision, the Union of India had went in appeal to the Supreme Court wherein it was submitted that till suitable amendments were made in the Representation of People Act and Rules thereunder, the High Court should not have given any direction to the Election Commission.

JUDGMENT:- The Supreme Court directed the Election Commission to call for information from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:-

- Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past, if any, and whether he was punished with imprisonment or fine?
- Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.
- The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants.
- Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.
- The educational qualifications of the candidate.

FOR COMMON MAN:- This judgment has entitled every citizen to know the full particulars of the candidates who is to represent him as a fundamental rights. Such practices bring about transparency in governance and also allow the voter to exercise his right to vote judicially.

(37) Rai Sahib Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549

FACTS IN BRIEF :- This petition under Article 32 of the Constitution was preferred by six persons who purported to carry on the business of preparing, printing publishing and selling text books for different classes in the schools of Punjab . It is alleged that the Education Department of the Punjab Government has in pursuance of their so-called policy of nationalization of text books, issued a series of notifications since 1950 regarding the printing, publication and sale of these books which have not only placed unwarrantable restrictions upon the rights of the petitioners to carry on their business but have practically ousted them and other fellow-traders from the business altogether. It was submitted that no restrictions could be imposed upon the petitioners' right to carry on the trade, which was guaranteed under Article 19(1)(g) of the Constitution, by mere executive orders without proper legislation and that the legislation, if any, must conform to the requirements of clause (6) of article 19 of the Constitution. Accordingly, the petitioners prayed for issuance of writ in the nature of mandamus directing the Punjab Government to withdraw the notifications which have affected their rights.

ARGUMENTS:- It was contended that the executive Government of a State was wholly incompetent, without any legislative sanction, to engage in any trade or business activity and that the acts of the Government in carrying out their policy of establishing monopoly in the business of printing and publishing text books for school students is wholly without jurisdiction and illegal. That assuming that the State could create a monopoly in its favour in respect of a particular trade or business, which could be done not by any executive act but by means of a proper legislation which should conform to the requirements of article 19(6) of the Constitution. It is argued that it was not open to the Government to deprive the petitioners of their interest in any business or undertaking which amounts to property without authority of law and without payment of compensation as is required under Article 31 of the Constitution. It was also argued that the Government has no power in law to carry on the business of printing or selling text books for the use of school students in competition with private agencies without the sanction of the legislature.

JUDGMENT:- The Supreme Court dismissed the petition holding that the executive wing of the state could issue such notifications regulating/restricting the rights of the petitioners from carrying on the trade of publishing books. The Court held that the power of the Executive being co-extensive with that of the legislature, as provided for under Article 162 of the Constitution. Therefore, the Court held, such restriction the right to carry on trade and profession, as provided for in Article 19(1)(a), could be placed by the executive without there being a law to enforce the same.

FOR COMMON MAN:- The judgment in the instant case makes the proposition beyond doubt that the power of the executive is co-extensive to that of the legislature and thus the executive is empowered to carry on the measures and exercise the powers, as vested with in the legislature, so long as they are within the permissible constitutional limits.

(38) Rupa Ashok Hurra v. Ashok Hurra, AIR 2002 SC 177

FACTS IN BRIEF :- The matter first came to the Supreme Court in the form of a civil appeal and was decided thereof. Thereupon a review petition was filed subsequently to review the judgment delivered by the Supreme Court in the civil appeal. This review petition was dismissed. The petitioner then filed a writ petition under Article 32 questioning the validity of the judgment delivered in the civil appeal. The three judge Bench of the Supreme Court referred the said writ petition to a Constitution Bench of five judges, wherein the precise issue was; 'Whether an aggrieved person is entitled to any relief against a final judgment/order of the Supreme Court, after dismissal of review petition, either under Article 32 of the Constitution or otherwise?'

ARGUMENTS:- The following was submitted before the Supreme Court;

- That the principle of finality or certainty of judgments of the Supreme Court has its own importance but it was now required to be circumvented and the case should be re-examined where the orders were passed without jurisdiction or in violation of principles of natural justice, violation of any fundamental rights or where there has been a gross injustice,
- That the Supreme court had the inherent jurisdiction under the Supreme Court Rules, 1966, (precisely Order 47 Rule 6) therefore the cases falling in the aforementioned categories should be examined under the inherent jurisdiction of this court,

1. That the provisions of Order 47 Rule 6 the Supreme Court Rules, 1966 was a mere restatement of the provisions of Article 137 of the Constitution and that the inherent jurisdiction of the court could be exercised to remedy the injustice suffered by a person.
2. That Article 129 of the Constitution declared the Supreme Court to be a Court of Record so that it would have inherent powers to pass appropriate orders to undo injustice to any party resulting from judgment of this court.

