AILA_DATASET

AILA_Q1||The appellant on February 9, 1961 was appointed as an Officer in Grade III in the respondent Bank (for short 'the Bank'). He was promoted on April 1, 1968 to the Grade officer in the Foreign Exchange Department in the Head Office of the Bank. Sometime in 1964, MCH Society (for short 'the Society') was formed of which the appellant was one of the chief promoters and thereafter its Secretary. The object of the Society was to construct residential premises for the employees of the Bank and its other members. It appears that the complaint was received in respect of the affairs of the Society relating to misappropriation of the funds of the Society and consequently, in exercise of the powers under Section S of Act A1, the Registrar on April 23, 1969 instituted an inquiry thereof. P1 was appointed the Registrar's nominee who on October 4, 1969; submitted the report holding the appellant and two other office bearers of the Society negligent in dealing with the funds of the Society causing a loss to the tune of Rs. 3,59,000/-. The Registrar on October 21, 1969, passed an order appointing an officer under Section S of A1 to assess the loss caused to the Society. However, the Government by its order dated November 29, 1969 annulled the Registrar's order dated April 23, 1969 and October 21, 1969 and directed a fresh inquiry into the affairs of the Society. On December 17, 1969, the Bank issued show cause notice to the appellant to explain within fifteen days his alleged negligent conduct in dealing with the affairs of the Society as revealed in the report dated 4th October, 1969. In the meantime, P2 came to be appointed by the Registrar vide his order dated 26th July, 1969, to make inquiries under Section S of A1. Petitioner by his reply dated 18/22th January, 1970 submitted his explanation and also challenged the legality of the inquiry and the findings recorded therein. On 5th March, 1970, P3, treasurer of the Society and an employee of the Bank criminal complaints in the Court of Addl. Chief Presidency Magistrate alleging that the appellant and two other office bearers of the society had dishonestly misappropriated a sum of Rs. 51,000/ and Rs. 80,000/- respectively which was entrusted to the appellant in his capacity as Promoter and Secretary of the Society and thereby committed criminal breach of trust. The Magistrate framed the charges against the appellant. The Bank having regard to the serious misconduct of the appellant involving moral turpitude vide its order dated 3rd November, 1970 suspended the appellant pending trial. The appellant protested this action of the Bank complaining that he was not given an opportunity of hearing before passing the order of suspension. In the meantime, P2, the authorized officer appointed by the Registrar vide his order dated 9th October, 1971 held the appellant liable to pay Rs. 2,36,000/- to the Society in addition to the amount of Rs. 2,03,000/- for which he (the appellant) and two other office bearers of the Society were held jointly liable. The Bank in view of this finding, vide its order dated 29th November, 1971 terminated the services of the appellant with effect from 1st December, 1971 along with notice pay. The appellant protested against the Action of the Bank and on 3rd December, 1971 filed detailed representation against the order of termination. The Bank replied to the appellant's representation and justified its action. The appellant on 28th December, 1971 submitted his reply to the Bank stating, inter alia, that the termination of his services was not simplicitor and was in violation of the principles of natural justice; that no opportunity of hearing was given to him; that the termination order attached stigma. The appellant aggrieved by the findings and order made by P2 appealed before Tribunal. In the meantime, the criminal proceedings ended in conviction vide order dated 27th March, 1972 passed by the Addl. Chief Metropolitan Magistrate. The appellant challenged the order of conviction and sentence in the High Court and during the pendency of the said appeal, the Tribunal vide its order dated April 12, 1973 dismissed the appellant's appeal but reduced the liability by Rs. 72,000/-. On November 12, 1973, the High Court allowed the criminal appeal and acquitted the appellant. The High Court, however, in its order observed that since the services of the appellant were terminated in view of the criminal proceedings and since the appellant has been acquitted, representation, if a any, by the appellant to the Bank for reinstatement may be considered sympathetically. Taking clue from the observations made by the High Court, the appellant filed three representations, the last being dated 3rd May, 1975 requesting the Bank to revoke the order of termination and be reinstated. The Bank vide its communication dated May 21, 1975 refused to reinstate the appellant. The appellant, therefore, on July 23, 1975 filed the writ petition in the High Court for quashing the orders dated 29th November 1971, 27th December, 1971 and 21st May, 1975 passed by the Bank. The learned Single Judge of the High Court by his judgment and order dated December 6/7, 1979 granted desired relief to the appellant. The Bank

aggrieved by the judgment and order passed by the learned Single Judge preferred an appeal under Clause 15 of the Letters Patent. The appeal was heard by the Division Bench. The Division Bench of the High Court did not agree with the judgment passed by the learned Single Judge and consequently by its judgment and order dated April 16 1985 allowed the appeal and dismissed the writ petition the ground of laches and also on merits. It is this judgment and order of the High Court which is impugned in this appeal.
AILA_Q2||The appellant before us was examined as prime witness in the trial of T.R. on the file of the Special Judge against the first respondent. The trial ended in conviction against the first respondent and when the appeal filed by him came to be heard by the High Court the appellant had become a Cabinet Minister. On account of the disparaging remarks made by the Appellate Judge the appellant tendered his resignation and demitted office for maintaining democratic traditions. It is in that backgroud this appeal has come to be preferred. Pursuant to a trap laid by the Vigilance Police on the complaint of the appellant's Manager, P1 (P.W.2) the first respondent was arrested on 26.4.79 for having accepted a bribe of Rs. 2,000 from P1. The marked currency notes were recovered from the brief case of the first respondent prior to the arrest. The prosecution case was that the first respondent had been extracting illegal gratification at the rate of Rs. 1,000 er month during the months of January, February and March, 1979 from P1 but all of a sudden he raised the demand to Rs. 2,000 per month in April 1979 and this led to P1 laying information (Exhibit I) before the Superintendent of Police (Vigilance). Acting on the report, a trap was laid on 26.4.79 and after P1 had handed over the marked currency notes the Vigilance party entered the office and recovered the currency notes from the brief case and arrested the first respondent. The first respondent denied having received any illegal gratification but offered no explanation for the presence of the currency notes in his brief case. Eleven witnesses including the appellant who figured as P.W.8 were examined by the prosecution and the first respondent examined three witnesses D.Ws. 1 to 3 to substantiate the defence set up by him, viz., that the sum of Rs. 2,000 had been paid by way of donation for conducting a drama and publishing a souvenir by the Mining Officers' Club and also towards donation for Children's Welfare Fund.The Special Judge accepted the prosecution case and held the first respondent guilty. The Special Judge awarded a sentence of rigorous imprisonment for one year for the conviction under the first charge but did not award any separate sentence for the conviction under the second. Against the conviction and sentence the first respondent appealed to the High Court. A learned Judge of the High Court has allowed the appeal holding that the prosecution has not proved its case by acceptable evidence and besides, the first respondent's explanation for the possession of the currency notes appeared probable. While acquitting the first respondent the learned Judge has, however, made several adverse remarks about the conduct of the appellant and about the credibility of his testimony and it is with that part of the judgment we are now concerned with in this appeal.
AILA_Q3||This appeal arises from the judgment of the learned Single Judge of High Court dated 6th June, 1988 whereby the learned Single Judge declined to quash the prosecution of the petitioner. The petitioner therein has been prosecuted for selling adulterated supari on the basis of a certificate issued by the Director of Central Food Laboratory showing that the article of Food purchased from the accused contained 2000 mgs/kg. saccharin and that the sample does not conform to the standard rules. The High Court took the view the report prima facie goes to show that accused has sold adulterated article of food and consequently declined to quash the prosecution. This appeal is directed against the order of the High Court accepting the appeal against the order of acquittal passed by the Chief Judicial Magistrate. The appeal was filed against the acquittal of accused Nos. 2 and 3 therein and out of whom one is the appellant before us. The High Court confirmed the acquittal of second accused but sentenced the appellant before us to undergo simple imprisonment for six month and to pay a fine of Rs. 1,000 with a default sentence of simple imprisonment for two more months.
AILA_Q4||The Petitioner was married to the Respondent No.2, on 27th November, 2005, as per Hindu traditions and customs. At the time of marriage 12 lakhs in cash, 45 sovereigns of gold and 50,000/- is alleged to have been given to the Accused Nos.1 to 4, who are the husband, the mother-in-law and other relatives of the husband. According to the Respondent No.2, the Petitioner left India for place L1 in January 2006 without taking her along with him. However, in February, 2006, the Respondent No.2 went to place L1 to join the Petitioner. While in place L1, the Respondent No.2 is alleged to have been severely ill-treated by the Petitioner and apart from the above, various demands were also made including a demand for additional dowry of 5 lakhs. On account of such physical and mental torture not only by the Petitioner/husband, but also by his immediate relatives, who continued to demand additional dowry by way of phone calls, the

Respondent No.2 addressed a complaint to the Superintendent of Police, from place L1 and the same was registered as Case (Crl.) No.25 by the Station House Officer on the instructions of the Superintendent of Police. Upon investigation into the complaint filed by the Respondent No.2, the Inspector of Police, filed a charge-sheet in CC No.307 in the Court of the Additional Munsif Magistrate against the Petitioner and his father, mother and sister, who were named as Accused Nos.2, 3 and 4. The learned Magistrate took cognizance of the aforesaid case and by his order dated 19th February, 2007, ordered issuance of summons against the accused. The cognizance taken by the learned Magistrate was questioned by the Petitioner and the other co-accused before the High Court and a prayer was made for quashing of the same. The High Court by its order dated 27th August, 2008, allowed Criminal Petition No.2746 of 2008 filed by the Accused Nos.2 to 4 and quashed the proceedings against them. However, Criminal Petition No.3629 of 2008 filed by the Petitioner herein was dismissed. The present Special Leave Petition is directed against the said order of the High Court rejecting the Petitioner's petition and declining to quash Complaint Case No. 307 initiated against him.
AILA_Q5||This appeal is preferred against the judgment dated 19.8.2011 passed by the High Court, whereby the High Court partly allowed the appeal filed by the appellants thereby confirming the conviction of the appellants with certain modifications. On 18.11.1994, at about 8.00 A.M. in the morning the complainant P1 (PW-5) along with his two sons namely P2 and P3 (PW-6) were busy in cutting pullas (reeds) from the dola of their field. At that time, P4 (A-1) and his sons P5 (A-2), P6 (A-3) and P7 (A-4) armed with jaily, pharsi and lathis respectively, entered the land where the complainant was working with his sons and asked them not to cut the pullas as it was jointly held by both the parties. Wordy altercations ensued between the parties and P4 insisted that he would take away the entire pullas.In the fight, the accused persons started inflicting injuries to the complainant, and his sons P5 (A-2) gave a pharsi blow on the head of P2, P4 (A-1) caused injury to P1 (PW-5) with two jaily blows. Additionally, P7 and P6 attacked the complainant with lathi blows on shoulder and left elbow respectively and caused several other injuries to the complainant party. P1 and his injured sons raised alarm, hearing which P9 and P10 came to rescue them and on seeing them, the accused persons fled away. The injured witnesses were taken to the Primary Health Centre where Dr. D1, Medical Officer, medically examined the injured persons. Injured P2 was vomiting in the hospital and later on he was referred to General Hospital, Gurgaon as his condition deteriorated. A CT scan disclosed that large extra-dural haematoma was found in the frontal region with mass effect and P2 needed urgent surgery and he was operated upon and the large extra-dural haematoma was removed. Dr. D1 (PW-2) also examined the other injured persons, PW 5-P1 and PW 6- P3.4. Statement of P1 was recorded, based on which F.I.R. was registered at Police Station. PW 8 P8 (ASI) had taken up the investigation. He examined the witnesses and after completion of investigation and challan was filed. In the trial court, prosecution examined nine witnesses including P1-PW5, P3-PW6 and Dr. D2-PW2 and Dr. D3-PW9, Neuro Surgeon, PW8-investigating officer and other witnesses. The accused were examined about the incriminating evidence and circumstances.First accused P4 pleaded that on the date of occurrence-complainant party P1 and his sons P3 and P2 forcibly trespassed into the land belonging to the accused and attempted to forcibly cut the pullas. P1 further claims that he along with P6 caused injuries to the complainant party in exercise of right of private defence of property. He has denied that P9 and P10 had seen the incident. P5 (A-2) and P7 (A-3) stated that they were not present on the spot and they have been falsely implicated. P6 (A-4) adopted the stand of his father P4.5. Upon consideration of oral and documentary evidence, the learned Additional Sessions Judge vide judgment dated 17.2.2000 convicted all the accused persons and sentenced them to undergo rigorous imprisonment for five years and one year respectively and a fine of Rs. 500/- each with default clause. Aggrieved by the said judgment, the accused-appellants filed criminal appeal before the High Court. The High Court vide impugned judgment dated 19.8.2011 modified the judgment of the trial court thereby convicted P4 (A-1) and sentenced him to undergo rigorous imprisonment for one year, convicted second accused P5 and imposed sentence of imprisonment for five years as well the fine of Rs.500/- was confirmed by the High Court. He was sentenced to undergo six months rigorous imprisonment. Both the sentences were ordered to run concurrently. High Court modified the sentence of P7 (A-3) P6 (A-4) and sentenced them to undergo rigorous imprisonment for six months (two counts) respectively. In this appeal, the appellants assail the correctness of the impugned judgment.
AILA_Q6||On 19.3.1999, SI P1 along Ct. P2 went to Village V1 where Inspector P1, PW-16, had reached along with his staff. After some time, ACP, arrived at the spot. On enquiry, they came to know that one constable of Police Station, namely, P2, having suffered a gun shot injury, had been taken to the hospital. The Head Constable P3 narrated the occurrence to the effect that he along

with other officials had received information about the presence of P4, a proclaimed offender of Police Station, was hiding in the house of P5 and about 4.30 p.m., they reached Village V1 and as per the instruction of SI P6, he and Ct. P2 went to the place to obtain information about the presence of P4 and SI P6 waited along with the staff at a distance of 100 meters from the house of P5. When he and P2 reached near the house of P5, accused P4 was standing outside the room. P2 disclosed his identity to him and asked him to surrender, but, P4, instead of surrendering, took out a knife from his shirt pocket with his left hand and tried to assault. However, immediately he was caught hold of by P2 from the rear and both of them grappled with each other for some time. The Head Constable, P3, tried to snatch the knife from the hands of P4 and ultimately he was successful in snatching away the knife from his hands but, at that juncture, P4 took out a desi katta and fired at P2 and the bullet hit in the stomach area. Hearing the sound, the villagers surrounded and assaulted P4. During that time, SI P6 came to the spot along with his staff and injured P2 was taken to the hospital. Desi katta and knife which were seized from the accused were given to the IO by P3. As further revealed, accused P4 was apprehended and five cartridges were recovered and on the basis of the statement of P3, an FIR was registered. When P2 succumbed to his injuries, the case was converted to another section. The bullet that had hit the stomach of the deceased was kept in a sealed cover and the same was sent to P1 and ultimately, on completion of the investigation, charge-sheet was filed in the competent court which, in turn, committed the matter to the Court of Session. Be it noted, after hearing the accused, charges under were framed against the accused-appellant.The accused pleaded not guilty and claimed to be tried.

AILA_Q7||This criminal appeal is directed against the judgment of the High Court dismissing the appeal but modifying the sentence. The appellant took his trial on the allegations that he had dishonestly and fraudulently misappropriated a sum of Rs. 3851.60, which amount was in his control in the capacity of a public servant, i.e. Cashier-cum-Accountant in the office of the District Veterinary Officer and that he had wilfully and with the intent to defraud altered and even mutilated the cash book (Ex. 4) and also had forged the said cash book with the intent to defraud the government to the extent of the aforesaid amount. The trial court accepting the case of the prosecution convicted the appellant under all the charges and sentenced him to rigorous imprisonment for a period of one year and to pay a fine of Rs. 3900, in default to suffer rigorous imprisonment for one year and also to undergo rigorous imprisonment for one year on each of the convictions in addition to pay a fine of Rs. 200, in default to suffer imprisonment for a period of two months. On appeal, the High Court while confirming the judgment of the trial court in its entirety, reduced the fine amount from Rs. 3900 to Rs. 2000, in default to undergo six months rigorous imprisonment for the conviction. In other respects, the sentences awarded for the convictions under the other two charges were confirmed. Hence this appeal.