- That since the Supreme Court was the creature of the Constitution, such that the corrective power was to be derived from the provisions conferring jurisdiction on the Supreme Court like Articles 32 and 129-140, such a power did not arise from an abstract inherent jurisdiction. It was also contended that the corrective power was a species of the review power and Articles 129, 137, Order 40 Rule 5 and Order 47 Rule 1 and 6 indicated that this court had inherent power to set right its own judgment.

JUDGMENT:- The Constitutional Bench held that a final judgment/order passed by the Supreme Court could not be assailed in an application under Article 32 of the Constitution of India by an aggrieved person whether he was a party to the case or not. The jurisdiction of the Supreme Court under Article 32 of the could not be invoked to challenge the validity of a final judgment/order passed by the court after exhausting the remedy of review under Article 137 read with Order 41 Rule 1 of the Supreme Court Rules, 1966.

However the Supreme Court, to prevent abuse of its process and to cure a gross miscarriage of justice, could reconsider its judgments in exercise of its inherent power but only in the rarest cases where such injustice was manifest or where the orders had been passed without jurisdiction. The curative petition was to contain a certification by a Senior Advocate with regard to the fulfillment of the above requirements.

FOR COMMON MAN:- The judgment lays down important propositions of law. Therefore,

1. A final judgment/order passed by the Supreme Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person whether he was a party to the case or not.
2. The jurisdiction of this Court under Article 32 of the Constitution cannot be invoked to challenge the validity of a final judgment/order passed by this Court after exhausting the remedy of review under Article 137 of the Constitution read with Order 40 Rule 1 of the Supreme Court Rules, 1966.
3. The Supreme Court may reconsider its judgments by exercising its inherent powers in case of gross injustice but only if certain conditions had been satisfied.

- The petitioner must establish a violation of natural justice, that his interest had been affected, though he was not made a party to it; or, he was not served a notice; or, he was not heard, though he was served a notice.
- The petitioner would be entitled to relief, if a member of the Bench that passed the judgment, failed to disclose his connection with the subject matter; or, if the parties provide apprehension of bias. The judgment should be such that it adversely affects the petitioner.
- The curative petition must be certified by a senior advocate to ensure that the requirements are fulfilled.

(39) S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124

FACTS IN BRIEF :- This case dealt with two major issues; (a) whether the exclusion of the jurisdiction of the High Court under Articles 226 and 227 of the Constitution in service matters specified in Section 28 of the Administrative Tribunals Act, 1985 and the vesting of exclusive jurisdiction in such service matters in the Administrative Tribunal, subject to an exception in favor of the jurisdiction of the Supreme Court under Articles 32 and 136 was constitutionally permitted, (b) Whether the composition of the Administrative Tribunal and the mode of appointment of Chairman, Vice-Chairman and members had the effect of introducing a constitutional infirmity invalidating the provisions of the impugned Act.

JUDGMENT:- The case is of seminal importance as the Supreme Court relying on *Minerva Mills v. Union of India* (AIR 1986 SC 2030) declared that it was well settled that judicial review was a basic and essential feature of the Constitution. If the power of judicial review was absolutely taken away, the Constitution would cease to be what it was. The Court further declared that if a law made under Article 323A(1) were to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would be violative of the basic structure and hence outside the constituent power of Parliament. The Court concluded by holding that the same independence from executive pressure or influence must be ensured to the Chairman, Vice-Chairman and Members of the Administrative Tribunal or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. The Court did not strike down the Administrative Tribunals Act, 1985, but while making the judgment prospective gave an opportunity to the Central Government to amend the Act suitably within the stipulated time to remove the difficulties found in the Act.

FOR COMMON MAN:- The judgment at that time was of particular importance as it sought to open ways for alternative dispute resolution mechanism, which strictly speaking did not fall within the ambit of courts. However the impact of the judgment has been mitigated as it has been overruled by *L. Chandra Kumar v. Union of India* (AIR 1997 SC 1125).

(40) Sakshi v. Union of India, AIR 2004 SC 3566

FACTS IN BRIEF:- T his writ petition was filed by Sakshi, a woman organization, in the Apex Court to issue a writ declaring that “sexual intercourse” as contained in Section 375 of the Indian Penal Code (IPC) included all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration and for issue of a direction for registration of all such cases to be falling under Sections 375, 376 and 376A, 376D of the IPC.

ARGUMENTS:- It was contended by the petitioner organization that the existing trend of respondent authorities to treat sexual violence, other than penile/vaginal petitioner as lesser offences falling under either Section 377 or 354 IPC and not as a sexual violence under Section 375/376 IPC was without any justification. It was also submitted that limiting understanding of “rape” to abuse by penile/vaginal penetration only, was contrary to contemporary understanding of sexual abuse law as it denied majority of women and children access to adequate redress in violation of Article 14 and 21. It was contended that registration of cases of sexual violence as cases of moral turpitude under Section 377 by respondent authorities was without any justification as these cases would otherwise fall within scope and ambit of Section 375/376.

JUDGMENT:- The Supreme Court concluded that although Sections 354, 375 and 377 of the IPC had come up for consideration before superior courts of the country on innumerable occasions, the wide definition which petitioner wants to be given to "rape" as defined in Section 375 IPC so that the same may become an offence punishable under Section 376 IPC had neither been considered nor accepted by any Court in India so far. The Court observed that prosecution of an accused for an offence under Section 376 IPC on radically enlarged meaning of Section 375 IPC would violate the guarantee enshrined in Article 20(1) which states that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Therefore the Apex Court held that an exercise to alter the definition of rape, as contained in Section 375 IPC, by a process of judicial interpretation, and that too when there was no ambiguity in the provisions of the enactment was bound to result in good deal of chaos and confusion, and would not be in the interest of society at large.

Upon the aspect of the petition seeking directions to be issued to the government and the police to ensure protection of a victim of sexual abuse at time of recording his statement in Court, the court noted that since Section 273 of the Code of Criminal Procedure (Cr.P.C.) merely required evidence to be taken in the presence of the accused and did not require that the evidence should be recorded in such a manner that accused should have full view of the victim or the witnesses, directions were issued that provisions of Sub-section (2) of Section 327 Cr.P.C. would in addition to the offences mentioned in the sub-section and would also apply to inquiry or trial of offences under Sections 354 and 377 of the IPC. Herein the Court also took note of *State of Maharashtra v. Dr. Praful B Desai* (**2003**) 4 SCC 601, wherein recording of evidence by way of video conferencing vis-à-vis Section 273 Cr.P.C. was held to be permissible and *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384 wherein directions were given to hold trial of rape cases in camera and that trial to be conducted by lady judges wherever available so that prosecutrix can make statement with greater ease.

FOR COMMON MAN:- Dismissing the petition, the Court showed its inability to extend the statutory definition of 'rape' as provided for under the Indian Penal Code (Section 375) holding that it was only within the competence of the legislature to extend the definition. The Court's observation that it would not be in the larger interest of the State or the people to alter the definition of 'rape' as contained in Section 375 IPC by a process of judicial interpretation also shows the concern of the Court in maintaining national peace and tranquility.

(41) Sheela Barse v. State of Maharashtra, (1987) 4 SCC 373

FACTS IN BRIEF :- The Petitioner Sheela Barse was a Bombay-based journalist who had sought permission to interview women prisoners in the Maharashtra jails**.** When she wanted to take tape-recorded interview she was asked to take down the notes only. Later, the petitioner was informed that grant of permission to have interview was a matter of discretion of the Inspector General and such interviews are ordinarily allowed to research scholars only. Petitioner then made grievance over the withdrawal of the permission and pleaded that it is the citizen's rights to know if government is administering the jails in accordance with law. Petitioner's letter was treated as a writ petition under Article 32 of the Constitution.

ARGUMENTS:- According to the Petitioner Articles 19(1)(a) and 21 guaranteed to every citizen reasonable access to information about the institutions that formulate, enact, implement and enforce the laws of the land. It was argued that every citizen had a right to receive such information through public institutions including the media as it was physically impossible for every citizen to be informed about all issues of public importance individually and personally. She contended that as a journalist she had the right to collect and disseminate information to citizens.

The Respondents opposed the petition pleading that interview with prisoners was governed by the rules made in the Maharashtra Prison Manual and the since the petitioner did not satisfy the prescription, it was justified in revoking the permission for having interviews with prisoners. Also it was submitted that normally the prisons authorities did not allow interviews with the prisoners unless the person seeking interview was a research scholar studying for Ph.D. or intending to visit the prison as a part of his field work of curriculum prescribed for post-graduate course etc. Further it was submitted that there were no rules for permitting interviews except to the relatives and legal advisers for facilitating defence of prisoners. The state contended that if unguided and uncontrolled right of visit was provided to citizens, it would be difficult to maintain discipline and the very purpose of keeping the delinquents in prison would be frustrated.

JUDGMENT:- The Court held that Article 19(1)(a) of the Constitution guaranteed to all citizens freedom of speech and expressions was not the point in issue but the enlarged meaning given to the provisions of Article 21 by the Court in a few earlier cases found relevance. The Apex Court stated that 'life' in Article 21 had to be given an extended meaning wherein those citizens who were detained in prisons, either as undertrials or as convicts, were also entitled to the benefit of the guarantees subject to reasonable restrictions.