AILA_Q8||This appeal, by special leave, has been preferred against the judgment and order dated 23 February 2005 of the High Court (Aurangabad Bench), by which the appeal preferred by the appellants was dismissed and their conviction and sentence of 7 years RI imposed thereunder was affirmed. The deceased P1 was daughter of PW1. P2 resident of village Sanjkheda and she was married to appellant no. 1 P3 son of P4 about two and half years prior to the date of incident which took place on 15 September 1991. The appellant no. 2, P5 is the mother of the appellant no. 1 and both the appellants were residing in the same house in village V1. According to the case of prosecution, a sum of Rs. 5000 and some gold ornaments had been given at the time of marriage of P1. For about six months P1 was treated well but thereafter the accused started asking her to bring Rs. 1,000-1,200 from her parents to meet the household expenses and also for purchasing manure. Whenever P1 went to her parental home, she used to tell her parents that her husband and mother-in-law (accused appellants) were harassing her and used to occasionally beat her. Her father PW.1 P2 along with some of his relatives went to the house of the accused and tried to persuade them not to ill-treat P1. Thereafter, the accused treated P1 properly but after about four months they again started harassing her. A few days before Nag Panchami festival P1 came to her parental home and complained that the accused were not giving her proper food, clothing and even footwear. She also told her parents that her husband had asked her to bring an amount of Rs.1,000-1,200 for the purpose of household expenses and manure. The case of the prosecution futher is that in the evening of 15 September 1991 a person came from village V1 on a motorcycle and informed PW.1 P2 that P1 was unwell. PW.1 then immediately went to the house of the accused along with some of his relatives. There he saw that P1 was lying dead and froth was coming out of her mouth which indicated that she had consumed some poisonous substance. The Police Patil of the village PW.3 P6 lodged an accidental death report at 9.00 p.m. on 15 September 1991 at the police station. On the basis of the said accidental death report,

PW.6 P7, Police Sub-Inspector, visited the house of the accused, held inquest on the dead body of P1, and thereafter sent the same for post-mortem examination. PW.1 P2 lodged the FIR of the incident at 7.00 p.m. on 16 September 1991 at Police Station, on the basis of which a case was registered against the appellants. After completion of investigation, charge sheet was submitted against the appellants and in due course, the case was committed to the Court of Sessions. The learned Sessions Judge framed charges against both the appellants. The appellants pleaded not guilty and claimed to be tried. The prosecution in order to establish its case examined six wintesses and filed some documentary evidence. The learned Sessions Judge after consideration of the material on record acquitted the appellants of the charges but convicted them under and imposed a sentence of 7 years RI thereunder. The appeal preferred by the appellants was dismissed by the High Court by the judgment and order dated 23 February 2005.
AILA_Q9||The complainant P1 filed a Special Leave Petition in this court seeking leave to appeal against the judgment dated 6th April, 1993 of the High Court. The incident for which these accused were charged is the murder of P2, son of the complainant P1 (appellant) on 13th June, 1982. As per the case of the prosecution, the complainant along with his son P2 (deceased) was getting his maize field weeded through the help of a few labourers on the morning of 13th June, 1982. His real brother P3 came on the spot and forbade the complainant from doing so. The complainant insisted that he had right to carry on the work in the field which belonged to him. On this P3, who was accompanied by his son accused P4 and P5 abused the labourers and drove them away from the field. The complainant took strong objection to this but the accused party started abusing the complainant and his son and started pelting stones on them. The complainant and his son also threw stones on the opposite party in their defence. In the meantime, some villagers came and intervened in the fight. As a result of this, the accused persons went away. The complainant and his son P2 continued with the work in the field. After a few hours, that is about 10.00 a.m., few villagers informed the complainant that the accused persons were coming back armed with weapons. The complainant did not pay heed to this warning thinking that the accused persons were his close relations. Within a short time, all the seven accused persons reached the spot. Seeing them, the complainant and his son P2 ran for their safety and entered the nearby house of P6. They hid themselves in a room by bolting the room from inside.2. However, as the main gate of the house had remained open, the accused persons rushed inside the house and broke open the door which had been bolted from inside. They entered the room where the complainant and his son P2 were hiding. P2 was dragged outside the room in the courtyard of the house where accused P4 is said to have given a bhala blow on his stomach. As a result of the blow, P2 fell down. Accused P3 gave a pharsa blow on the head of P2. The other accused persons also assaulted P2 with their weapons. The complainant tried to save his son but he was also assaulted by accused P7 and P5. While this was going on, the villagers accompanied by P9, P10, P11 and P12 came and intervened and saved the victims from further assault. However, P2 died on the spot. Police came in the village at about 1.00 p.m. when statement of the complainant P1 was recorded. On the basis of the said statement, an FIR was recorded and the seven accused persons were charge-sheeted and tried for the aforesaid offences. The sessions court by its judgment dated 19th June, 1992 while giving benefit of doubt to the accused persons and finding fault with the investigation acquitted all the accused persons. The State filed an appeal against the said judgment of the Sessions Court. The High Court dismissed the appeal in limine making the following observations :"As regards merits, it is clear from the perusal of the record that the witness named in the fardbayan have not been examined by the prosecution and also that the witnesses examined in Court were examined by the police after eight months from the date of occurrence. It is also clear that the Investigating Office of the case has not been examined. Therefore, there are no merits. Further the appeal is barred by limitation also, which cannot be considered." Against the said judgment of the High Court, the complainant filed a Special Leave Petition in this Court. Leave was granted. Hence the present appeal. The appeal has been registered for final hearing.
AILA_Q10||The four appellants, along with P1 son of P2, were jointly tried in the court of Additional Sessions Judge on the following charges: "That you all accused nos. 1 to 5 on or about 12th day of November, 1967 at about 5-45 a.m. near XYZ Road, formed an unlawful assembly and in prosecution of the common object of such assembly viz. : to commit murder of complainant P3 or in order to cause murder of P3 or grievous hurts to him committed the offence of rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code and within the cognizance of this Court. That you all on the same date, time and place, were members of unlawful assembly, in prosecution of common object of which viz. : to commit murder of P3 or to cause grievous hurt to him, one or all you caused grievous hurts to him which offence you knew

to be likely to be committed in prosecution of the common object of the said assembly. That you all on the same date, time and place attempted to cause murder of P3 Deshmukh, in furtherance of common intention and thereby committed an offence punishable." The order of the trial court convicting them all concludes thus: "All the five accused are convicted for the offence of rioting punishable and each is sentenced to rigorous imprisonment for the period of six months and to a fine of Rs. 501-, in default, rigorous imprisonment for two weeks for that offence. Accused shall surrender to their bail." 2. They all jointly appealed to the High Court by one memorandum of appeal. Learned judge admitted the appeal only on behalf of P1 and dismissed in limine the appeal on behalf of the four -appellants before us. The only point which concerns this Court in the present appeal by special leave relates to the correctness of the order dismissing in limine the appeal on behalf of the four appellants, when the appeal on behalf of P1, co-accused was admitted for hearing on the merits after notice to, the State.
AILA_Q11||The detenu P1, a French national, at the relevant time was employed as Airport Manager by A1 in L1. By an A1 flight, on September 20, 1981, he arrived at International Airport, L2 and passed through green channel indicating he had no dutiable goods to declare to the Customs Authorities. When he was at Exit Gate No. 1, the Intelligence Officer questioned him about the contents of two suitcases an other packages carried by him. The reply led to the inspection of the baggages which led to the recovery of watch parts weighing 4 1/2 Kgs, in 8 packages. 1. This led to a further enquiry, and evaluation of the watch parts led to the conclusion that the value was Rs. 3, 91, 200 CIF. Ultimately, the Government, on December 16, 1981, made an order of detention with a view to preventing an detenu from smuggling goods. On the same day, he was furnished grounds of detention which inter alia referred to the smuggling of the watch parts and two wrist-watches The detenu filed a petition for a writ of habeas corpus in the High Court at L2. Before the High Court, three contentions were advanced on behalf of the detenu. They were "(1) It was a case of solitary incident, and prosecution was pending; (2) The detention order was mala fide having been served to prevent the Magistrate from passing an order on the application for leaving India; (3) All material documents relevant for subjective satisfaction were not considered and the order has been passed mechanically." The Division Bench of the High Court which heard the petition held on ground number 1 that even though this is the first time the detenu was found indulging in smuggling activities and a prosecution might have been launched yet taking into account all the relevant materials, satisfaction on likelihood of repetition of smuggling activities in future seem to be real. In respect of ground No. 2, the Court was of the opinion that even though the detention order was made on December 16, 1981, the day fixed for pronouncing order on the application of the detenu seeking permission to leave India, yet the file shows that the screening committee had taken the decision of recommending the detention of the detenu as well as those other persons connected with the different incidents so far back as on November 19, 1981 and the actual proposal recommending detention by Customs Authority was forwarded on November 25, 1981. 2. The counter-affidavit before the High Court disclosed that the detaining authority did not know that an application for permission to leave India was filed by the detenu and the decision of the Chief Judicial Magistrate was likely to be pronounced on December 16, 1981, the day on which the detention order was made. After taking note of this fact, the High Court rejected the contention. On the 3rd contention, the Court was of the opinion that there is nothing to show that there was no consideration of material documents and rejected the same. Ultimately, the High Court rejected the petition of the detenu The detenu filed a petition for special leave against the judgment of the High Court as also a writ petition for a writ of habeas corpus. It appears that the writ petition was filed with a view to urging some additional grounds which were not raised before the High Court and, frankly, speaking learned counsel for the detenu, did not press any of the contentions which were canvassed before the High Court, but urged three other contentions which the High Court was not invited to examine On behalf of the detenu, the learned counsel questioned the validity and legality of the detention order on the following three grounds :- The Detaining Authority viz. Secretary to the Government, L2 Home Department (Law and Order) did not consider the representation and thereby violated constitutional guarantee. Even if detenu is alleged to have made a confessional statement, the same was retracted before the detention order was made and yet there is nothing to show that the detaining authority took into consideration the fact that the confession was retracted and it is quite likely that the confessional statement itself may have influenced his mind and, therefore, the detention order is vitiated. Alternatively, it was contended that in any view of the matter, the fact that as the confessional statement was retracted by the detenu, the retraction ought to have been sent to the Advisory Board. It appears that by the continued detention, the detenu has suffered mental disorder as revealed by the report of Senior Psychiatrist. Dr. D1, Senior Psychiatrist of

Central Mental Hospital, Yervada and in view of this report, continued detention of the detenu is likely to inflict irreparable harm and, therefore, also the detention on the ground of humanitarian consideration requires to be terminated.
AILA_Q12||The petitioner has been under detention pursuant to the order dated June 5, 1990 passed by the District Magistrate with a view to preventing him "from doing any such work which is prejudicial for the maintenance of public order". The grounds of detention were furnished to the detenu in time. Therein it was stated inter alia: "That you along with one companion on February 12, 1990 about 7.45 indiscriminately fired and murdered Dr D1 who was connected with a Nursing Home when she was returning from Dr D2's dental clinic situated at a busy and crowded road after the dental treatment along with her sister P1, with the result that the people started running here and there and were scared. In this connection a case was registered in Police Station and after its investigation charge-sheet has been submitted in the court against P2." It was stated" that the brutal murder has created a feeling of insecurity in public in general and among doctors in particular". The grounds of detention further said that the detenu was in District Jail in connection with a criminal case and he was on bail. But he got his bail cancelled on February 14, 1990 and was trying for his bail in another criminal case and his bail application was under consideration.
AILA_Q13||This is an appeal with a certificate granted by the judicial Commissioner. P1-hereinafter referred to as the respondent'-was appointed a constable in the Police Force of L1 by the Superintendent of Police, L2 by order dated April 18, 1954. The employment was temporary and was liable to be terminated with one month's notice. On December 6, 1957, the Superintendent of Police, informed the respondent that his services "'will be terminated with effect from 6-1-58 A. M." The respondent presented an appeal to the Chief Commissioner against the order of termination. By letter dated April 11, 1958 the respondent was informed that as he was "an Ex convict for theft, nothing can be done for him". In reply to another application addressed to the Chief Commissioner the respondent was informed by letter dated May 26, 1958, that he was already informed in connection with his previous appeal that as he was "'an Ex convict in a case of theft" he "cannot be reemployed by the Administration." The respondent then filed in the Court of the Judicial Commissioner, L1, a petition for a writ praying for a writ declaring that the order of the Superintendent of Police terminating his service was "illegal" and for a writ of mandamus or a writ of certiorari directing the Chief Commissioner not to enforce the said order and for an order reinstating him in the Police Force of the L1 Administration with retros pective effect. The L1 Administration submitted in rejoinder that the respondent being a temporary employee of the Police Force, his services were lawfully terminated. The Judicial Commissioner of L1 held that the respondent was a temporary employee, but the order terminating the respondent's employment was invalid for it infringed the constitutional guarantee of protection of public servants which applied to temporary as well as permanent public servants. In the view of the judicial Commissioner, termination of employment of a temporary servant will not per se be treated as a punishment of dismissal or removal, but it is open to the Court even if an order merely of termination of employment of a temporary employee is passed to ascertain whether the order was intended to be of termination simpliciter or of dismissal entailing penal consequences, and that the order dated April 11, 1958, of the Chief Commissioner passed in appeal clearly indicated that the order of the Superintendent of Police was one imposing penalty. He observed: "This reply (dated April 11, 1958) will clearly indicate that though the Superintendent of Police purported to terminate his service, he meant to dismiss the petitioner from am service as a punishment on the ground that he was an ex-convict and that it was intended that he should not be reappointed in future in any department of the Government. Thus it cannot be gainsaid that the termination was in fact a punishment for previous misconduct debarring the petitioner from being, employed even in the future, and that in passing the innocuous order (dated December 6, 1957Annexure D), the Superintendent was really camouflaging his real intention. The real intention came to light, perhaps as the result of an oversight in communicating the orders in appeal to the petitioner".
AILA_Q14||P1 is before us being aggrieved by and dissatisfied with the judgment and order dated 17.10.2005 passed by a Division Bench of the High Court. Appellant herein along with P2 (Accused No.1), P3 (Accused No. 3) and P4 (Accused No.4) were tried for committing the murder of one P5. P5 was an accused in a case of murder of the father of the appellant and accused No. 3. Allegedly, when cremation was taking place, the appellant took a vow to take revenge of murder of his father. P5 (deceased) on or about 13.02.1991 at about 11.00 a.m. was going to L1 on a motorcycle. He was accompanied by P6 (PW-4). When they were at distance of about 3 k.m. from P1, the accused persons who were in a Maruti van parked the vehicle by the side of road got down. The motorcycle was stopped by Accused Nos. 2, 3 and 4. P3 (Accused No. 3) is said to have caught hold P5 and P6 (Accused No.2) and P4 (Accused No. 4) inflicted stab injuries with

knives. An attempt to rescue the deceased by PW-4 resulted in a threat to him, whereupon he started running towards Jalgaon. Bhaulal also tried to save himself by running away from the said place. He was chased by Accused Nos. 2 and 3 and was again assaulted with knives. PW-4 immediately went to the Taluka Police Station on a vehicle of a passer by. A First Information Report was lodged at about 11.45 a.m. P5 was taken to the hospital in a tractor. At about 12.45 p.m. he died. At the trial, the prosecution examined 17 witnesses. P6 (PW-4) and P7 (PW-5) were examined as eye- witnesses to the occurrence. We have noticed hereinbefore that PW-4 was the informant. PW-5 was the driver of the Maruti van, which was taken on hire by the accused persons. They had gone to L2 and L3. The learned Trial Judge upon considering the evidence brought on record convicted all the accused persons. The High Court by reason of the impugned judgment in the criminal appeal filed by the accused persons, however, set aside the conviction and sentence of Accused No.1. Accused Nos. 2, 3 and 4. Accused Nos. 2 and 3 were also convicted under Section 341 read with Section 34 IPC. Accused No. 2 was further convicted under Section 506 IPC. Indisputably, P1 preferred an appeal before this Court against the said judgment of conviction and sentence passed by the High Court.

AILA_Q15||The appellants are five in number and they have filed this appeal as of right. They were acquitted by the trial court but convicted by the High Court on appeal filed by the State, besides the offence of rioting. On the first count they were each sentenced to imprisonment for life besides fine and to lesser sentences for the lesser offence. The gist of the case against them is that all the five accused formed themselves into an unlawful assembly on the evening of 24-10-1985 and lay in ambush waiting for P1 (deceased) to come through the road and on seeing P1 they all launched an attack with weapons like gandasa, takua and ghope. The wife of P1 (P2, PW 10) who accompanied her husband made a bid to rescue her husband from the onslaughts of the assailants, but she too was attacked by them. P1 died at the spot. PW 10 (P2) furnished first information to the police on the same evening on the basis of which FIR was registered by the police. Subsequently all the five accused were arrested and on the strength of the information elicited from Ist accused P3 and third accused P4 weapons of offences were recovered from concealed places. The most important witness in this case is PW 10 (P2). The importance of her evidence is that no court can possibly hold that she would not have witnessed the occurrence, for she herself sustained as many as eight injuries, some of them serious, during the occurrence. The fact that she gave the police prompt information which has reached the Magistrate on the very same night adds further credence to her version. Added to that, she narrated the incident to PW 12 and PW 13 (a chowkidar) who reached the spot soon after the occurrence. The trial court did not place reliance on the evidence of PW 10 (P2) principally on the ground that her evidence did not agree with the testimony of PW 11 (JoP4). It must be pointed out that JoP4 was cited as an eyewitness and he turned hostile and the Public Prosecutor confronted him with his own previous statements and contradicted him. It is not safe to jettison the evidence of a witness like PW 10 (P2) as important as she is in the syndrome of the facts of this case, with the aid of a hostile witness's stance in the Court. Such a course adopted by the trial court had been rightly deprecated by the High Court. The defence version was that PW 10 would have possibly sustained those injuries at some other place and at some other time and not when she was accompanying her husband at the place of occurrence. Such a suggestion is too unconvincing and very far-fetched. No court can give any weight to such a theory. Even the defence admitted that PW 10 sustained so many injuries as described by PW 1 Dr D1 in his evidence. We are totally disinclined to countenance the contention that PW 10 would have absolved those who have attacked her and turned against the five accused falsely. Such a theory will not fit in with logic and common sense. But unfortunately that version was found acceptable to the trial court and therefore the High Court has rightly repelled it.

AILA_Q16||The appellant P1 is convicted by the Additional Sessions Judge by judgment and order dated 5th/9th August, 1991 and was sentenced to death subject to confirmation by the High Court. Appellant appealed against the conviction and sentence which was partly allowed. The order with regard to the death penalty was set aside and appellant was sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default thereof to undergo R.I. for 18 months. Against the said judgment and order this appeal is filed. The prosecution version as stated by P.W.1 is that he was a resident of Delhi and was dealer and manufacturer of Umbrellas; he has got two wives known as P2 and P3. His first wife P2 is residing at House No. 377 alongwith her three children, named, P4, P5 and P6 and her other three children have been residing with him at his House No.1584. They are P1 (appellant), P7 and P8. His second wife P3 (deceased) had been residing with him alongwith her six children including daughter P9 aged 17 years (deceased). He was also having a house where his first wife was residing earlier before she

shifted. There was dispute between him on the one hand and his wife P2 and her children on the other with regard to the house. The appellant-accused and his brother were insisting for the transfer of the said house in the name of their mother at the earliest. For transferring the said house in the name of his first wife, he went to Tis Hazari on 17th October, 1988 alongwith his son-in-law P10 and met his counsel who advised him to come on the next day. Hence, the said property could not be transferred in the name of his wife. At about 6.00 P.M., when he was sleeping in the house, he woke up on hearing the noise of a quarrel and P8, daughter of P2 abusing P3. He slapped P8 and asked her to desist from abusing P3. After this the appellant and P7 came into the house, P7 went inside the room alongwith P8 and then came out with a dagger. P7 abused him and stabbed on his left eye, he fell down. At that time, P3 intervened and protested saying as to why he was beating his handicapped father. At that time, appellant snatched away dagger from P7 and started stabbing P3 repeatedly. At that stage, his daughter P9 intervened and asked the appellant as to why he was stabbing P3. P7 stated that she was the root of all troubles so the appellant started stabbing P9 at her abdomen, neck and other parts of her body. After sometime when persons collected outside, the appellant ran away. Within minutes P3 and P9 died at the spot. Police recorded the statement of P.W.1 as FIR. Appellant as well as his brother P7 were chargesheeted. P7 was convicted. He has not preferred any appeal against his conviction. After considering the evidence of the prosecution witnesses particularly P.W.1, P.W.2 and P.W.4 who have unequivocally deposed that both the deceased persons were killed by the appellant by inflicting dagger blows, the High Court has rightly arrived at the conclusion that accused is guilty for the offence for which he is charged. Mr. R.K. Jain, learned senior counsel for the appellant, has not raised any contention with regard to the conviction of the appellant.
AILA_Q17||facts of the matter, as is evident from the present Writ Petition challenging an order of detention dated 1st March, 2001 it appears that the petitioner is presently confined in Central Prison and it is this detention which the petitioner contended is without the authority of law and constitute an infringement of his guaranteed fundamental rights. The reason for detention has been and as recorded by the Department is that the Bill of Entry No.235337 dated 19.7.2000 was filed in the name of E Enterprises for clearance of 300 numbers of ACER CD ROM drive 50X by Customs House Agents, C1. According to the Department this Bill of Entry was filed in the name of E Enterprises but the latter expressly intimated the department stating that they did not place any order for import purposes. The department made an investigation and the goods were seized. The total CIF value according to the department was Rs.43,53,189/- and Rs.57,87,200/- was the market value. The petitioner appeared before the Customs Department on 24.7.2000 and the officers detained him and obtained the statements and was subsequently arrested on 25.7.2000 for an offence. The principal allegation against the petitioner/detenu being misdeclaration in the Bill of Entry. The petitioner/detenu however was remanded to judicial custody on 26.7.2000. Subsequently, the detenu was enlarged on bail by the learned Additional Chief Metropolitan Magistrate on 11.8.2000. The Department after the completion of investigation issued a show-cause notice. Significantly, though the incident noticed above took place on 24.7.2000 and other important documents have come into existence immediately thereafter, the detaining authority did not pass the detention order immediately but only after a lapse of about seven months, i.e. on 1.3.2000. During this interregnum, however, the detenu admittedly did not indulge in any illegal activities and it is on this context P1, learned advocate appearing in support of the petition with his usual eloquence contended that the incident of 24th July, 2000 had become stale and irrelevant and it is too remote in point of time and as such question of there being any detention order on the basis thereof would not arise. P1 further contended upon reference to the fact situation as adverted herein before in this judgment that the detenu was arrested on 25.7.2000 for offences and was remanded to judicial custody on 26.7.2000. The detenu was however enlarged on bail by the learned Additional Chief Metropolitan Magistrate (EO.III) on 11.8.2000 and the Department after completing the investigation issued the required show-cause notice on 19.9.2000. The factual score thus lends a substantial credence to the submissions of P1 as regards the charges being too stale to be taken recourse to in the matter of issuance of the order of detention on 1st March, 2001 more so, having regard to the admitted factum of non-involvement of the detenu in any illegal activity and thus consequently too remote as well in point of time to be the basis of an order of detention. It is in elaboration of his submissions P1 contended that once the show-cause notice has been issued, there cannot be any manner of doubt that the investigation is complete, but in the contextual facts the detaining authority has failed to apply its mind as regards the issue of unreasonable delay in passing the order of detention.

AILA_Q18||These appeals involve a pure question of law as to whether an award by which residue assets of a partnership firm are distributed amongst the partners on dissolution of the partnership firm requires registration. Briefly the facts are that a partnership firm was constituted comprising of four persons belonging to the same family. Disputes and differences arose between the partners which were ultimately referred to arbitration. The arbitrators made an award on 2nd October, 1972. The award was challenged by way of objections filed under by some of the partners. The objection petition was contested by the other partners who prayed that the award be made a rule of the Court. The grounds of challenge to the award included misconduct on the part of the arbitrators as well as another ground that the award required registration. The trial Court accepted both the objections holding that there was misconduct on the part of the arbitrators as also that the award was required to be compulsorily registered and since it was not registered it was inadmissible in evidence. This decision of the trial court was challenged before the High Court by way of a Civil Revision filed. The High Court found that in the facts and circumstances of the case it could not be said that there was any legal misconduct on the part of the arbitrators. Thus the first ground of attack against the award was found to be unsustainable. However, the High Court accepted the finding of the trial Court on the second ground, that is, the award was required to be compulsorily registered. Since the award was unregistered, it could not be made a rule of the Court. Hence the present appeals.
AILA_Q19||This appeal is preferred by the appellants against the judgment and order dated 31.08.2012 passed by the High Court whereby the High Court has allowed the appeal filed by the State and convicted all the appellants and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each. The brief facts of the case, as per the prosecution story, are that on 5.1.2001 at about 6:10 p.m. at L1, the accused persons formed an unlawful assembly and in prosecution of the common object of such assembly, committed the murder of P2. P3, son of the deceased (PW-3) lodged an Ejahar about the incident at Police Station on 5.1.2001 at about 10:00 p.m. On receipt of the Ejahar, F.I.R. No.3 was registered by Police Station and started investigation. The police arrived at the place of occurrence and called the Executive Magistrate who prepared the inquest on the dead body and the inquest was sent for post-mortem examination to Civil Hospital. The police found one bag containing one dagger and two hand-made bombs lying near the dead body. After investigation, charge-sheet was submitted against the accused, the said charge-sheet was received by the Chief Judicial Magistrate by the Since Court the offence was of Sessions, the triable Chief Judicial Magistrate by his order dated 15.3.2002 committed the case to the Court of Sessions for trial. During the course of trial the prosecution examined 10 witnesses to bring home the charges levelled against the appellants. The defense adduced no evidence and took a plea of total denial. The Trial Court on a careful scrutiny of the evidence found that the statements of PW-4 & PW-5 were contradictory which created doubt as to the presence of these two witnesses at the place of occurrence. PW-1 deposed that about 6 months ago, when he was returning from the Pharmacy, he met P5 who said that his brother had been killed in the market, but he did not mention the name of any person. The incident took place in the market place where there were about 50 shops on both sides of the road. The Trial Court observed that if accused P5 and P6 appeared from the left and right, they must have come out of one of the shops on both sides of the road since PW-4 categorically stated that he had not seen the accused persons on the road while they were going towards the house of the deceased. But none of the shopkeepers, adjacent to the place of occurrence, came forward to depose that any occurrence as stated by PW-4 & PW-5 had taken place in front of their shops. PW-5 during cross-examination stated that he knew the names of two shopkeepers and they are P7 and P8. P8 (PW-2) did not state that the occurrence took place in front of his shop. PW-5 further stated during cross examination that the deceased was an accused in a murder case and had no explanation as to whether the deceased would move around having bombs and other weapons with him. The Trial Court drew the conclusion that the seized articles were belonging to the deceased persons. On analysis of the evidence the Trial Court decided that the evidence of PW-4 and PW-5 was full of contradictions on material particulars and as such the testimony of these witnesses did not inspire any confidence. Under the circumstances, the uncorroborated testimony of PW-4 and PW-5 by some independent eye witness could not be accepted to warrant the conviction of the accused persons. The High Court on the other hand overruled the decision of the Trial Court and convicted all the five accused and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each.
AILA_Q20||This appeal by special leave is directed against the Judgment rendered by a High Court confirming the conviction of the appellant for the offences punishable. The High Court by the impugned judgment confirmed the judgment passed by the Principal Sessions Judge

convicting the appellant and sentencing him to suffer imprisonment for life and rigorous imprisonment for seven years, respectively, and further to pay a fine of Rs.1,000/- each and in default, to suffer simple imprisonment for a period of six months each. In the nutshell, the prosecution version which led to the trial of the appellant is as under: On the intervening night of 7th/8th April, 2002 appellant went to the house of the deceased in a village with an intention to end the life of the deceased and knocked at the door of the deceased which was opened by the wife of the deceased, P1 (PW-3) and the appellant-accused all of a sudden hacked and attempted to kill her by inflicting severe injuries on her body, as a result of which she fell down and then he rushed towards the deceased who was sleeping and hacked him by inflicting severe injuries. The appellant after committing the offence escaped from the place of occurrence by bolting the door from outside. The daughter of the deceased P2 (PW-4) aged about 9 years raised hue and cry upon which the neighbours opened the door from outside and informed P1 Gangaraju (PW1) who is a close relation of the deceased who thereafter informed Police Station and lodged first information report at about 4.00 a.m. on 8th April, 2002. A case was registered against unknown persons. The prosecution, in order to establish its case, examined altogether 14 witnesses. The trial court upon appreciation of the evidence found the appellant guilty and sentenced him to suffer imprisonment for life and rigorous imprisonment for a period of seven years, respectively. The trial court mainly relied upon the evidence of PW-3 and PW-4. The High Court vide its judgment dated 20th August, 2007 dismissed the criminal appeal filed by the appellant and accordingly confirmed the judgment of the trial court. The High Court too relied upon the evidence of PW-3 and PW-4. Both courts below found that the appellant attacked the deceased with sharp edged weapon resulting in his death. The courts below also found the appellant- accused attempted to kill PW-3 by inflicting severe injuries on her body.
AILA_Q21||Challenge in this appeal is to the judgment of a learned Single Judge of the High Court by which two Writ Petitions filed by the respondent were disposed of. The controversy lies within a very narrow compass. Before dealing with the rival contentions the factual background needs to be noted. Respondent was appointed on 3.9.1980 as a daily-rated worker in the Horticulture Department of the State. In the Writ Petition the prayer was for regularization as a clerk on completion of ten years of service on daily wages basis. It is to be noted that the union of the employees had moved the Labour Court for regularization of all daily wagers. The same was adjudicated by the Industrial Disputes Tribunal. A reference was made to the Labour Court and the State filed its response questioning maintainability of the reference. Initially the Labour Court had decided in favour of the workers but on a Writ Petition being filed, the High Court held in favour of the State holding that the claim for regularization was not maintainable. It was noted that no appointment order was issued and the case of the respondent was not sponsored by the employment exchange. It was also noted that the claim for equal work for equal pay was not maintainable as daily-rated persons were not required to perform duties at par with those in regular service and they did not also fulfil the procedure at the time of recruitment. Two Writ Petitions were filed; in one the challenge was to the order of the Industrial Disputes Tribunal while the Writ Petition to which this Appeal relates to the Award by the Labour Court. It is to be noted that the Labour Court had observed that the employer had regularized the respondent as a Chowkidar with effect from 5.7.1997 which was refused by him. Thereafter the engagement as daily wager was terminated. This order was challenged before the Industrial Disputes Tribunal which was dismissed. However, as noted above the High Court has remanded the matter to the Tribunal. The High Court in the impugned order held that the approach of the Labour Court was wrong as it has introduced concepts which are unnecessary. It was noted by the High Court that there was no dispute that the respondent was employed as a clerk. Learned counsel for the respondents submitted that the question whether the appointment was as a clerk has been concluded by an earlier order of the High Court which has become final and, therefore, the present appeal is misconceived.
AILA_Q22||Assailing the legal acceptability of the judgment and order passed by the High Court where it has given endorsement to the judgment passed by the learned Additional Sessions Judge wherein the learned trial Judge had found the appellants guilty of the offences and imposed the sentence of rigorous imprisonment of seven years and a fine of Rs.1,000/- on the first score, five years rigorous imprisonment and a fine of Rs.1,000/- on the second score, eighteen months rigorous imprisonment and a fine of Rs.500/- on the third count and six months rigorous imprisonment and a fine of Rs.250/- on the fourth count with the default clause for the fine amount in respect of each of the offences. The learned trial Judge stipulated that all the sentences shall be concurrent. Filtering the unnecessary details, the prosecution case, in brief, is that the marriage between the appellant No. 1 and deceased P1, sister of the informant, PW-2,

was solemnized on 24.9.1997. After the marriage the deceased stayed with her husband and the mother-in-law, the appellant No.2 herein, at the matrimonial home. In the wedlock, two children, one son and a daughter were born. On 11.9.2001, the informant, brother of the deceased, got a telephonic call from the accused No. 1 that his sister P1 had committed suicide. On receipt of the telephone call came along with his friend, P2, PW-20, and at that juncture, the husband of P1, P3, informed that the deceased was fed up with the constant ill-health of her children and the said frustration had led her to commit suicide by tying a 'dupatta' around her neck. The brother of the deceased did not believe the version of P3, and lodged an FIR alleging that the husband and the mother-in-law of the deceased, after the marriage, had been constantly asking for dowry of Rs.2 lacs from the father of the deceased, but as the said demand could not be satisfied due to the financial condition of the father, the husband and his mother started ill-treating her in the matrimonial home and being unable to tolerate the physical and mental torture she was compelled to commit suicide. Be it noted, as the death was unnatural, the police had sent the dead body for post mortem and the doctor conducting the autopsy opined that the death was due to suicide. After the criminal law was set in motion on the base of the FIR lodged by the brother, the investigating officer examined number of witnesses and after completing all the formalities laid the charge sheet before the competent Court, who, in turn, committed the matter to the Court of Session. The accused persons denied the allegations and claimed to be tried. The prosecution, in order to establish the charges levelled against the accused persons, examined 22 witnesses and got marked number of documents. The defence chose not to adduce any evidence. 4. The learned trial Judge principally posed four questions, namely, whether the accused persons had inflicted unbearable torture on the deceased as well as caused mental harassment to make themselves liable for punishment; whether the material brought on record established the offence; whether the physical and mental torture on the deceased compelled her to commit suicide on 11.9.2001 as a consequence of which the accused persons had become liable to be convicted; and whether the accused persons had demanded a sum of Rs.2 lacs towards dowry from the parents of P1 so as to be found guilty. The learned trial Judge answered all the questions in the affirmative and opined that the prosecution had been able to prove the offences to the hilt and, accordingly, imposed the sentence as stated hereinbefore. Grieved by the judgment of conviction and the order of sentence the appellants filed an appeal. The High Court at the stage of admission had suo motu issued notice for enhancement of sentence. The State had appealed for the self-same purpose. The appeals and the revision application were disposed of by a common judgment dated 6.9.2007 whereby the Division Bench of the High Court concurred with the view expressed by the learned trial Judge and, accordingly, dismissed the appeals preferred by the accused as well as by the State and resultantly suo motu by the High Court also stood dismissed. The non-success in the appeal has compelled the accused-appellants to prefer this appeal by special leave.
AILA_Q23||The petitioner is a firm carrying on business as builders, colonizers and contractors. The petitioner is the owner of 24.45 acres of vacant land situated in s village. Being engaged in construction activities it made an application under the provisions for the grant of licence for group housing scheme. This application was submitted by the petitioner on July 21, 1983 without necessary documents. After several representations the Director of Town and Country Planning Department replied that it was proposed to grant licence to the petitioner for setting up of Group Housing Colony. The petitioner was called upon to fulfil the conditions laid down in the rules within a period of 30 days from the date of service of that notice. The agreement was required to be executed on non-judicial stamp paper of Rs 3. The petitioner was also called upon to execute a bank guarantee for Rs 109.30 lakhs. On a request made by the petitioner for extension of time for furnishing the bank guarantee, time was extended (vide letter dated April 5, 1984) by four weeks. A further extension was prayed by the petitioner that was also granted on July 5, 1984 granting a further extension by four weeks. On October 19, 1984, while returning the estimates for development and service plans, respondent 2 (Director of Town and Country Planning) for 24.45 acres, the petitioner was directed to submit the estimate only for 21.15 acres. On receipt of this letter, the petitioner wrote on November 14, 1984 that the external development charges which were demanded by respondent 2 might be reduced in view of the reduction in the area. This request of the petitioner was not acceded to by the Director. The petitioner was called upon to execute an agreement under bank guarantee as already asked for. After some lapse of time, on December 12, 1987, the petitioner explained the circumstances under which he could not arrange for the bank guarantee of Rs 109.30 lakhs earlier. The bankers were willing to provide a bank guarantee for Rs 109.30 lakhs within 30 days of his intimating them to do so. It was also stated that he was willing to abide by all the directions and conditions which had been prescribed by

respondent 2. Again, on September 26, 1988, October 11, 1988, January 2, 1989 and January 7, 1989, the request was rejected for the revival of the sanction and agreeing to comply with the rules and conditions. On September 25, 1989, the petitioner was informed that it is a request for grant of a licence which was refused since it had failed to fulfil the conditions laid down under Rule 11 within the stipulated/extended period. Upon receipt of this letter, the petitioner filed a memorandum to the Governor on May 4, 1991 since the State was under President's rule. It appears from the affidavit that the Governor made a suggestion that the licence granted in February 1984 could be revalidated if the petitioner was ready and willing to pay interest at bank rate on the amount of Rs 109.30 lakhs which was demanded as a security by the Director of Town and Country Planning w.e.f. 1984. Thereupon, the petitioner consented to such a course. The affidavit further avers that the Governor while recording the statement of the petitioner directed to submit a report and to calculate the total amount. 6. With the change of the government, these directions of the Governor were not implemented. Hence, in this present petition, the petitioner prays for an order in the nature of mandamus to direct the State of Haryana to revalidate the licence/permission granted by the Director by his letter dated 'Nil' Memo No. 1823-5 DP-84 permitting the petitioner to construct the multi-storeyed houses and flats in accordance with law by accepting security/bank guarantee to the tune of Rs 109.30 lakhs as demanded by the respondent. 7. A further prayer is for permission, approval or sanction to enable the petitioner to construct the multi-storeyed houses in pursuance of the licence granted by respondent 2 in the year 1984.