The Court observed that public gaze should be directed to such matters and the pressmen as friends of the society and public spirited citizens should have access not only to information but also interviews. Therefore Court permitted public to prisons. The Court, giving the dividing line, observed that citizens did not have any right either under Article 19(1)(a) or 21 to enter into the jails for collection of information but in order that the guarantee of the fundamental right under Article 21 may be available to the citizens detained in the jails, it becomes necessary to permit citizen's access to information as also interviews with prisoners. Interviews become necessary as otherwise the correct information may not be collected but such access had to be controlled and regulated. Hence petitioner's claim that she was entitled to uncontrolled interview was not accepted. The Court held that there may be cases where such tape-recording was necessary but Court made it clear that tape-recording should be subject to special permission of the appropriate authority and hence the petitioner was directed to make an application to the prescribed authority for the requisite permission which was to be dealt by the authorities in the light of the guidelines laid down in the case.

FOR COMMON MAN:- The Apex Court permitted p ublic access to the jails for the purposes of interviewing declared that the same was not to be an unrestricted and uncontrolled right. The Court directed that this right was to be guided by several factors including the abidance by the reasonable prison rules and jail manuals. The case also provided with the guidelines which the authorities have to keep in mind while considering an application made by the press people for the purposes of taking any interview of a prisoner. It has further to be understood that interviews cannot be forced and willingness of the prisoners to be interviewed would always be insisted upon. The interviews which are taken have further to be cross checked and verified by the authorities before it's becoming public so as to ensure that only the correct information ultimately reaches the masses.

(42) Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, AIR 1996 SC 722

FACTS IN BRIEF :- The Respondent was the student of the Baptist College , Kohima where the Appellant was a lecturer. The Appellant used to visit the home of the respondent often and voluntarily confessed his love for her. The respondent was blinded by the false assurances of marriage given by the Appellant and agreed to have conjugal relationship with the accused and as a result thereof became pregnant. Thereon the Respondent being afraid of a social scandal started pressurizing the Appellant to marry her. Upon this the Appellant 'married' her in front of the God he worshipped in his home by applying *sindur* to her forehead and accepting her as his legally wedded wife.

After these incidents, the accused kept on trying to convince the respondent that she should get the child aborted and on her not getting convinced he used the plea that his parents would not get convinced to accept her as the daughter-in-law if they had the child, as a result the respondent was compelled to undergo an abortion. That the same story was repeated in April 1994 and here the Appellant even misrepresented himself as 'Bikash Gautan' at the nursing home in Dimapur where the Respondent was taken for her abortion. The Respondent believed herself as the legally wedded wife of the Appellant in full faith and never once questioned the excuses given by the Appellant. On hearing that the Appellant was going to Silchar to join the job at the government college that they both had been waiting for so that they could make their marriage known in public, the Respondent went to meet him to be taken along with him, wherein the Appellant refused point blank to accept their relationship.

Thereafter the respondent brought an action against the Appellant on the grounds of criminal offences under the Indian Penal Code, Sections 312, 420, 493, 496 and 498A. On these facts a special leave petition was filed by the appellant against the order of the High Court of Assam at Guwahati which declined to dismiss the criminal case filed by the Respondent against the Appellant.

ARGUMENTS:- The Appellant sought to evade the cases on the ground that (a) the Appellant was unemployed, his service having been terminated from the Government College at Silchar and (b) the whole case had no factual basis, but was cooked up to defame him.

JUDGMENT:- The Supreme Court upholding the decision of the High Court refused to quash the proceedings of the pending criminal case dismissed the petition while also awarding an interim maintenance of Rs. 1,000/- per month to the Respondent. The question before the Court, 'whether the Court was competent to pass any further orders in the present case and compel the present Appellant to pay interim maintenance to the Respondent during the pendency of the Criminal Trial' was decided positively on the ground that the Supreme Court enjoyed a wide range of jurisdictions under Article 32 of the Constitution of and it included the power to award compensation for the violation of the Fundamental Rights as well.

The Court also declared that the crime of 'Rape' was not only a penal cause of action but one that was a crime against the basic human rights and was a violation of the most cherished Right to Life of the victim. Therefore relying upon the decision in of *Delhi Domestic Working Women's Forum* v. *Union of India* ((1995) 1 SCC 14) the Court concluded that while trying the case relating to the Penal offence of Rape, a court had the jurisdiction to award compensation at the final stage and also there was no bar as to award interim compensation.

FOR COMMON MAN:- This case lays down the law that interim compensation can be awarded to victims of rape during trials considering the gravity of the situation and in the interests of justice. Thus it marks a progressive shift in criminal law jurisprudence wherein a victimological approach has been introduced in adjudicatory process.

(43) Smt. Gian Kaur v. State of Punjab, AIR 1996 SC 1257

FACTS IN BRIEF :- The Appellant Gian Kaur and her husband were convicted by the Trial Court for abetment to suicide of one Kulwant Kaur. The Appellant challenged the conviction, stating thereby that Section 306 of the Indian Penal Code, 1860 (IPC) was unconstitutional. The said challenge was based upon the decision of a division bench of the Supreme Court in *P. Rathinam v. Union of India* (1994) 3 SCC 394 wherein Section 309 of IPC had been declared unconstitutional as being violative of Article 21. The matter was raised before a divisional bench of the Court, which considering the importance of the issue, referred it to a Constitutional Bench of five judges.