AILA_Q24||These appeals are directed against the judgment of a High Court whereby an appeal and a criminal revision were disposed of. The appellants were found guilty and sentenced to undergo various terms of sentences. The Criminal Appeal was filed by three appellants questioning the conviction and sentence as recorded. Complainant filed a revision petition stating that she was entitled to compensation. Background facts giving rise to the trial are essentially as follows: "The complainant and the appellants are first cousins, and as such are closely related to each other. Their grandfather was P1. As per site plans Ex. PP prepared by P2, P3 PW4 and Ex. PT prepared by P3 PW9 (I.0.), it shows that the place of occurrence was in the common land owned both by the appellants and the complainant party. The tube well of which the pipes were being taken out by the appellants, was also in the common piece of land. P4 (hereinafter referred to as 'deceased') was standing in the water-course point B (Ex.PT). Complainant P5 was standing in the common land Point C (Ex.PT) and P6 was standing at Point D (Ex. PT). It is the appellants who went 16 to 35 feet towards the complainants where deceased P4 and the other two witnesses P5 (PW6) and P6 (PW7) were standing and thereafter attacked them. P5 (PW6) asked the appellants not to take out the iron and plastic pipes of the tube well, but firstly to talk to the elders. Malkiat Singh, Patwari (PW4), who is a key witness in regard to the ownership of the piece of land where the tubewell was installed, was not put any question regarding the ownership of the common land. P5 (PW6), in his testimony before the Court, stated that the appellants on 7.1.2001 at about 1.00 P.M. armed with spades came to the tube well and started removing the pipes, which was jointly owned by both the appellants and complainant party. On being stopped, the appellants felt offended and attacked the complainant party. He (PW6) has further stated that there was no dispute regarding the joint property, but the appellants were not on visiting terms with them as far social functions were concerned. P4 was attacked in the joint water channel and across the water channel there was the field of P7, father of P8. After leaving the common pipes of land where the tube well was installed, rest of the land had been divided by both the parties and they were cultivating the land separately and peacefully. The complainant party did not have any weapons in their hands when they had gone to stop the appellants. This witness (PW6) has stated that they did not go near the appellants, but asked them not to remove the pipes. They were at that time standing at a distance of 5-6 karms. P6 (PW7) has also reiterated the same. P5 (PW6) has stated, that P9 and P10 have their fields at a distance of about half a kills from the place of occurrence. Both these witnesses P5 (PW6) and P6 (PW7) corroborate each other inter-se and also corroborate the FIR The medical evidence also corroborates the statements given by the eye witnesses. Dr. D1 (PW 1) has stated in his testimony, that on examining P5 he found that he had received one incised wound injury on the scalp left parietal area vertical in position. Similarly on examining P6, he found the first injury to be an incised wound. Second and third were abrasions on the left shoulder and neck. The fourth injury was a lacerated wound on the right parietal area of scalp. On the post-mortem conducted on P4, an incised wound was found on the parietal area of the scalp, about 12 cms from right ear pinna backwards, traversing part of left parietal area of scalp to left occipital area. The medical evidence corroborates the ocular account." Trial court took note of the fact that the appellants and the members of the complainant

party are related to each other closely. The dispute arose because of conflicting claims as to the ownership of the land. It was submitted that the occurrence took place when the members of the complainant party came forward and obstructed the appellant from doing the work and restrained them from pulling out the pipe. There was exchange of hot words and in the process, the occurrence, according to the prosecution, took place. In essence it was submitted that the accused were exercising the right of private defence or in the alternative the occurrence took place in the course of a sudden quarrel. Stand of the State was that there appears to be some exchange of words. The trial court found substance in the plea and found the accused persons guilty. Before the High Court it was submitted that the factual scenario has not been correctly appreciated by the trial court. It noted that the appellants pulled out the iron and plastic pipes which were installed on the land jointly owned by both the parties. Since the accused persons pulled out the pipes it was natural that the members of the complainant party who were standing at a distance of 16 to 35 feets from the appellants intervened and asked them not to pull out the pipes unless the elders take a decision. The appellants did not pay any heed.
AILA_Q25||These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. The lands situated inter alia in villages V1, V2, V3 and V4 were acquired by the State for the purpose of use thereof by the Appellant. A notification was issued on 31.7.1986. The declaration was issued on 29.12.1987. Upon service of notice upon the claimants, the Collector made an award. In doing so, several deeds of sale executed between 1981 and 1982 in respect of lands adjoining some of the villages were taken into consideration and market value of the land was determined at the rate of Rs. 1.55 per sq. m. The claimants Respondents did not accept the said award and prayed for a reference to the Civil Court. Such a reference having been made the Reference Court purported to be relying on or on the basis of judgments dated 30th October, 1996 and 10th November, 1996 passed by 4th Extra Assistant Judge and 2nd Extra Assistant Judge respectively in L.A. R. Case No. 1349/92 and 1314/92 passed an award computing the amount of compensation at the rate of Rs. 10/- per sq. m. The Appellant herein was not impleaded as a party in the Reference Court. It had, thus, no opportunity also to adduce any evidence either before the Land Acquisition Collector or before the Reference Court. It preferred appeals before the High Court being aggrieved by and dissatisfied with the said judgment and award passed by the Reference Court. A contention raised by the Appellant before the High Court inter alia was that the Reference Judge acted illegally and without jurisdiction in passing the said judgment solely on the basis of the deposition of one P1 who alleged that the agricultural lands which he and others had been cultivating were of high fertility and three crops in a year were grown therein. The witness further alleged that the village was well-developed. He further contended that the lands of one P2 was acquired for the Appellant wherein compensation at the rate of Rs. 10/- per sq. m. was awarded. It was argued that the Reference Court was bound to consider the deeds of sale relied upon by the Collector in his Award. High Court rejected the said contentions stating that the Reference Court had not committed any error of law in taking into consideration the evidence adduced by the said witness. It was held: "It appears that after the evidence, another judgment was pointed to the Reference Court for which there is a reference in the impugned judgment. The lands covered under that reference cases were situated in the sim of village V1 and V5 and the Reference Court awarded Rs. 10/- per sq. mtrs. In the instant case, the lands are situated at village V1. In view of this evidence, we find no substance in the appeals and appeals are dismissed."
AILA_Q26||The hearing before us now relates to certain objections filed to the Award made by a former Judge of this Court who was appointed the sole arbitrator to adjudicate upon the dispute between the parties pursuant to the Order of this Court dated 18th November, 1987 in the circumstances as set out hereinafter. In order to appreciate the objections, it is necessary to refer to certain facts. The Settlement Commissioner llotted Plot No. 631 at L1 measuring 160 sq. yds to the Respondent under the Settlement Scheme for the refugees from Pakistan for a total price of Rs.4,800. This allotment was made by the Settlement Commissioner on behalf of the Rehabilitation Department of the Government. The Respondent applied for a loan from the Ministry of Defence for construction of the house on the said plot and a loan of Rs.15,000 was sanctioned in his favour. Under the House Construction Rules of the Government, the plans and estimates had to be submitted along with the application and a sanctioned amount was paid in four instalments at different stages of construction. The Respondent started the construction of a building on the said land. By the end of 1973, the Respondent had constructed a house on the said plot upto the roof level. By that time he had obtained and used up a sum of Rs.12,000 out of the loan sanctioned to him and only a balance of Rs.3,000 remained to be paid to him under the said loan. According to the Respondent, this amount was not sufficient for the final completion of

the house and he, therefore, sought the help of Appellant No. I who advanced a sum of Rs.5,000 to him. In September, 1973 the Respondent entered into an agreement dated September 6, 1973 to sell the house and the said plot to the Appellant No. 1. The aforesaid amount of Rs.5,000 given by way of loan was shown in that agreement as an advance paid towards the sale price. The Respondent also executed a General Power of Attorney in favour of Appellant No. 1 inter alia enabling him to carry on construction work on the said land on behalf of the Respondent. According to the Respondent, the house was not complete but the Appellants who are husband and wife were occupying the same. Under circumstances, we need not discuss here, on January 29, 1974 another agreement was entered into between Appellant No. 1 and the Respondent which has been described as an agreement for construction. Under that agreement, Rs.80,000 was to be paid by the Respondent as the price of the construction to be put up by Appellant No. I on the said plot and he was to charge Rs.20,000 as the profits and labour charges. He was to deposit Rs.15,000 with the Respondent, this transaction was sham and bogus. Disputes arose Respondent was to return the amount of Rs.1,15,000 within three years in a lump sum and on such payment, Appellant No. I was to hand over the possession of the building and the plot to the Respondent. Till that amount was paid, Appellant No. 1 was entitled to possess and occupy and enjoy the same and to receive rents thereof. According to the Respondent, this transaction was sham and bogus. Disputes arose between the parties and the Respondent filed a suit in August 1977 claiming for the return of the possession of the said plot and the house. A notice of motionfor stay taken out by the Appellants was dismissed. An appeal was preferred against the said decision. In the appeal, which came up for hearing before the Additional District Judge. With the consent of the parties, P1 was appointed as the sole arbitrator to adjudicate upon the disputes in the suit. The said P1 died in July 1979 without making any award. On an application by the Respondent, the learned Additional District Judge filled up the vacancy by appointing P2, Advocate, as the sole arbitrator. P2 made and published his award which went against the Appellants. According to the Appellants, the said award was made ex parte. The appellants challenged the award by filing objectionsbefore the learned Additional District Judge and applied for setting aside the said award. This application was dismissed by the learned Additional District Judge. The Appellants filed an appeal against this decision on October 14,1982 before the High Court but the said appeal was dismissed by the learned Single Judge of that High Court on April 30, 1985. This decision of the learned Single Judge was challenged before this Court by way of Special Leave Petition. Leave was granted and the present Appeal came to be numbered as aforesaid. This Appeal came up for hearing before a Division Bench of this Court on November 18,1987. After hearing Counsel for the parties. in order to ensure fairplay in the action, this Court set aside the award of the Arbitrator and also the judgment of the High Court and appointed a former Judge of this Court, as the sole arbitrator to adjudicate upon the disputes between the parties. The arbitrator was directed to make his award with short reasons within four months from the receipt of the the order. Certain other conditions like payment of compensation and additional expense were imposed on the Appellants. Pursuant to the said order of this Court, former judge entered upon the reference and made and made and published his award on March 18,1988. Under the said award, it was held that the Respondent was entitled to a sum of Rs.58,498.60p and interest on this amount at the rate of 18 per annum from the date of the reference to the date of the award which worked out to a sum of Rs.3,510. Taking into account the amount paid by the Respondent initially towards the arbitrator's remuneration and others costs and after setting off the dues of Appellants against the Respondent, it was held that the Respondent-claimant was entitled to recover possession of the disputed building from the Appellants and that a sum of Rs.57,753 was payable by the Appellants to the Respondent. It is this award which is challenged before us now.

AILA_Q27||Appellant before us was detained. He is the Managing Director of a company, registered and incorporated as CompanyC1. It was an exporter and held a valid licence therefor. The company was to export products of alloy steel. Upon exporting of alloy steel, it was entitled to credits under the Duty Entitlement Pass Book (DEPB) Scheme introduced by the Government of India with an object of encouraging exports. He allegedly misdeclared both the value and description of goods upon procuring fake and false bills through one P1. The said P1 was said to have been operating three firms, CompanyC2, CompanyC3 and CompanyC4. It was allegedly found that non-alloy steel, bars, rods, etc. of value ranging from Rs. 15/- to Rs. 17/- per kg. were exported in the guise of alloy steel forgings, bars, rods, etc. by declaring their value thereof from Rs. 110/- to Rs. 150/- per kg. and the export proceeds over and above the actual price were being routed through a Channel. The officers of the Directorate of Revenue Intelligence (DRI) searched the factory as well as the residential premises of Appellant and that of P1. Various

incriminating documents were recovered. Appellant and the said P1 made statements. P1 allegedly admitted to have supplied fake bills to units owned and controlled by Appellant on commission basis without actual supply of the goods. It was also found that Appellant had declared goods exported as "alloy steel" whereas after the tests conducted by Central Revenue Control Laboratory, they were found to be "other than alloy steel", i.e., non-alloy. The Consul (Economic), Consulate General of India at L1 allegedly confirmed the existence of a parallel set of export invoices. Invoices with a higher value were presented before the Indian Customs Authorities with a view to avail DEPB incentives but in fact invoices with a lower value were presented for clearance. On the aforementioned allegations, an order of detention was issued on 5.4.2005. Appellant moved for issuance of a writ of Habeas Corpus before the High Court. The said writ petition was dismissed by an order dated 23.11.2005 by a learned Single Judge. A letters patent appeal, concededly which was not maintainable, was filed thereagainst which was dismissed by reason of the impugned judgment. Although before the High Court, the principal ground urged on behalf of Appellant in questioning the legality or validity of the order of detention was unexplained delay in passing the order of detention which did not find favour with the High Court. Before us, several other grounds, viz., non placement of vital/ material documents before the detaining authority, non- supply of documents relied on or referred to in the order of detention as also non-application of mind on the part of the detaining authority had been raised. In the meantime admittedly the period of detention being over, Appellant had been set at large. He was released from custody on 17.5.2006. This appeal, however, has been pressed as a proceeding and has been initiated against Appellant.

AILA_Q28||Challenge in this appeal is to the judgment of the High Court dismissing the appeal filed by the appellants. The appeal was directed against the judgment dated 31.8.2004 passed by learned Additional Sessions Judge convicting the appellants for offence and sentencing each to undergo imprisonment for life and to pay a fine of Rs. 2000/- with default stipulation. Background facts in a nutshell are as follows: On 27th December, 2000, at about 11.00 a.m., one P1, brother of P2 (hereinafter referred to as the 'deceased') made a complaint to the officer in charge of the Police Station that at about 6 a.m. on the same day P3 s/o P4, P5 S/o P6 and P7 s/o P3 along with two others assaulted his brother P2 with spears thereby severely injuring him while he was ploughing the field. He also stated that deceased-P2 was taken to the hospital for treatment but he died there. Accordingly, a case was registered. On 4th January, 2001, nearly a week after the alleged incident, the statements of PW-1 and PW-7, the alleged eyewitnessesm were recorded by the Judicial Magistrate. On 13th May, 2002 charge sheet was filed against the appellant herein. By order dated 27th October, 2003, the case was committed by the learned SDJM(S), to the Court of the Sessions Judge, Jothat for trial of offences. On 13th November, 2003, the learned Additional Sessions Judge, Jorhat framed charge. Trial Court, as noted above, convicted the accused, which was affirmed by the High Court.

AILA_Q29||This appeal has been preferred against the judgment and order dated 5.8.2008, passed by the High Court reversing the judgment of acquittal dated 8.4.2003 recorded by the Sessions Court wherein the appellant was charge sheeted for murdering his wife, P1, by giving her Sodium Cyanide. This is a most unfortunate case, in which, a young, B.Com 2nd year student, P1 died under mysterious circumstances within 15 days of her marriage in her parent's house at L1. The appellant, P2, is post-graduate and at relevant time had been employed in the Gulf in a firm, namely, CompanyC1 dealing with golden Jewellery. The couple, after marriage on 15.5.2000, stayed for two days with the brother of the appellant at Ollur and they came back to L1 on 17.5.2000, as the parents of P1 had arranged a reception for them at their house. The couple stayed there for two days and left for L2 on 19.5.2000 and stayed in the house of PW.10, a friend of the appellant. The couple came back on 22.5.2000 to L1, the family house of the deceased, P1. The couple again went to L2 on 30.5.2000 to attend the marriage of PW.10 with one P3, which was scheduled to be held on 31.5.2000 and returned to L1, at 4.00 p.m. on 1.6.2000. The appellant left P1 at her parent's house and went to Hospital to meet his sister and mother as his mother had undergone an operation for cancer and was convalescing. The appellant returned to P1's house at about 10.30 p.m. and found that door of her room was bolted from inside and there was no response on calling to her. The door was broke opened by the appellant and P1's father. P1 was found unconscious lying on the floor. She was taken to the Government Hospital, L1, where she was declared dead by the doctors. PW.1, father of the deceased lodged an F.I.R. on 2.6.2000 at 7.00 a.m.. The inquest was conducted on the same day and post mortem was conducted on 3.6.2000, and the deceased was buried thereafter. PW.21, the Deputy Superintendent of Police while conducting the investigation of the case received information that just few days prior to the incident the appellant had procured Cyanide, thus, he was arrested on

26.6.2000. An alleged confessional statement was made by the appellant that he had purchased Sodium Cyanide from the shop of PW.7, who was dealing with jewellery as well as Sodium Cyanide. PW.7 made a statement that the appellant had procured 1 Kg. Sodium Cyanide from him between 25.5.2000 and 27.5.2000. The post mortem report revealed that P1 died of Cyanide poisoning. As per the statement of PW.9, mother of the deceased P1, the poison was given to P1 by the appellant under the guise of giving her an ayurvedic contraceptive medicine. PW.21, the Investigating Officer completed the investigation and submitted a charge sheet against the appellant for the offence. The appellant pleaded not guilty to the charge of murder and claimed trial. The prosecution examined 21 witnesses in support of its case. Appellant in his statement stated that he was innocent and there was a possibility of the involvement of PW.10, who had misbehaved with P1 and had sexual intercourse with her on 31.05.2000 when the couple was staying with him. More so, P1 might have committed suicide because of feelings of guilt for that reason. The Trial Court dis-believed the prosecution witnesses and acquitted the appellant vide judgment and order dated 8.4.2003. 5. The High Court considered the submissions made by the prosecution that the appreciation of evidence by learned Sessions Judge was not proper one, thus, the findings of fact recorded by the Trial Court were perverse. The circumstances proved, ruled out the possibility of suicide. The medical evidence proved beyond doubt that the deceased died of Cyanide poisoning. Nobody except the appellant had procured the Cyanide poison and the appellant had persuaded the deceased P1 to take it under the garb of it being an oral contraceptive. There was no question of dis-believing all the prosecution witnesses including the parents and sister of the deceased, P1. Appellant was unhappy with the deceased for her non-cooperation in carnal intercourse. Therefore, all the circumstances necessary to record a finding of guilt against the appellant stood proved by the prosecution. The High Court, vide impugned judgment and order dated 5.8.2008, accepted the State's appeal and reversed the judgment and order of acquittal dated 8.4.2003 passed by the Trial Court. Hence, this appeal.
AILA_Q30||That the deceased P1 got married to P2, the 2nd respondent herein, in the year 2001. In her marital home, she was ill-treated by her parents-in-law, respondents 1 and 3 herein. They would constantly tell her that she was incapable of doing the house work properly, and her mother-in-law did not give her sufficient food to eat. On 29.11.2002 at noon, when the deceased returned home after her bath in the pond, her mother-in-law hurled abuses at her and inquired what she had been doing at the pond. When she replied that she had been washing clothes there, her mother-in-law gave her few slaps, as a result of which the deceased began to cry. Her mother-in-law then directed her husband to burn her alive. Her father-in-law had thus poured kerosene on her and had asked his wife to set her on fire, as a result of which her mother-in-law lit a matchstick and threw the same at her. Since the deceased began to scream, her parents-in-law came out of the house and bolted the door from the outside. On hearing her shriek, a few villagers sent news of the same to her parents who resided in a neighboring village, at a distance of about half a kilometer. Her father, mother and uncle thus came to the place of occurrence. The door was opened by them, and the deceased was taken out. The deceased P1 narrated the said incident to her parents, and thereafter she was taken in a trolley to the Police Station in a severely burnt condition, where she herself lodged a report narrating the incident, and at about 2 p.m., on the basis of the complaint, an FIR, Ex.P-17 was recorded. The Investigating Agency made all the necessary arrangements in order to record her dying declaration and the Executive Magistrate PW.12, was called for the aforementioned purpose. Her dying declaration was recorded by the Executive Magistrate and subsequently, the deceased was admitted to the Government Hospital at 3.25 p.m., where she died at 3.35 p.m. Intimation of her death was communicated by the hospital officials to the Police. The Investigating Agency thus took over the dead body of the deceased, and sent it for post-mortem. They also seized all the necessary articles from the spot, prepared the panchnama, and after recording the statements of the witnesses, submitted a charge sheet before the competent court, which in turn, committed the case to the Court of Sessions. Hence, trial commenced after framing charges. The accused persons abjured their guilt. In order to prove the charges, the prosecution examined as many as 17 witnesses, and placed reliance on Ex.P1 to P24. The respondents- accused took the defence of an alibi in their statement, stating that they had been in their agricultural field at the time of the said incident and it was here that they had received information about the incident. The deceased had committed suicide and they were being falsely been implicated. The learned Additional Sessions Judge, in Sessions Trial No.305 of 2002, vide judgment and order dated 6.12.2003, after appreciating the material on record, recorded findings of fact to the effect that the deceased had not committed suicide, and that the respondents-accused were guilty of the offences. They were convicted and sentenced, in default of payment of fine, to further undergo one month RI; undergo imprisonment

for life and a fine of Rs.2,000/- each, in default of payment of fine, to suffer further RI for 6 months. Aggrieved by the aforesaid order of conviction and sentence, the respondents-accused challenged the same before the High Court which was allowed by the High Court vide its impugned judgment and order, acquitting all the accused.
AILA_Q31||This appeal by special leave is directed against the judgment and order dated 26.5.2006 passed by the learned Single Judge of the High Court whereby the learned Single Judge has allowed the writ petition and set aside the impugned order passed by the Revisional Court and remanded the matter back to the Revisional Court for deciding afresh on the basis of direction given by the Court. The brief facts which are necessary for the disposal of this appeal are that a Writ Petition was filed by the petitioner (Respondents herein) before the High Court praying to quash the order dated 21.2.2006 passed in Criminal Revision No.166 of 2004 by the Additional Sessions Judge whereby the revision was allowed and the impugned order passed by the Court below was set aside. One P1 and P2 were recorded bhumidhar of the plot in dispute No.1232, area 3 bigha and plot No.1233, area 4 bigha 17 biswas situated in a village. Thereafter, a forged power of attorney was got executed in favour of P3 allegedly executed by P1 and P2. On the ground of forged power of attorney, P1 lodged the F.I.R. The holder of the power of attorney P3 is the real brother-in-law of P4, Respondent No.9 and a sale deed was executed by him in favour of P5, P6, P4 and P7 all sons of P8. On 17th June, 1993, a registered sale deed had been executed by P1 himself in favour of the respondents P9 and P10, who came in possession over the property in dispute. Therefore, share of P1 was firstly transferred by the holder of the power of attorney and same was again transferred by the owner of the property of P1. Therefore, dispute arose between both the vendees of the sale deeds. An application was moved on 13th June, 2003 on behalf of the respondents in the Court of S.D.M. upon which the report was called from the concerned police station. Similarly, report was also summoned from the Tehsildar at the instance of the respondents and police submitted the challan. Tehsildar also submitted a report with regard to the mutation. P6 started constructing shops on the disputed land with the help of his companions because they themselves wanted to raise construction upon the land. Therefore, a breach of peace between both the parties arose. The S.D.M. concerned passed a preliminary order as well as the attachment order. After appearance, an application on behalf of the appellants was moved which was rejected vide order dated 12th July, 2004 by S.D.M. Aggrieved by this, the legal representative of P5, P6, P11, P12 and P13 filed Criminal Revision before the Additional Sessions Judge. Learned Additional Sessions Judge by Order dated 21st February, 2006 quashed the order of the S.D.M. Similarly, the order of attachment and supurdaginama regarding disputed land was also quashed and directed that the possession be given to the revisionist upon the disputed land. Thereafter, P9 and others filed a writ petition before the High Court. The High Court after considering the writ petition came to the conclusion that the learned Additional Sessions Judge has gone wrong in quashing the proceedings as well as the order of attachment and supurdaginama. Aggrieved against this order the present appeal was filed before this Court.
AILA_Q32||On 9th May, 2004, the marriage of the daughter of one P1, the brother of P2 PW.1, was to be solemnized in village Janephal, District Aurangabad. P2 PW.1, arranged a water tanker on the 6th May, 2004. As the tanker was being taken towards P2's house the accused appellants, obstructed the way by putting stones and thorny bushes. The accused also abused PW.12 and the deceased P3. P2 reached the village at about 9.30 a.m. and was told by the deceased not to take the tanker to his well, as planned as, the appellants had obstructed the passage in that direction. The tanker was accordingly brought to its destination by some other route by P3. P3 and P2, thereafter, went to police station Shioor for lodging a complaint with respect to the behaviour of the appellants and while they were returning from the police station they were waylaid by the appellants, P4 armed with an iron rod and all the others with sticks. They also attacked P3 with their weapons on which he became unconscious and fell to the ground. He was, thereafter, removed to the hospital by some of the witnesses and an FIR was lodged at Police Station. On the completion of the investigation the appellants were brought to trial for offences punishable and were sentenced to undergo life imprisonment for the main offence and for three months for the offence. This judgment has been confirmed by the High court in appeal. This appeal by way of special leave is before us today.
AILA_Q33||This is an appeal by special leave from the judgment and order of the High Court dated March 27, 1958, whereby the said High Court maintained the conviction of the appellant but reduced the sentence of four years' rigorous imprisonment passed on the appellant by the Special Judge, Kanpur, to two years' rigorous imprisonment. The short facts are these. The appellant P1 was employed in the Police Department. He started his service as a constable on a

salary of Rs. 13 per month from August 1, 1930. In 1946 his pay was increased to Rs. 46 per month. He was appointed a Head constable on a salary of Rs. 50 per month in 1947. He officiated as a Sub-Inspector of Police sometime in 1948 and 1949 on a salary of Rs. 150 per month. On March 1, 1949, he was reverted to his post of Head constable. Between the dates February 27, 1951, and September 9, 1952, he was posted as a Head constable attached to the L1. The charge against him was that in that capacity he dishonestly or fraudulently misappropriated or otherwise converted to his own use many articles, principally those seized in connection with excise offences kept in deposit in the said L1. These articles included opium, bottles of liquor etc. The charge further stated that a sum of Rs. 9,284-1-0 was recovered on a search of his house on September 9 and 10, 1952 and this amount was disproportionate to the known sources of income of the appellant. There was an allegation by the prosecution that the acts of dishonest misappropriation etc. were committed by the appellant in conspiracy with two other persons called P2 and P3. Therefore, the charges against the appellant were (1) for the offence of conspiracy (2) for the offence for the acts of dishonest misappropriation or user and (3) for an offence in respect of a particular entry said to have been forged in the Register of Properties kept in the L1. The learned Special Judge who tried the appellant P2 and P3 recorded an order of acquittal in respect of the latter two persons. As to the appellant, he was also acquitted of all the charges except one. On this charge the learned Special Judge recorded an order of conviction, but this was based on the sole ground that the appellant had failed to account satisfactorily for the possession of Rs. 9,284-1-0 which, according to the finding of the learned Special Judge, was disproportionate to the known sources of income of the appellant. It should be noted here that the learned Special Judge held the appellant not guilty of the various acts of dishonest misappropriation or user alleged against him in respect of the properties kept in the L1. In his appeal to the High Court the appellant urged various grounds, one of which was that Hon'ble Justice could not be convicted on the rule of presumption laid down when on the only charge of criminal misconduct alleged he had been found not guilty. The High Court repelled this contention and upheld the conviction of the appellant but reduced the sentence.
AILA_Q34||These writ petitions are filed as Public Interest Litigation by the two petitioners herein who were Members of the Parliament at the time of filing the petitions. Respondent nos. 4 and 5 were formerly Chief Ministers. It is alleged by the petitioners that they filed writ petitions before the High Court alleging large-scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandary and pursuant to these allegations, several cases were registered by the Police and investigation of these cases was later handed over to the Central Bureau of Investigation. In an earlier petition filed before this Court on 19.3.1996, this Court directed that the investigation shall be monitored by the High Court and in that Order, it was indicated that the CBI Officers entrusted with the investigation shall inform the Chief Justice of High Court from time to time of the progress made in the investigation and if they needed any directions in the matter of conducting the investigation, obtain them from him and it was also said that the learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. It was also directed that the State Government shall co-operate in assigning adequate number of Special judges to deal with the cases expeditiously so that no evidence may be lost. The petitioners allege that consequent upon change of the Government in the Centre, attempts have been made to delay and interfere with the judicial process. It is alleged that the public prosecutors who were handling the cases were removed and to protect the interests of respondent nos. 4 and 5, convenient prosecutor was appointed. The respondent no. 5 is an accused in a case. The allegation in that case is that respondent no. 5 as Minister between 1990 to 1996 had acquired assets disproportionate to his known sources of income. Chargesheet was filed in the Court of the Special Judge, CBI. Respondent no. 4 also was charge sheeted in the same case for abetmen. The petitioners allege that certain income tax cases of respondent nos. 4 and 5 were pending before the Income Tax Appellate Tribunal (ITAT) and one P1 who was a member of the ITAT had been hearing those cases and that respondent nos. 4 and 5 found it difficult to pursue the hearings before the said ITAT member and hence at their influence P1 was sent on deputation and he was replaced by one P1 who was on the verge of retirement. It is further alleged that the new member alongwith another member heard these cases within two weeks and orders were pronounced in favour of respondent nos. 4 and 5. It is also alleged that respondent no. 3, namely, the Central Board of Direct Taxes did not prefer appeal in these cases though the decision went against the revenue. This, according to the petitioners, was to help respondent nos. 4 and 5 in the cases filed against them based on the allegation that they acquired assets disproportionate to their known sources of income. The petitioners have also alleged that the Special Case pending

before the Special Judge, CBI was at the final stage of hearing and that the Director, CBI, presumably under pressure from the accused changed the prosecutor and appointed one P3 who was only a retired Deputy Superintendent of Police and had no experience of conducting the prosecution. According to the prosecution, this was done at the fag end of the prosecution case to help the accused. The petitioners have made allegations against respondents 1 to 3 also that they were acting arbitrarily and interfering in the judicial process to benefit the respondent nos. 4 and 5. The petitioners have alleged that respondent nos. 4 and 5 obtained stay of proceedings of the case pending before the Special Judge from this Court suppressing some material facts. It is alleged that the respondent nos. 4 and 5 still wield influence and power and, therefore, this Court should monitor the trial of the case pending before the Special Judge, CBI. In these Writ Petitions, the petitioners have prayed mainly four reliefs. The first relief prayed is to issue an appropriate writ, order or direction monitoring the conduct of the trials relating to fodder scam cases proceedings against respondent nos. 4 and 5. The second prayer is to appoint the very same prosecutor who had been conducting prosecution earlier and to direct the High Court to see that no prosecutor or CBI Officer attached with the investigation and trial of the case should be removed, harassed or victimized for discharging their duties. The petitioners have also prayed that at least one inspector be provided for each fodder case. The petitioners have also prayed for cancellation of bail granted to respondent nos. 4 and 5. Petitioners have further prayed for a direction to respondents 1 to 3 to file an appeal against the orders passed by the ITAT. AILA_Q35||Two appellants, who are brothers, along with their father P1 was prosecuted for an offence. Prosecution case in that the appellants have a sweetmeat shop in L1. PW 6 P2 is residing in a house opposite to the shop. On April 13, 1980, P1, the father of the appellants requested P2 to permit him to tie a rope of the canopy with the projection of the house of the witness, but he did not allow the same. P1 was offended. On April 18, 1980, a wet underwear drying-up on the roof flew away which was picked up by the first appellant P3. But when witness P2 demanded the same, the appellant had declined to return the same saying that he had found the same lying in the bazar and moreover he had not allowed his father to tie the rope. There was an exchange of abuses, but the matter ended there.In the evening on that day when P1 visited the shop of the appellants, P2 complained about the conduct of the first appellant P3. However, P1 persuaded the first appellant to return the underwear of witness P2. At about 9.30 p.m. on that day deceased P4 accompanied by PW P5 visited the house of witness P2 for settling the details of the marriage that was to be performed in the near future. At about 10.00 p.m., deceased P4 and PW P5 left the house of witness P2. P2 followed them. When they reached the bazar locality, all the three of them saw the two appellants and P1 standing in front of their shop and on seeing deceased P4 and his companions, they raised chargers. P1 raised lalkaras and exhorted the appellants to catch hold of witness P2 and that he should not be allowed to escape. It is alleged that appellants 1 and 2, each of them was armed with a dagger. The first appellant P3 gave a blow with dagger on the left side of the chest of deceased P4, who fell down on the ground. When PW P5 rushed to the rescue of deceased P4, second appellant P7 gave two blows with a dagger and he also fell on the ground. Witness PW 8 P6 raised an alarm and the rickshaws to the hospital where on reaching the hospital P4 was pronounced dead by the Medical Officer who examined him. PW P5 was admitted in the hospital. PW 6 P2 lodged the first information report and the offence was registered. After completing the investigation, the appellants were prosecuted and tried for the offences hereinabove mentioned. At the trial PW P2 and PW P6 were examined as witnesses to the occurrence. PW 4 Dr. D1, who conducted the autopsy on the dead body of deceased P4 deposed that he found one incised stab wound 4 1/2 cm. x 2 1/2 cm. on front of left side of chest at 6 O'clock position, 3 1/2 cm. below left nipple oblique in direction. He also found two minor abrasions, one on front of left knee and the other on left side of fore-head. In his opinion, death was due to shock and haemorrhage as a result of injury to heart corresponding to injury No. 1 and in his opinion this injury was sufficient in the ordinary course of nature to cause death. The defence of the accused, the first appellant P3, was that he caused one single injury to deceased P4. He has given his own version of the incident to which we would presently refer. Appellant 2 and P1 denied having committed any offence. The learned Additional Sessions Judge rejected the defence version put forth by the first appellant P3 as unworthy of credit and held that the evidence of two witnesses P2 and P6 was reliable and is borne out by a part of the statement made by the first appellant P3 . He however rejected that the first appellant caused injury to P4 in furtherance of the common intention of all the accused. Accordingly, the second appellant P7 was held responsible for his own act of causing injury to PW P5. The Sessions Judge was not satisfied with regard to the participation of the third accused P1 and he was given benefit of doubt and acquitted. Accordingly, the first appellant P3 was convicted for an offence and was sentenced to