ARGUMENTS:- The following arguments were raised before the Supreme Court;

1. The Appellants contended that 'right to die' had become a fundamental rights under Article 21 after the decision of *P. Rathinam* and therefore Section 306 of IPC, which did not allow another to assist in the enforcement of this fundamental right to die, was unconstitutional.

2. They also submitted that since it was settled that Article 21 had a wide meaning wherein the term 'life' does not mean 'mere animal existence' but 'right to live with human dignity' embracing quality of life, logically it must follow that right to live would include right not to live i.e. right to die or to terminate one's life.
3. As an *amicus curie*, Fali J. Nariman submitted that Article 21 could not be construed to include within it the so-called 'right to die' since Article 21 guaranteed protection of life and liberty and not its extinction.
4. Another *amicus curie* , Soli J. Sorabjee submitted that Section 306 could survive independently of Section 309 IPC, as it does not violate either Article 14 or Article 21 as was the case with section 306.

JUDGMENT:- The Supreme Court negated the contention that right to life included the right to terminate one's life. It observed, 'the right to die', if any is inherently inconsistent with the 'right to life' as inconsistent is 'death with life' and thus over-ruled the decision in *P. Rathinam* and, therefore, Sections 306 and 309 of the Indian Penal Code was declared to be constitutional. The Court specifically rejected the argument of mercy killing or euthanasia as not permissible in India owing to the protection given under Article 21.

FOR COMMON MAN:- The judgment is consequential on account of the following;

1. The Court observed that the protection under Article 21 was of protective nature and thus could not be read so as to make the right to live with dignity be interpreted as the right to end one's life if was not capable of dignified existence.
2. Article 21 was characterized as having positive content only , as contrary to other fundamental rights which could be interpreted both positively as well as negatively such as, freedom of speech, freedom of association, freedom of movement, freedom of business etc. wherein, the right to do included the right not to do.
3. The 'right to commit suicide' (or 'to die') was held to be not available in India on account of the specific restriction under section 306 and 309 under the Indian Penal Code.
4. This case is an illustrious example of the doctrine of eclipse. The unconstitutionality imposed on Section 309 of the Indian Penal Code in *P. Rathinam* was reversed in this case and thus a law which was void and inapplicable was rendered valid and applicable again. The section remained a dead law during the interval but it did not cease to exist.

Thus the Supreme Court seems to have reaffirmed the view that the life of an individual is not his own but belongs to the society. Thus, it being in the interests of the society, he shall not be allowed to end it prematurely, prior to a natural end.

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(44) Sarla Mudgal v. Union of India, (1995) 3 SCC 635)

FACTS IN BRIEF :- There were four petitions in this case under Article 32 of the Constitution which were clubbed together for hearing. The common questions for consideration before the Apex Court were (a) Whether a Hindu husband, married under Hindu law, by embracing Islam, could solemnize second marriage? (b) Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu? and (c) Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

JUDGMENT:- The Apex Court observed that a second marriage by an apostate under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the Hindu Marriage Act, 1955 by which he would be continuing to be governed so far as his first marriage under the Act was concerned despite his conversion to Islam. The second marriage of an apostate would, therefore, be illegal marriage qua his wife who married him under the Act and continued to be a Hindu. Between the apostate and his Hindu wife the second marriage was in violation of the provisions of the Act and as such would be *non-est*. Further the Court held stated that it was no doubt correct that the marriage solemnized by a Hindu husband after embracing Islam may not be strictly be a void marriage under Section 494 of the Indian Penal Code because he was no longer a Hindu, but the fact remained that the said marriage would be in violation of the Hindu Marriage Act which strictly professes monogamy and the real reason for the voidness of the second marriage is was the subsistence of the first marriage which was not dissolved even by the conversion of the husband. It would be giving a go-bye to the substance of the matter and acting against the spirit of the Statute if the second marriage of the convert is held to be legal.

FOR COMMON MAN:- This case categorically establishes that c onversion of religion merely for the purpose of marrying again by any person is not allowed and the second marriage will be void in such a case while the concerned person would be liable for committing bigamy. Further the judgment stressed

upon the need for acting upon Article 44 of the Constitution which calls for a Uniform Civil Code. The Court observed, "Successive Governments till-date have been wholly remiss in their duty of implementing the constitutional mandate under Article 44 of the Constitution of India. We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and endeavour to secure to the citizens a uniform civil code throughout the territory of' India." However it is sad to note that the situation remains unchanged even after one decade of this judgment.