suffer imprisonment for life and to pay a fine of Rs. 2000 in default to suffer further imprisonment for one year. Second appellant P7 was held guilty for an offence, and as he was aged about 17 years on the date of the occurrence with no previous conviction, he was given benefit of a provision. First and second appellant having been dissatisfied with the order of the Sessions Judge, appealed to the High Court. The High Court agreed with the findings recorded by the learned Additional Sessions Judge and confirmed the conviction and sentence of the appellants. AILA_Q36||Interpretation and/or application of Medical Benefit Rules applicable in the State S1 as also in the State S2 is in question before us in these appeals which arise out of the judgment and order dated 20th June, 2005 passed by S1 High Court in Writ Petition No. 10942 and that of the judgment and order dated 4th August, 2005 passed by the S2 High Court in D.B. Civil Writ Petition No.6502 respectively.Respondent in the S1 case is an officer working in the Office of the Department of Commercial Taxes. He underwent 'Coronary Artery' Bypass Surgery in the Hospital H1 having been admitted on 19th June, 2000. A sum of Rs.1,50,600/- was said to have been incurred by him by way of medical expenses. He claimed re-imbursement thereof. State S1 sanctioned and reimbursed a sum of Rs.39,207/-. Feeling aggrieved, a writ petition was filed which, by reason of the impugned judgment, has been allowed. S2 case, relates to one P1, who was a Judicial officer. He had been suffering from some kidney problems. Respondent herein is his mother. P2 was being treated for renal failure in 1997. He was referred to Hospital H2 for kidney transplantation by the Hospital H3. However, as H2 showed its inability to admit him because of non-availability of bed. Transplantation of kidney was carried out in Hospital H4, in 1997. Respondent, who was also an employee of the State claimed reimbursement of the said medical expenses. However, a sum of Rs.50,000/- was allegedly found admissible for the purpose of reimbursement out of the total claim of a sum of Rs.2.11 lacs. Respondent, however, claimed that the entire sum may be reimbursed. Other medical expenses incurred by P2, as follow up measures, have been reimbursed to the respondent herein. P2 joined S1 Judicial Service in the year 2000. In February, 2003 he got himself treated in H4. Allegedly his case was not referred therefor by the H3. As he was not treated by H2, he filed a writ petition in the High Court of Delhi for a direction to admit him therein. However, because of an emergent situation, he got himself admitted in H4. The said writ petition was withdrawn. In the month of May, 2003 he again came and got himself admitted and treated in Hospital H4 at L1. He filed a representation before the Registrar General of the High Court of S2 that on account of the sudden demise of his maternal uncle, he had to go to L1 and as he fell ill there, went straightaway to Hospital H4. He, therefore, prayed for reimbursement of his medical expenses incurred on that occasion also. Indisputably, however, the Principal and Controller, Hospital H3, on or about 5th July, 2003, referred him to Hospital H1. Allegedly in the reference order it was mentioned that the same was subject to medical expenses with a ceiling of Rs.10,000/- only. P2 obtained treatment in the Hospital H4 from 4th July to 29th July, 2003. He unfortunately breathed his last on 7th November, 2003. Respondent claimed medical reimbursement to the tune of Rs.6,52,148/- with interest. Only a sum of Rs.75,000/- was, however, sanctioned by the State of Rajasthan as being admissible, purported to be in terms of the Rules.Feeling aggrieved, a writ petition was filed in the High Court of Rajasthan which by reason of the impugned judgment and order has been allowed directing :- As a result of the aforesaid discussion the writ petition succeeds and same is allowed. The respondents are directed to release the amount of Rs.6,52,148/- in favour of the Petitioner of the medical expenses bills of Hospital H4, P1, where his son late P2, an officer of the S1 Judicial Service was treated, within a period of two months from the date of receipt of the copy of this order. The respondents are further directed to pay to the petitioner on the aforesaid amount the interest at the rate of 6% per annum from the date of submission of the first medical bill for reimbursement of the amount of Hospital H4, New Delhi, till the payment thereof is made." AILA_Q37||Appellants call in question legality of the judgment rendered by the High Court upholding conviction of the appellants (hereinafter referred to as the 'accused') and sentence as imposed by the trial Court which had sentenced each to undergo rigorous imprisonment for three months, two years and seven years respectively with separate fines for each of the alleged offences with default stipulations. Background facts leading to the trial of the accused appellants are as follows: The case was registered on the basis of information lodged by P1 (PW-6), which was recorded on 10.11.1989 at about 2.00 a.m. According to the informant, he and his son P2's wife P3 (PW- 7) were sitting in the courtyard of the house of P2 (hereinafter referred to as the 'deceased'). It was about 11.00 a.m. on 9.11.1989 when deceased was coming from the village after purchasing vegetables. When he reached near the house of P4, son of P5, P6 (A-1) armed with a Gandasi and P7 (A-2) armed with a lathi were present there. P7 made an obscene gesture. At this P7 and the deceased exchanged hot words and abused each other. P6 gave a Gandasi

blow on the right hand of the deceased, which caused a grievous injury. P7 gave a lathi blow on the left foot of the deceased and also gave a thrust blow of lathi on the left side of his head. Deceased fell down on the ground. The occurrence was witnessed by P1 (PW-6) and P3 (PW-7). Both of them took P2 injured to their house. When P1 and P3 raised alarm, both the accused persons ran away from the spot. Since the condition of P2 became serious during the night time, he was taken to the Primary Health Centre. On 10.11.1989 at night at about 0.15 a.m. Dr.D1 examined P2. He found injury No.1 which was an incised wound in the middle phalanx of the index finger of right hand. The second injury was an abrasion on the lateral side of upper 1/3rd part of left leg and the patient complained of pain on different parts of the body. Dr.D1 sent information to the Police Station. ASI P7 reached the Primary Health Centre and recorded the statement of P1 which is the FIR. On the basis of this statement, FIR was recorded by ASI P8. P2 expired at about 1.50 a.m. on 10.11.1989. Hence, information to this effect was sent. The accused persons were charged for offences. The accused persons pleaded innocence and claimed trial. Eight persons were examined to further the prosecution case. P1 (PW-6) was the complainant and claimed to be an eye-witness. P3 (PW-7) wife of the deceased also claimed to be an eye-witness. Placing reliance on their evidence, the learned Additional Session Judge found the accused persons guilty and sentenced them to undergo sentences as noted above. In appeal, the High Court confirmed the conviction and the sentences. In support of the appeal, learned counsel for the accused appellants submitted that the prosecution version was based on testimonies of relatives and, therefore, does not inspire confidence. Further there was delay in lodging the FIR. Additionally, it was submitted that the sentences imposed were high.
AILA_Q38||The appellant herein is a Senior Manager in a fertilizer company C1. The said company is engaged in manufacturing and selling of fertilizer. The Government of India in exercise of power has framed an order known as the Fertilizer (Control) Order, 1985 for controlling the quality of fertilizer. It appears that the samples of fertilizer sold by the appellant was taken from stitched bags of fertilizer and thereafter sent to laboratory for analysis. It is alleged that the laboratory reported that the fertilizer is sub-standard. It is further alleged that on the strength of the said report the respondent threatened the appellant to prosecute him. It is under such circumstances the appellant filed a petition before the High Court challenging the validity of Clause 19 of the Fertilizer (Control) Order. The case of the appellant was that since Clause 19 does not permit an accused a right to adduce evidence to contradict the report of the public analyst, the said clause is ultra vires articles of the Constitution. The said contention of the appellant was accepted by a Single Judge of the High Court. Consequently, Clause 19 of the Fertilizer (Control) Order was struck down. Aggrieved by the judgment of the learned Single Judge, the respondents preferred a letters patent appeal before the Division Bench of the High Court. The Letters Patent Bench, allowed the appeal and set aside the judgment of the learned Single Judge. It is against the said judgment of the High Court, the appellant is in appeal before us. It is not disputed that no charge-sheet on the strength of public analyst's report has been submitted to the Court against the appellant.
AILA_Q39||Challenge in this appeal is to the order of a High Court allowing the appeal filed by the respondent (hereinafter referred to as the 'accused'). The accused was convicted for offence and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation by Principal District Judge. He was also convicted for other offences punishable and sentence to undergo rigorous imprisonment for 10 years and to pay a fine. Background facts in a nutshell are as follows: The deceased is one P1, a Sri Lankan student, who was residing in the first floor of the house belonging to one P2 (P.W.1). The Accused is also a Sri Lankan student studying in a different college, but staying in the second floor of the same premises. The occurrence allegedly took place in the afternoon of 22.4.2003. The First Information Report was lodged by P.W.1 on 24-4-2003 at about 9.30 A.M. It was indicated in the First Information Report that on 24.4.2003 at 9.00 A.M., while the informant had gone to perform pooja in the first floor of the house, he got foul smell in the last room of the first floor and found blood seeping through the front door. On opening the window he noticed that P1 was lying in a pool of blood with her face covered with a bag. On the basis of the aforesaid F.I.R., investigation was taken up initially by P.W.40. Subsequently on the basis of the order of the High Court, such investigation was completed by P.W.42.The accused is stated to have been arrested on suspicion on 26.4.2003. On the basis of the statement of the accused, prosecution discovered many materials including a knife and a log allegedly used for killing. Initially, P.W.40 suspected the role of P.W.1, his wife P.W.2, P.W.3, from whose house certain incriminating material were recovered allegedly on the basis of statement of the accused as well as P.W.4, who was working as a cleaner in the vehicle of P.W.1. Subsequently, however, P.W.42, who took over investigation from P.W.40 filed charge-sheet

only against the present appellant on the footing that P.Ws. 1 to 4 had no role to play in the crime.5. The prosecution relied upon only circumstantial evidence, namely, confessional statements of the accused leading to recovery of various incriminating materials. Ex.P-6 is the statement leading to recovery of Travel bags (M.Os. 2 & 3), knife (.M.0.5), wooden log (M.0.28), rubber gloves (M.0.29 series) cotton rope with human hair (MN.O.30 series), two sponges soaked with blood (M.0.31 series), bloodstained blue clolour jean pant (M.0.32), bloodstained white banian (M.0.33), colour banian (M.0.34), bloodstained grey colour pant (M.0.35), bloodstained pillow (M.0.36), plastic bucket (M.0.37) from the house of P.W.3. Ex-P-8 is the statement leading to recovery of computer and its accessories (M.Os. 6 to 17) from the house of P.W.15, a classmate of the accused. Ex.P-10 is the statement relating to jewelleries, ultimately leading to recovery of gold ingots (M.O.18 series) from the house of P.W.19 on the basis of other connecting statements of P.W.17 and P.W.18. These three statements, Exs. P-6, P-8 and P-10 dated 26-4-2003, were made before P.W.40 in the presence of P.W.22 and C.W.1. The other confessional statement Ex.P-12 dated 22-9-2003 made before P.W.42 and Subbiah and P.W.24, led to recovery of "M" dollar (M.0.38) and key chain with key chain in (M.0.39) from the toilet in the room of the accused. The prosecution has also relied upon the alleged motive to the effect that the accused urgently wanted money with a view to increase his marks in Mathematics and, therefore, the accused had stolen articles belonging to the deceased. The trial court found the respondent guilty and recorded conviction and imposed sentence as aforestated. The High Court found that the circumstances highlighted were not sufficient to fasten the guilt on the accused, and directed acquittal. Learned counsel for the appellant submitted that the High Court failed to notice that the circumstances highlighted clearly establish the chain of circumstances which established the prosecution version and the High Court was not justified in directing acquittal. Learned counsel for the respondent on the other hand supported the judgment of the High Court.
AILA_Q40||Having been selected by the Public Service Commission, the respondent herein was appointed as Law Officer-cum-Draftsman in the Directorate of Cooperation. There was only one post in the same Cadre and it had no promotional avenues. He filed a representation that his post be upgraded or two promotional avenues be provided to him. Several representations made by him having not received consideration at the hands of the appellants, the respondent herein filed a writ petition seeking for a specific direction upon the appellant herein to provide at least two promotional avenues. The said contention of the respondent was accepted by the High Court and by reason of its impugned judgment the appellant was directed to provide 'the graded scale' to the appellant by providing three grades, the initial being Grade III which is the Post of Law Officer cum Draftsman and thereafter Grade II and Grade I. Officer of Judicial Service. It was further directed: "The scale of pay of Grade II Law officer-cum- Draftsman shall be same as Grade-II officer of the Judicial Service. The scale of pay of Grade-I Law Officer-cum-Draftsman shall be equal to the scale of pay of Grade-I officer of Judicial Service." Questioning the said direction, the appellants are before us. The learned counsel appearing on behalf of the appellant would submit that the High Court went wrong in issuing the aforementioned direction. The learned counsel would urge that the respondent herein did not have any legal right to be promoted to a higher post far less the right to get the scale of pay of Grade I officer of the Judicial Service. Such a direction by the High Court, the learned counsel would contend, is wholly without jurisdiction. The learned counsel, appearing on behalf of the respondent, however, has supported the said order.
AILA_Q41||Appellant calls in question legality of the judgment rendered by High Court confirming his conviction for offence and sentence of imprisonment for life as awarded by the learned Sessions Judge. Background facts as unfolded during trial by the prosecution are essentially as follows. One P1 (hereinafter referred to as the 'deceased') was having industry and he employed a number of girls. The accused used to make fun of the girls/workers outside the factory and this was objected to by the deceased several times. On that score, there had been enmity between the deceased and the accused. At about 8.30 p.m. on 1.5.1990, PW-1, PW-2 and one P2 were standing in front of L1 ground, south of Mail Road. The accused was sitting on the eastern side of a culvert. There was a tube light burning and hence there was enough light at that place. At that time, the deceased, who came in a bicycle proceeding from east to west, took a turn towards south. The accused rushed to the deceased saying "you die, old man" and hit him with a stick (M.O.1) on his head. The deceased sustained injuries and there was profuse bleeding. PW-1, PW-2 and P2 immediately went near him and when the accused saw them coming near ran towards west, leaving the weapon viz., M.O.1 stick. Thereafter, PW-1, PW-2, P2 and the wife of the deceased took the deceased to the Government Hospital. After giving first aid to the deceased, the doctors in the said hospital advised to take the deceased to L2 for further treatment. The aforementioned persons thereafter took the deceased to L2 and at the

Government Hospital, the deceased was treated by Doctor D1 (PW-6). The doctor found several injuries. PW-1 narrated the incident to the Head Constable (PW-10) at the police station who recorded the first information report (Ex.P-11). Same was dispatched to the Court of Judicial Magistrate. Assistant Surgeon, Government Hospital (PW-7) treated the deceased who breathed his last at about 1.25 a.m. on 2.5.1990. On receiving information about the death information was sent to the Court of Judicial Magistrate. On postmortem 6 injuries were noticed, out of which 3 were external and the rest were internal. Injuries 1 and 2 as noticed were abrasions but the fatal injury i.e. injury No.3 was stated to be 4" linear oblique sutured wound over the right parietal scalp. The doctor opined that the injury was sufficient in ordinary course of nature to cause death. On 4.5.1990 the accused was arrested and after completion of investigation the charge sheet was placed. The accused pleaded innocence.The Trial Court found that the evidence of eye witnesses PWs. 1, 2 and 3 were cogent and credible. The accused used to tease girls working in the factory of the deceased. When the deceased objected to the same, there was some misunderstanding and at the time of occurrence when the deceased was coming by bicycle, the accused rushed towards him and attacked him; resulting the fatal injury. When the eye witnesses rushed to help the deceased, the accused ran away. Placing reliance on the evidence and considering the entire material on record the trial Court found the accused guilty and convicted as aforesaid. An appeal was preferred before the High Court questioning the conviction and sentence. Before the High Court, it was urged that PWs. 1 and 2 were related to the deceased, and PW-3 was a chance witness and no credence should be put on their evidence. The High Court did not accept the plea and finding the analysis of evidence by the trial Court to be in order, upheld the conviction and sentence.