(45) Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530

FACTS IN BRIEF :- Expressing doubt over the correctness of the judgment in *Assistant Commissioner, Assessment-II Bangalore v. Velliappa Textiles Ltd.*(2003) 11 SCC 405, a division bench of the Supreme Court referred the issue "Whether a company or a corporate body could be prosecuted for offences for which the sentence of imprisonment is a mandatory punishment" the a Constitutional Bench of the Court. The aspect of interpretation revolved around Section 56 of the Foreign Exchange Regulation Act (FEMA) which provided for a mandatory punishment of fine and imprisonment for certain offence. Thus the dispute arose that where the corporate bodies, which could not be imprisoned, the sentence could be imposed at all or not?

ARGUMENTS:- Calling for a literal interpretation, the A ppellants submitted that since the punishment provided was both 'imprisonment and fine', the court could not impose only a 'fine'. Both fine and imprisonment must be imposed. But since imprisoning a juristic entity was impossible, the law under consideration could not be made functional by initiating prosecution under it. Therefore it was argued that corporates could not be punished under the said Section at all.

JUDGMENT:- By a 3:2 majority, the Supreme Court overruled the case of *Velliappa Textiles Ltd* declaring that there was no immunity to the companies from prosecution merely because the prosecution was in respect of offences for which the punishment prescribed was mandatory imprisonment along with a fine. It was pointed out with reference to Section 56 of FERA that though punishment by way of imprisonment and fine was mandatory, prosecution would not be crippled merely because imprisonment to corporates was impossible.

FOR COMMON MAN:- This case clearly sets down the position that no one is above law. A juristic entity would not be exempted from prosecution merely on the ground that penal sanction on it would be in nature of fine and imprisonment together. Thus invoking the doctrine of impossibility and bringing out an interpretation what made the Section workable and applicable, the Court declared that though Corporation cannot be imprisoned it can surely be fined and prosecution was permissible.

(46) State of Gujarat v. Hon'ble High Court of Gujarat, (1998) 7 SCC 392

FACTS IN BRIEF :- The precise issue which arose for consideration in the present case was 'whether prisoners, who were required to do labour as part of their punishment, should necessarily be paid wages for such work at the rates prescribed under Minimum Wages law?' The appeals was made by various State Governments against the decision of their High Courts wherein it was held that prisoners should be paid wages and that the present rates of wages paid to them were too meager and therefore were liable to be enhanced.

ARGUMENTS:- It was argued that (a) when hard labour was made a part of punishment as lawfully imposed, it could be equated with the normal employer-employee phenomenon so as to entitle the prisoner to the social and legislative benefits which a free employee gets outside the walls of the prison. (b) Articles 23 and 24 of the Constitution clearly declared the 'Right against exploitation' wherein there was an absolute prohibition against 'forced labour', an expression which seemed to be collocated with the word 'begar'. (c) Under Article 21, like any other workman a prisoner was also entitled to wages and therefore the only question that remained to be considered was at what rate should the prisoners be paid for their work?

JUDGMENT:- The Court specifically declared that (a) it was lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consented to do it or not, (b) it was open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose, (c) it was imperative that the prisoner should be paid equitable wages for the work done by them, (d) in order to determine the quantum of equitable wages payable to prisoners the State concerned should constitute a wage fixation body for making recommendations.

Therefore the Court directed the State Governments to fix the wage rate and until the State Government had taken any decision on such recommendations, every prisoner was to be paid wages for the work done by him at such rates or revised rates as the Government concerned fixed in the light of the

observations made above. The Court also recommended the States concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

Another aspect of the judgment is the victimological approach it adopts. It observed, "Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of Victimology reveals two types of victims: (a) direct victims i.e. those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime, (b) indirect victims i.e. those who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner. Restorative and reparative theories have developed from the aforesaid thinking. These are not theories of punishment. Rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centered, although in some versions they encompass the notion of reparation to the community for the effects of crime. They envisage less resort to custody, with onerous community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counselling for offenders to reintegrate them into the community. Such theories therefore tend to act on a behavioural premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the State. Legal systems based on a restorative rationale are rare, but the increasing tendency to insert victim-orientated measures such as compensation orders into sentencing systems structured to impose punishment provides a fine example of Garland's observation that 'institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups'."

FOR COMMON MAN:- The importance of the case lies in the thrust it gives to the victimological jurisprudence in our country. It set a trend into the sentencing policy to listen to the wailings of the victims. Further the judgment is also hailed as acknowledging the existence human rights of the prisoners and their entitlement for remuneration for the work they did.

(47) State of Rajasthan v. Union of India, AIR 1977 SC 1361

FACTS IN BRIEF :- When the general elections took place for Lok Sabha in 1977, the Congress Party was badly routed in several states by the Janata Party. The latter won formed the government at the centre. In these states the Congress Governments were functioning at that time and they still had more time to run out for completion of their full term. The Central Home Minister, Charan Singh wrote a letter to each of the Chief Ministers of the States suggesting that they should seek dissolution of the state legislature from the Governor and obtain fresh mandate from the electorate. The State of Rajasthan , along with several other affected states, filed an original suit under Article 131 of the Constitution against the Union of India praying the Court to declare this directive of the Central Home Minister as unconstitutional and illegal.

ARGUMENTS:- It was argued that the Letter of the Central Home Minister was a prelude for invocation of Article 356 in these states and that the dissolution of the State Legislatures on the ground mentioned in the said letter was *prima facie* outside the purview of Article 356. In substance the suit was designed to forestall the invocation of Article 356 in the concerned states.

JUDGMENT:- The Court observed, "The satisfactionunder Article 356 is a subjective one and cannot be tested by reference to any objective tests or by or by judicially discoverable or manageable standards". Upon the facts, the Court concluded that it could not go into the correctness or adequacy of the facts and the circumstances on which the satisfaction of the Central government is based. However one thing is certain that if the satisfaction is malafide or is based on wholly extraneous or irrelevant grounds, the Court would have the jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied (under Article 356 for the dissolution of the State Legislature). The Supreme Court held, therefore, that the State Legislature could be dissolved without the President's proclamation having been approved by the Parliament. Any such proclamation come into immediate effect and remained in force for two months without Parliamentary approval. The Court also rejected the contention that the proclamation could not be issued when either or both Houses of Parliament were in session. It was further held that even if the Parliament disapproved the proclamation within the said period of two months, the proclamation continued to be valid for two months and that even if both the Houses did not approve or disapprove the proclamation, the governments which had been dismissed or the Assembly which may have been dissolved did not revive.

FOR COMMON MAN:- The broad position laid by the Supreme Court was that it could not interfere with the Center's exercise of power under Article 356 of the Constitution of India merely on the ground that it embraced political and executive policy and expediency unless some constitutional provision was

infringed showing that the Presidential satisfaction (under Article 356) was malafide or was based on wholly extraneous or irrelevant grounds.

(48) Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579

FACTS IN BRIEF :- The Petitioner, a convict under death sentence lodged in the Tihar Central Jail, came to know of a crime of torture practiced upon another prisoner (Prem Chand) allegedly by a jail warder (Maggar Singh) as a means to extract money from the victim through his visiting relations. This was complained by the Petitioner to a Judge of the Supreme Court through a letter. The Court treated it as a petition within the fold of Article 32 of the Constitution. The issues that persisted before the Supreme Court were; whether the Court had the jurisdiction to consider prisoners' grievance, not demanding release but, within the incarceratory circumstances, complaining of ill-treatment and curtailment short of illegal detention? What were the broad contours of the fundamental rights, especially Articles 14, 19 and 21 which belong to a detainee sentenced by Court? What judicial remedies were to be granted to prevent and punish their breach and to provide access to prison justice?, and what prison reform perspectives and strategies should be adopted to strengthen, in the long run, the constitutional mandates and human rights imperatives?

JUDGMENT:- The Supreme Court declared that it had the jurisdiction to consider prisoners' grievance, not demanding release but, within the incarceratory circumstances, complaining of ill-treatment and curtailment short of illegal detention. The Court expressly noted that the prisoners were also humans and fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. The Court held that it had the power and responsibility to intervene and protect the prisoner against mayhem, crude or subtle, and may use the writ of habeas corpus for enforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries.

The Court held that the integrity of physical person and mental personality as the most important right of a prisoner. Thereupon the Court held that Prem Chand, the prisoner, had been tortured illegally and the Superintendent could not absolve himself from responsibility even though he may not have been directly a party to it. The State was directed to take action against the erroneous officials. The Court also laid guidelines to protect the rights of the prisoner and allow him a peaceful and respectful life without any room for tortures inside the prison.

FOR COMMON MAN:- Assuming a legislative role, providing for the interest of the prisoners, the Supreme Court laid down guidelines for the protection of the rights of the prisoners. It also put forth the pressing need for prison reforms. Suggestions of the likes of keeping of a grievance box were given, with the help of which in each ward a free access was to be afforded to every inmate which being kept locked and sealed by the district magistrate and on his periodical visit, he alone, or his surrogate, was supposed to open the box, find out the grievances, investigate their merits and take remedial action, if justified. Various rules in relation to the Jail Manual were found to be insufficient as far as the protection of the convict’s rights were concerned. The stress was laid down on the need of the Courts to be dynamic and diversified in meeting out remedies to prisoners. Not merely the contempt power but also the power to create ad hoc, and use the services of officers of justice was to be brought into play. The problems prevailing in the Tihar jail such as overcrowding, non-accommodation etc. were taken note of concerns were raised. A greater need was felt for expeditious prison reforms and protecting of the rights of the prisoners. Thus the Court stood tall in defending the rights of the prisoners inside prisons.