AILA_Q42||This appeal arises out of the judgment dated 23.8.2016, passed by the High Court wherein High Court has dismissed the petition filed by the appellant. Records reveal that the parents of the appellant, namely, P1 and P2, entered into an agreement to sell dated 14.1.1997 with Respondent No.2 herein. The sale consideration was Rs.33,50,000/- (Rupees Thirty Three Lakhs Fifty Thousand only); the parents of the appellant received earnest money of Rs.6,50,101/- (Rupees Six Lakhs Fifty Thousand One Hundred One only) and remaining amount was to be paid at time of registration of the sale deed. The appellant however denies about the receipt of earnest money of Rs.6,50,101/- by his parents. It seems that the said transaction for agreement to sell was not completed. Civil Suit in that regard is filed and is pending. Respondent No.2 lodged the complaint before the police authorities, making allegations of cheating, breach of trust, etc., against the parents of the appellant as well as the appellant, which came to be registered as FIR No.03/2016. Charge-sheet No.23/2016 also came to be filed against the three persons, including the appellant. Cognizance was taken by the Chief Judicial Magistrate, against the appellant and his parents. The appellant moved an application before the High Court for quashing the proceedings against him and the same came to be dismissed by the impugned judgment.

AILA_Q43||Transfer Petition have been filed to transfer the petitions filed pending before the High Court of S1 to the High Court of S2. The petitioner got married to Lt. P1 on 09.03.2012 as per Hindu rites and customs. Petitioner's husband Lt. P1 is a naval officer who was then posted at S1. After marriage, the petitioner was residing with her husband at S1. As brought on record, the relationship between the petitioner and her husband was not very cordial. On 22.02.2013, the petitioner gave an oral complaint that her husband was withholding her identity card, laptop, mobile phone, original marriage certificate etc. The respondent was called to the police station and directed to handover the belongings to the petitioner. On 04.04.2013, the petitioner lodged a complaint against her husband, her parents-in-law and sister-in-law alleging that they have subjected her to physical and mental cruelty. The petitioner had also levelled charge of sexual abuse against five naval officers and wife of one of the naval officers. Based on her complaint, a case was registered in FIR for the offences punishable against the petitioner's husband Lt. P1, her parents-in-law, sister-in-law and the said five naval officers and wife of one of them. In the complaint lodged subsequently, the petitioner had made allegations of wife- swapping and also implicated new names. Investigation in the said case is pending with Police Station S1. Petitioner's husband had moved an anticipatory bail application before the High Court of S1, which was rejected vide order dated 10.06.2013. While declining anticipatory bail, the High Court has directed that a thorough investigation must be conducted by the police. Pursuant to the said order of the court, Deputy Commissioner of Police vide order dated 12.06.2013 constituted a special team headed by the Assistant Commissioner of Police, S1. Navy officers shown as accused in FIR No.260 of 2013 and private respondents in these transfer petitions namely, Capt. P2, P3, Lt. P4, P5 and P5 have filed petitions before the High Court of S1, which the petitioner now seeks to transfer. The petitioner claims transfer of the said two petitions contending that she

has no means or a male member in her family to support her to pursue the case at S1. The petitioner also alleges that she faces threat to her life on account of the private respondents. When these transfer petitions came up for hearing, by an order dated 16.09.2013, this Court granted interim stay of further proceedings in the said quash petitions.
AILA_Q44||This petition is by the State directed against the order dated 10.11.1998 passed by the High Court by which the charges framed against the respondent were quashed. The relevant and necessary facts to dispose of this petition are: The respondent was working as a Road Transport Inspector in the Regional Office of the Road Transport Corporation, Bhopal and is a public servant as such. A complaint for the check period 25.9.1982 to 27.3.1993 was filed stating that he had acquired the property in excess of the known source of his income. During the investigation properties and assets belonging to his mother-in- law, father, brother and nephew were shown as assets of the respondent. The assets of his wife, who is an income-tax payer and a self earning member, were also connected with the assets of the respondent. While submitting charge sheet several important documents, which were collected during the course of investigation, were withheld. According to the respondent the said documents supported him. If those documents were considered even prima facie there was no scope to frame charges against him. At the time of framing charges the respondent made an application seeking production of these documents in court before proceeding to frame charge. But the said application was rejected stating that for the purpose of framing charges only the documents forwarded to the court need to be considered. Hence he filed Criminal Revision in the High court. The said Revision Petition was disposed of by the order dated 8.9.1997 in the following terms: - "In the result the revision is allowed, the order impugned is set-aside and it is directed that the documents made available by the accused during investigation be produced and may be taken into consideration by the court below while framing the charge." Thereafter the trial court framed charges. Aggrieved by the order dated 4.4.1988 framing charges in the Special Case No. 26/96 by the Special Judge, the respondent filed Criminal Revision. The High Court by order dated 10.11.1998 accepted the case of the respondent, set aside the order of the learned Special Judge, framing charges and discharged the respondent. In these circumstances the State has come up in this petition challenging the said order of the High Court.
AILA_Q45||The appellants were tried for offences on the allegations that about four months prior to the incident, some quarrel had taken place between the deceased P1 and the appellant No. 4 P2 in relation to raising of boundary wall. On 12 April 1983 at about 7.00 P.M. the deceased accompanied by P3, had gone to P4 (PW-8) to engage some labourers for cutting crop in his field and while returning from the house of P4, when the deceased came near the L1 of appellant No. 4, he shouted to the remaining accused who were there that the deceased was their enemy and he should not be allowed to go and kill him. The appellant No. 6 P5 assaulted the deceased with the lathi on his head. When he fell down on the ground, all the appellants assaulted him. In spite of P3 intervening, the appellants did not stop assaulting. When they found that the deceased had died, the appellants dragged his body from the spot to place near L2 of appellant No. 1 P6. Thereafter, they ran away. P7 (PW-10), brother of the deceased lodged first information report. The incident was witnessed by P4 (PW-8) and P8 (PW-13). The trial court did not believe the evidence of eye-witnesses P4 (PW-8) and P8 (PW-13); found certain discrepancies in the statements of witnesses; doubted the evidence of eye-witnesses to have identified the accused in darkness; consequently, the appellants were acquitted by the trial court giving benefit of doubt. On appeal by the State, the High Court upset the order of acquittal recorded by the trial court and held the appellants guilty of the offences and sentenced all the appellants to rigorous imprisonment for one year and for imprisonment of life. Both the sentences were to run concurrently. Hence, this appeal to this Court.
AILA_Q46||In this appeal by special leave the sole appellant is P1 who alongwith six others was put up for trial before the Additional Sessions Judge in charged of the offence. It is not necessary to refer to the charges framed against the remaining accused since they are not appellants before us. The trial court by its judgment and order of April 24, 1995 found the appellant guilty of offence and sentenced him to undergo rigorous imprisonment for 10 years. The appellant preferred Criminal Appeal No.125 of 1995 before the High Court which was dismissed by the High Court by its impugned judgment and order of April 5, 2002. We may only observe that of the seven persons put up for trial before the learned Additional Sessions Judge one P2 was given the benefit of doubt and acquitted. One P3 was sentenced to life imprisonment and P4 was sentenced to life imprisonment. The remaining accused were sentenced to 10 years rigorous imprisonment. The appeals preferred by the remaining accused have also been disposed of by the High Court by the impugned judgment. The case of the prosecution is that the informant Dr. D1 is a resident of L1.

On January 13, 1989 at 2010 hours he lodged a first information report at police station in which he stated that on that date at about 7.30 p.m. while he was watching the television, other members of the family were in the house. His son P5, PW-1 had gone to the fields and had not returned. While he was watching the television he saw that three persons entered his house with concealed faces. Of them two were armed with pistols and they demanded the keys from him. He could identify accused P3 by his voice, stature and eyes. He then heard the cries of his daughter-in-law coming from another room and when he rushed to her room he found that two other persons were threatening her, of whom one was armed with country made pistol. His daughter-in-law handed over to them whatever ornaments she was wearing at that time. Two other persons then entered the room who picked up some articles. Those two persons had not concealed their faces. Some other dacoits also entered the room of his daughter-in-law and started making demands from her. A relative of his, namely P6, PW-4, who was residing with him, told his daughter-in-law to handover the keys to the dacoits. Thereafter the dacoits asked P6 to open the almirah but he was unable to do so. One of the dacoits threatened to kill him if he did not open the almirah. Seeing this, the informant rushed and caught that hand of the dacoit in which he was holding the pistol and pushed him towards the verandah. Thereafter the informant's daughter, P7 started raising alarm. Some of the dacoits were in the courtyard of the house and he recognized one of them as Rajesh Yadav who was armed with a pistol. Rajesh Yadav exhorted Parshuram to fire and thereafter Parshuram fired hitting his daughter P7. The dacoits also exploded bombs. The informant claimed to have recognized one of the miscreants as P2 who assaulted him on his back with the barrel of his pistol as a result of which his grip over one of the dacoits, whom he had caught, loosened and that dacoit slipped away. Thereafter the dacoits fled away. His daughter P7 succumbed to her injuries. By this time his son P5, PW-1 had also come. He mentioned in his report that P20, P6, PW-4 and P30, PW-2 were also injured. In the report he also gave descriptions of other dacoits whom he had not recognized.
AILA_Q47||Challenge in this appeal is to the judgment of the High Court upholding the conviction of the appellant for offences punishable and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- with default stipulations, as recorded by the Principal Sessions Judge. The prosecution version, in a nutshell, is as follows. PW-1 is the wife of PW-4. The accused and PW-4 are the sons of P1 (hereinafter referred to as the 'deceased'). PW-2 is the son of PW-1. P1 had certain immovable properties which he partitioned 10 years before the occurrence, and he regained a piece of land namely 10 cents, which is a poramboke, for his livelihood. The accused was insisting him to give that land also. There arose a civil dispute between them. It also ended in favour of P1. On the day of occurrence i.e, 26.05.2003 at about 7.00 A.M., PW-1 was going to the garden to pluck vegetables. At that time, her father-in-law, the said P1, was cutting trees. He was having a spade and aruval in hand. At that time, the accused came there and questioned how he could cut the trees, and following the same, there was a wordy duel. Immediately, the accused snatched the aruval and cut him on the neck and shoulder indiscriminately. PW-1 on seeing this, raised alarm, and immediately, the accused fled away from the place of occurrence. The said P1 met his instantaneous death. PW-1 proceeded to the Police Station, where, the sub- Inspector of Police (PW-11), was present. PW-1 gave a report (Ex.P1), on the strength of which a case came to be registered. The first information report, Ex.P-12, along with Ex.P1 was despatched to the Magistrates' Court. The Inspector of Police (PW-12), on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared an observation mahazar, Ex.P-4, and a rough sketch, Ex.P-13. Then, he conducted inquest on the dead body of P1 in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P-14. The dead body was sent to the Government Hospital along with a requisition, Ex.P-2, for the purpose of autopsy. The Assistant Surgeon (PW-6), attached to the Government Hospital, on receipt of the said requisition, conducted autopsy on the dead body of P1 and found 7 cut injuries. The doctor gave a post-mortem certificate, Ex.P-3, with her opinion that the deceased would appear to have died of hemorrhage and shock due to injuries to major vessels. Pending the investigation, the Investigating Officer arrested the accused on 27.05.2003. He volunteered to give a confessional statement, which was recorded by the Investigator. The admissible part of the confession was marked as Ex. P-6, pursuant to which he produced M.O.-1, aruval and M.O.-4, Shirt, which have been recovered under a mahazar, Ex.P-7. The accused was sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body and M.Os. I and 4, recovered from the accused, were subjected to chemical analysis by the Forensic Sciences Department, which resulted in two reports namely Ex.P-10, the Chemical Analyst's report and Ex.P-11, the Serologist's report. On completion of investigation, the Investigator filed the final

report. Charges were framed. The accused pleaded innocence. Twelve witnesses were examined to further the prosecution version. The accused, in his examination submitted that he has been falsely implicated and in any event, there was a wordy duel before the occurrence in which the appellant had purportedly snatched the weapon from the hands of the deceased and, therefore, a statute has no application. The Trial Court did not accept the plea and placing reliance on the evidence of the eye-witnesses, PWs-l and 2, recorded the conviction and sentence, as noted above. The plea taken before the Trial Court was reiterated by the accused persons before the High Court. By the impugned judgment, the High Court did not find any substance in the plea and dismissed the appeal.

AILA_Q48||Whether sanction is required to initiate criminal proceedings in respect of offences is the question arising for consideration in these cases. The District Registrar lodged a complaint with the Inspector of Police, CBCID on 07.07.1999. The main allegation against the respondents was that while they were working as Sub-Registrars in various offices in the State, they conspired with stamp vendors and document writers and other staff to gain monetary benefit and resorted to manipulation of registers and got the registration of the documents with old value of the properties, resulting in wrongful gain to themselves and loss to the Government, and thereby cheated the public and the Government. On the basis of the complaint, F.I.R. No. 35/1999 was registered by the appellant, and after investigation, report against 41 persons including the respondents herein, was submitted before the III Additional Chief Metropolitan Magistrate. The respondents raised the objection that there was no sanction and hence the proceedings could not be initiated. Learned Magistrate on 03.07.2007 passed an order holding that: "Whether the sanction is required or not to be considered during the trial and it is the burden on the complainant to prove that the accused acted beyond in discharge of their official duties and there is no nexus between the acts committed and their official duties and at this stage the question that the accused acted within their duties cannot be decided." Aggrieved, respondents moved the High Court leading to the impugned order whereby the criminal proceedings were quashed on the sole ground that there was no sanction, and hence the appeals.

AILA_Q49||Appellant was a Patwari working at village V1 in the year 1976. On an allegation that he had sought illegal gratification, on or about 13 July 1976, a complaint was lodged in the office of Deputy Superintendent of Police, Anti-Corruption that the appellant had asked for illegal gratification. A raiding party laid a trap on the said date and he was found to have accepted illegal gratification. Pursuant thereto he was prosecuted for alleged commission of an offence. He was placed under suspension. He was convicted by reason of a judgment dated 25 February 1985 passed by the Special Judge (A.C.D.). He was dismissed from service in terms of the said judgment of conviction by an order dated 3 October 1987 2. The appellant preferred an appeal against the said judgment of conviction and sentence and by reason of a judgment and order dated 16 January 2001, the said appeal was allowed. The appellant, thus, stood acquitted. In the meanwhile, i.e., in the year 1998, the appellant reached his age of superannuation. Having been acquitted in the criminal proceeding, he filed a writ petition before the High Court which. By an order dated 19 February 2003, a learned Single Judge of the High Court directed that in the event the appellant files a representation before the competent officer with regard to pension, the same may be considered within a period of three months therefrom. An appeal preferred there against was dismissed by reason of the impugned order passed by the Division Bench.

AILA_Q50||A peculiar feature of this appeal by special leave is that it is not an appeal against conviction or against acquittal but one preferred by a prosecution witness for expunction of several highly derogatory remarks made against him by a learned Judge of the High Court while allowing a Criminal Appeal at the High Court. P1, the appellant before us was examined as P.W. 8 in the trial of a case on the file of the Special Judge (Vigilance) against the first respondent. The trial ended in conviction against the first respondent and when the appeal filed by him came to be heard by the High Court the appellant had become a Cabinet Minister in the State. On account of the disparaging remarks made by the Appellate Judge the appellant tendered his resignation and demitted office for maintaining democratic traditions. It is in that backgroud this appeal has come to be preferred. Pursuant to a trap laid by the Vigilance Police on the complaint of the appellant's Manager, P2 (P.W.2) the first respondent was arrested on 26.4.79 for having accepted a bribe of Rs. 2,000 from P2. The marked currency notes M.Os. V to XXVI were recovered from the brief case M.O. II of the first respondent prior to the arrest. The prosecution case was that the first respondent had been extracting illegal gratification at the rate of Rs. 1,000 er month during the months of January, February and March, 1979 from P2 but all of a sudden he raised the demand to Rs. 2,000 per month in April 1979 and this led to P2 laying information (Exhibit I) before the Superintendent of Police (Vigilance). Acting on the report, a trap was laid on 26.4.79 and after P2

had handed over the marked currency notes the Vigilance party entered the office and recovered the currency notes from the brief case and arrested the first respondent. The first respondent denied having received any illegal gratification but offered no explanation for the presence of the currency notes in his brief case. Eleven witnesses including the appellant who figured as P.W.8 were examined by the prosecution and the first respondent examined three witnesses D.Ws. 1 to 3 to substantiate the defence set up by him, viz., that the sum of Rs. 2,000 had been paid by way of donation for conducting a drama and publishing a souvenir by the Mining Officers' Club and also towards donation for Children's Welfare Fund. The Special Judge accepted the prosecution case and held the first respondent guilty. The Special Judge awarded a sentence of rigorous imprisonment for one year for the conviction under the first charge but did not award any separate sentence for the second conviction. Against the conviction and sentence the first respondent preferred Criminal Appeal No. 31 of 1982 to the High Court. A learned Judge of the High Court has allowed the appeal holding that the prosecution has not proved its case by acceptable evidence and besides, the first respondent's explanation for the possession of the currency notes appeared probable. While acquitting the first respondent the learned Judge has, however, made several adverse remarks about the conduct of the appellant and about the credibility of his testimony and it is with that part of the judgment we are now concerned with in this appeal.