(49) Vincent v. Union of India, AIR 1987 SC 990

FACTS IN BRIEF :- The petitioner filed a public interest litigation alleging that the drugs industry in India was dominated by multi-national corporations originally based in U.S.A., U.K., Federal Republic of Germany, Sweden, Japan, France and the like. According to the petitioner these corporations had large resources and made huge profits. The control exercised by the government in this country on such corporations was minimal and inadequate and the disease-prone sub-continent of India was being used as pasture ground by these corporations. The Hathi Committee, appointed by the Central Government, in its Report submitted in 1974 highlighted the havoc played by these corporations in India and pleaded for nationalizing the drug industry in the best interest of the Indian people. The recommendation was not been accepted by the Government. According to the Petitioner several drugs banned in the advanced west after appropriate analytical research were routed to India and on account of lack of control and sluggish enforcement of the law, conveniently found their way into the market.

It was submitted that what was poison to the human body in the west was equally poison to the people in India but not knowing the repercussion thereof on the human system, such drugs were freely circulate and are even prescribed for patients. Therefore the petitioner sought directions from the Supreme Court in public interest towards banning import, manufacture, sale and distribution of such drugs which had

been recommended for banning by the Drugs Consultative Committee and cancellation of all licenses authorizing import, manufacture, sale, and distribution of such drugs.

JUDGMENT:- Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far-reaching implications of the total ban of certain medicines for which the petitioner has prayed, the Supreme Court observed that a judicial proceeding of the nature sought was not an appropriate one for determination of such matters. Nevertheless, stating the importance of sound health, Rangnath Misra, J., observed, "a healthy body is the very foundation for all human activities. In a welfare state, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Attending to public health therefore is of high priority-perhaps the one at top."

The Court opined that the branch of health care of citizens involved an ever changing challenge. The problem was a shifting one and could not have a fixed process to deal with the situations that would arise from time to time. Therefore the Court allowed the Central Government to adopt an approved national policy and prescribed an adequate number of formulations which would on the whole meet the requirement of the people at large on the basis of the expert advice. However the Court warned that it was necessary to keep abreast of the changing situations and make proper and timely amendments. The Court, w hile laying the guidelines on this aspect, held that injurious drugs were to be totally eliminated from the market.

FOR COMMON MAN:- The case highlights the importance of a health living and institutionalisms the right to health within the constitutional precincts. Considering the gravity of the situation, the Court urged the Government to take a timely action against the drugs proved to be unfit of human consumption. However the reluctance of the Court to give directions regarding nationalization of the industry shows the cautious approach of the Court to tread into the role of the executive, a laudable trend, for which judiciary has been severely criticized of late.

(50) Vishaka v. State of Rajasthan , AIR 1997 SC 3011

FACTS IN BRIEF :- The immediate cause for the filing of this writ petition was an incident of alleged brutal gang rape of a social worker in a village of Rajasthan . The petition was brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process.

JUDGMENT:- The Court while admitting the petition under Article 32 of the Constitution held that such incidents resulted in the violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty '. The Court declaring them to be a clear violation of the rights under Articles 14 (Right to Equality), 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and 21 (Right to life and liberty) of the Constitution and stated, "One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Art. 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'." It further observed that the fundamental right to carry on any occupation, trade or profession depended on the availability of a "safe" working environment. Right to life means life with dignity.

Taking note of the various international conventions to this effect, the Court went on to lay down guidelines to be observed in both private and public employment so as to ensure that there incidents of sexual harassment at the work place were not repeated. The Court defined 'sexual harassment' as including 'such unwelcome sexually determined behaviour (whether directly or by implication) as;

- physical contact and advances;
- a demand or request for sexual favours;
- sexually coloured remarks;
- showing pornography;
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.'

The Court held that where any of these acts were committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she was drawing salary or honorarium or voluntary, whether in Government or public or private enterprise, such conduct would be considered as humiliating and constituting health and safety problems. Such treatment was also discriminatory as the woman had reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it created a hostile work environment and adverse consequences might be visited on her if she did not give consent to the conduct in question or raises any objection thereto."

The Court also gave other directions to ensure that no sexual harassment took place at the work place and the responsibility for ensuring the same was placed on the employer. It was further directed that the complaint of the sexually harassed worker was to be addressed at the work place therefore Complaint Committee were to be formulated. The Court also ordered the employers to create awareness about the right of being protected from the sexual harassment and for that it ordered to notify these guidelines and any law in this regard.

FOR COMMON MAN:- This case lays down the framework and guidelines for the protection of the working woman from sexual harassment at the work place. It thus fills the gap on the much needed point of sexual harassment at the work place. Another aspect to be noted here is that these guidelines are equally applicable to the private employer as it is to the government employer, thereby ensuring that the protection extends everywhere and the life, dignity and profession of a working woman is adequately protected