Masud Khan v State Of Uttar Pradesh
Supreme Court of India

26 September 1973
Writ Petition No.
117 of 1973
The Judgment was delivered by : A.
Alagiriswami, J.
1 Petitioner Masud Khan prays for his release on the ground that he, an Indian citizen has been illegally arrested and confined to, jail under Paragraph 5 of the Foreigners (Internment) Order, 1962.
He had come to India from Pakistan on the basis of a Pakistani passport dated 137-1954and Indian visa dated 9-4-1956.
In his application for visa he had stated that he had migrated to Pakistan in 1948 and was in Government service in Pakistan in P.W.D.
as a Darogha and had given his permanent address as Hyderabad (Sind).
2 If these statements were correct the petitioner would clearly be a Pakistani national.
When this fact was brought out in the counter affidavit filled on behalf of the respondent, the petitioner filed a further affidavit stating that he was appointed as a Police Constable in Hasanganj Police Station, District Fatehpur, U.P.
in February 1947 and continued as a Police Constable till the middle of 1950 when he was dismissed from service, and that he went to Pakistan in the year 1951.In the reply affidavit filed on behalf of the respondent it is stated that one Md.
Masood Khan son of Zahoor Khan was enrolled as Police Constable on 16-9-1947 and he was discharged from service on 20-5-1949.
It is fairly clear that this information culled from the English Order Book from 1-101947 to 27-12-1951 refers to the petitioner.
While, therefore, it is established that the petitioner did not go to Pakistan in 1948, it cannot be said that it has been established that the petitioner went to Pakistan only in 1951.When he went to Pakistan is a matter peculiarly within his knowledge and the produced no evidence in support of that statement.
3 Considering the frequent change of ground which the petitioner has resorted to, a mere statement from him cannot be accepted as true.
Nor can we accept his contention that it is for the respondent to establish that lie did not go to Pakistan in 1951 but that he went on some other date.
The petitioner has also alleged that he was married in U.P.
on 25th December, 1949.Even assuming that this statement is correct; the petitioner cannot establish that he is a citizen of India unless lie succeeds in establishing that he was in India on 26-1-1950.
If he bad been in India on 26-1-1950 but had gone to Pakistan in 1951 it would be for the Central Government to decide whether he is a Pakistani national or an Indian citizen even though he may have come to India on a Pakistani passport in 1956.

That question does not arise here.
4 We are not prepared to assume that the petitioner should be deemed to have been present in India on 26-1-1950, as was urged on behalf of the petitioner.
There is no room for any such presumption.
Under s-9 of the Foreigners Act whenever a question arises whether a person is or is not a foreigner the onus of proving that he is not a foreigner lies upon him.
The burden is therefore, upon the petitioner to establish that be is a citizen of India in the manner claimed by him and therefore be is not a foreigner.
This burden not having been discharged by the petitioner it should be held that he is a foreigner and his claim that he is an Indian citizen cannot be dealt with under the Foreigners (Internment) Order, 1962 must be rejected.
5 It appears, however, that in 1960 he had been prosecuted before the Sub-Divisional Magistrate, Fatehpur under s.
14 of the Foreigner--, Act and was acquitted on the ground that he was not a foreigner.
It was therefore contended that the question whether the petitioner is -a foreigner or not is a matter of issue estoppels.
The decision that he was not a foreigner seems to have been based on the decision of the Allahabad High Court in Mohd.
Hanif Khan v.
State (AIR 1960 All.
434).
1959 Indlaw ALL 154It was held there that a Pakistani national who entered into India before the amendment to the Foreigners Act in 1957, when he could not be considered to be a foreigner, could not be so held because of that amendment.
That decision was that of a learned Single Judge.
On the point at issue he differed from an earlier decision of a learned Single Judge of the same Court in Ali Sher v.
The State (AIR 1960 All.
431).
1959 Indlaw ALL 153But he decided that case before him on a different point and did not think it necessary to refer the case before him to a Bench for considering which of the two decisions was correct on the question regarding the nationality of a person who came to India on a Pakistani passport before 1957.
There are thus two conflicting decisions of the same court on the same point and the Magistrate who decided the petitioner's case followed one of them.
6 But that apart, this matter could bedecided on another point..
The question of issue-estoppels has been considered by this Court in Pritam Singh v.
State, of Punjab (AIR1956 SC 415), 1955 Indlaw SC 111 Manipur Administration v.
Thokchom, Bira Singh (1964 7 SCR 123) 1964 Indlaw SC 413 and Piara Singh S.
State of Punjab.
Issue-estoppels arises only if the earlier as well as the subsequent proceedings were criminal prosecutions.
In the present case while the earlier one was a criminal prosecution the present is merely an action taken, under the Foreigners (Internment) Order for the purpose of deporting the petitioner out of India.
7.
It is nota criminal prosecution.
The principle of issue estoppels is simply this : that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favored an accused, such a finding would constitute an estoppels or res judicator against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently, even for different offence which might be permitted by law.
Pritam Singh's case 1955 Indlaw SC 111 (supra) was based on the decision of the Privy Council in Sambasivam v.
Public, Prosecutor, Federation of Malaya (1950 A.C.
458).
In that case Lord McDermott speaking for the Board said:

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence.
To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication."
It should bekept clearly in mind that the proceeding referred to herein is a criminal prosecution.
The plea of issue-estoppels not the same as the, plea of double jeopardy or aura foist acquit.
In The King v.
Wilkes (77 C.L.R.511)
Divon, J.
8Referring to the question of issue estoppel said.
view that there is an issue estoppels, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoners There must be prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner.
The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding.
But if such a condition of affairs arises I see no reason why the ordinary rules of issue-estoppels should not apply Issue-estoppels concerned with the judicial establishment of a proposition of law or fact between parties.
It depends upon well-known doctrines which control the reiteration of issues which are settled by prior litigation."
"The emphasis here again would be seen to be on the determination of, criminal liability.
In Marz v.
The Queen (96 C.L.R.
62) the High Court of Australia said "The Crown is as much precluded by an estoppels by judgment in criminal proceedings as is a subject in civil proceedings The laws which gives effect to issue estoppels is not concerned with the correctness or incorrectness of the finding which amounts to an estoppels, still less with the process of reasoning by which the finding was reached.
in fact It is enough that an issue or issues have been distinctly raised or found.
Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding, may be made by one of them against the other."
Here again it is to be remembered that the principle applies to two criminal proceedings and the proceeding with which we are now concerned is not a criminal proceeding.
We therefore hold that there is no substance in this contention.

Indian Oil Corporation v NEPC India Limited and Others
Supreme Court of India

20 July 2006
Cr.A.
No 834 of 2002
The Judgment was delivered by: R.
V.
Raveendran, J.
1These appeals are filed against the common order dated 29.3.2001 passed by the Madras High Court allowing Crl.O.P.
Nos.2418 of 1999 and 1563 of 2000.
The said two petitions were filed by the respondents herein u/s.
482 of Criminal Procedure Code ('Code' for short) for quashing the complaints filed by the appellant against them in C.C.
No.299 of 1999 on the file of Judicial Magistrate No.6, Coimbatore and C.C.
No.
286 of 1998 on the file of Judicial Magistrate, Alandur (Chennai).
2 The appellant (Indian Oil Corporation, for short 'IOC') entered into two contracts, one with the first respondent (NEPC India Ltd.) and the other with its sister company Skyline NEPC Limited

('Skyline' for short) agreeing to supply to them aviation turbine fuel and aviation lubricants (together referred to as "aircraft fuel").
According to the appellant, in respect of the aircraft fuel supplied under the said contracts, the first respondent became due in a sum of Rs.5,28,23,501.90 and Skyline became due in a sum of Rs.13,12,76,421.25 as on 29.4.1997.
3 The first respondent hypothecated its two Fokker F27-500 Aircrafts, bearing Registration No. VT-NEJ (12684) and VT-NEK (10687) to the appellant under Deed of Hypothecation dated 1.5.1997, to secure the outstanding amounts.
Cl.
(2) of the said Deed provided that the two aircrafts with all parts and accessories stood hypothecated to IOC by way of charge and as security for payment of the amounts due, with effect from the date of hypothecation.
Cl.
(3) read with the schedule set out the instalments schedule for payment of the amount due.
4.
Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC.
It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount.
Cl.
(9) provided that if NEPC India failed to pay any of the installments with interest within the stipulated time,or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law.
Cl.
12 confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due.
It is stated that Skyline also hypothecated its aircraft (VT-ECP) under a separate Hypothecation Deed dated 14.5.1997.
It is further stated that a tripartite agreement dated 6.5.1997 was entered among IOC, NEPC India and Skyline setting out the mode of payment of the dues and recovery in the event of default.
5 As NEPC India failed to pay the first two installments as per schedule, IOC stopped supply of aircraft fuel on 3.6.1997.
However, subsequently, under a fresh agreement dated 20.9.1997, a revised payment schedule was agreed and IOC agreed to re-commence supply of aircraft fuel on 'cash and carry' basis. Even this arrangement came to an end as the installments were not paid.
6 Apprehending that NEPC India may remove the hypothecated aircraft (VT-NEJ) from Coimbatore Airport to a place outside its reach, IOC filed C.S.
No.425 of 1997 in the Madras High Court seeking a mandatory injunction to the Airport Authority of India and Director General of Civil Aviation to detain the said aircraft stationed at Coimbatore Airport, u/s.
8 of the Aircraft Act, 1934, so as to enable it to take possession thereof.
7.
The High Court granted an interim injunction on 16.9.1997 restraining NEPC India from removing the aircraft (VT-NEJ) from Coimbatore Airport.
In regard to the other hypothecated aircraft (VT-NEK) kept at Meenambakkam (Chennai) Airport, IOC filed a suit (OS No.3327/1998) in the City Civil Court, Chennai for a similar mandatory injunction.
8 IOC filed the two complaints against NEPC India and its two Directors (respondents 2 & 3 herein) in July, 1998 u/s.
200 of Code of Criminal Procedure alleging unauthorized removal of the engines and certain other parts from the two hypothecated aircraft.
They are:
"(i) C.C.
No.
299 of 1999 before the Judicial Magistrate No.6, Coimbatore, regarding Aircraft bearing No. VT-NEJ.
(ii) C.C.

No.
286 of 1998 before the Judicial Magistrate, Alandur (Chennai) regarding aircraft bearing No.
VT NEK."
9 The relevant averments in the complaint in C.C.
No.299/1999 (Coimbatore Court) reads as under:
"The complainant states that on 24.4.98, IOC had come to know that NEPC India Limited in total disregard to the orders of the Hon.
High Court, Madras had clandestinely removed both the engines and certain other parts from the Aircraft VT-NEJ Aircraft Sl.No.
10684 (Fokker F27-500) stationed at the Coimbatore Airport, Coimbatore.
The complainant states that, besides the above, the act of NEPC India Limited in removing the engines and certain other parts from the Aircraft VT-NEJ Aircraft Sl.
No.
10684 (Fokker F27- 500) stationed at the Coimbatore Airport, Coimbatore is against the terms of the hypothecation deed dated 01.5.1997 and 20.9.1997 will amount to theft, criminal breach of trust, and cheating which are offences punishable u/s.
378 (Theft), 403 (Dishonest Misappropriation of Property), 405 (Criminal Breach of Trust), 415 (Cheating), 425 (Mischief) of the Indian Penal Code.
No notice was given to IOC in this regard."
10 The relevant averments in the complaint in C.C.
No.286/1998 (Alandur Court) read as under :-
" With a view to defeat the said right of IOC (that is right to take possession and sell the aircraft), NEPC India removed the engines of the Aircraft (VT-NEK) stationed at the Meenambakkam Airport
The complainant states that, the act of NEPC India Limited in removing the engines and certain other parts from the Aircraft VT-NEK Aircraft Sl.
No.
10687 (Fokker F27-500) stationed at the Meenabakkam Airport, Chennai is against the terms of the hypothecation deed dated 1.5.1997 as well as the terms of the agreement dated 20.9.1997 and will amount to offences punishable u/s.
378 (Theft), 403(Dishonest Misappropriation of Property), 405 (Criminal Breach of Trust), 415 (Cheating), 425 (Mischief) of the India Penal Code.
No notice was given to IOC in this regard."
Both the complaints also contain the following common allegations:
"The complainant states that the accused had with fraudulent intention to cheat and defraud IOC had induced IOC to resume supply of Aircraft fuel on Cash and Carry basis, by undertaking to clear the outstanding amount of Rs.18 crores approximately within the time stipulated in the hypothecation agreements.
However, the accused had failed to clear the said outstanding amounts and had breached the terms of the hypothecation agreements.
Subsequently on 20.9.2007, an agreement was entered into between IOC and M/s NEPC India Limited.
As per the terms of the above agreement M/s NEPC India Limited had agreed to clear the outstanding amount of Rs.18 crores approximately due to IOC from M/s NEPC India Limited and M/s Skyline NEPC Limited within a time frame.
However, M/s NEPC India Limited had failed to keep up the schedule of payments mentioned in the said agreements.
The facts narrated above will clearly show that IOC has got every right to take possession of the Aircraft VT-NEK as well as VT-NEJ.
Only with a view to defeat the said right of IOC, M/s NEPC India has removed the engines of the aircraft.
.."
11 The respondents herein filed Crl.
O.P.
No.1563 of 2000 and Crl.O.P.
No.2418 of 1999 respectively u/s.
482 of Cr.P.C.
for quashing the said two complaints on the following two grounds:
(i) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(ii) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under sections 378, 403, 405, 415 or 425 IPC.
12 The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints.
It accepted the second ground urged by the Respondents herein, but rejected the first ground.
The said order of the High Court is under challenge in these appeals.
On the rival contentions urged, the following points arise for consideration :
(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?
(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?
Re : Point No.
(i) :
13 The principles relating to exercise of jurisdiction u/s.
482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions.
To mention a few - Madhavrao Jiwaji Rao Scindia v.
Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], 1988 Indlaw SC 599 State of Haryana vs.
Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs.
Kanwar Pal Singh Gill [1995 (6) SCC 194], 1995 Indlaw SC 1896 Central Bureau of Investigation v.
Duncans Agro Industries Ltd., [1996 (5) SCC 591], 1996 Indlaw SC 2982 State of Bihar vs.
Rajendra Agrawalla [1996 (8) SCC 164], 1996 Indlaw SC 4034 Rajesh Bajaj v.
State NCT of Delhi, [1999 (3) SCC 259], 1999 Indlaw SC 447 Medchl Chemicals & Pharma (P) Ltd.
v.
Biological E.
Ltd.
[2000 (3) SCC 269], 2000 Indlaw SC 666 Hridaya Ranjan Prasad Verma v.
State of Bihar [2000 (4) SCC 168], 2000 Indlaw SC 248 M.
Krishnan vs Vijay Kumar [2001 (8) SCC 645], 2001 Indlaw SC 21143 and Zandu Phamaceutical Works Ltd.
v.
Mohd.
Sharaful Haque [2005 (1) SCC 122].
2004 Indlaw SC 899 The principles, relevant to our purpose are:
(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.
14.
For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations.
Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.
(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution.
The power should be used sparingly and with abundant caution.
(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged.
If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed.
15.
Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.
(v) A given set of facts may make out :
(a) purely a civil wrong; or
(b) purely a criminal offence; or
(c) a civil wrong as also a criminal offence.
16.

A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.
As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings.
The test is whether the allegations in the complaint disclose a criminal offence or not.
17 While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases.
This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors.
Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families.
18.
There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement.
Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.
19 In G.
Sagar Suri vs.
State of UP [2000 (2) SCC 636], 2000 Indlaw SC 603 this Court observed :
"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence.
Criminal proceedings are not a short cut of other remedies available in law.
Before issuing process a criminal court has to exercise a great deal of caution.
For the accused it is a serious matter.
This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction u/s.
482 of the Code.
Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."
20.
While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power u/s.
250 Cr.P.C.
more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.
Be that as it may.
21 Coming to the facts of this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due.
It has filed C.S.
No.425/1997 in the Madras High Court and O.S.
No.3327/1998 in the City Civil Court, Chennai seeking injunctive reliefs to restrain the NEPC India from removing its aircrafts so that it can exercise its right to possess the Aircrafts.
It has also filed two more suits for recovery of the amounts due to it for the supplies made, that is CS No.998/1999 against NEPC India (for recovery of Rs.5,28,23,501/90) and CS No.11/2000 against Skyline (for recovery of Rs.13,12,76,421/25), in the Madras High Court.
22.
IOC has also initiated proceedings for winding up NEPC India and filed a petition seeking initiation of proceedings for contempt for alleged disobedience of the orders of temporary injunction.
These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies.
But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.
23 The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof.

24.
They have taken pains to point out that the aircrafts are continued to be stationed at Chennai and Coimbatore Airports; that the two engines of VT-NEK though removed from the aircraft, are still lying at Madras Airport; that the two DART 552 TR engines of VT-NEJ were dismantled for the purpose of overhauling/repairing; that they were fitted to another Aircraft (VT- NEH) which had been taken on lease from 'M/s Aircraft Financing and Trading BV' and that the said Aircraft (VT-NEH) has been detained by the lessor for its dues; that the two engines which were meant to be fitted to VT-NEJ (in places of the removed engines),
25 when sent for overhauling to M/s Hunting Aeromotive, U.K., were detained by them on account of a dispute relating to their bills; and that in these peculiar circumstances beyond their control, no dishonest intent could be attributed to them.
But these are defences that will have to be put forth and considered during the trial.
Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold.
26.
At this stage, we are only concerned with the question whether the averments in the complaint spell out the ingredients of a criminal offence or not.
27 The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings.
Re : Point No.(ii)
28 This takes us to the question whether the allegations made in the complaint, when taken on their face value as true and correct, constitute offences defined under sections 378, 403, 405, 415 and 425 IPCLearned counsel for the appellant restricted his submissions only to sections 405, 415 and 425, thereby fairly conceding that the averments in the complaint do not contain the averments necessary to make out the ingredients of the offence of theft (s.
378) or dishonest misappropriation of property (s.
403).
Section 378
29 S.
378 defines theft.
It states : "whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."
30.
The averments in the complaint clearly show that neither the aircrafts nor their engines were ever in the possession of IOC.
It is admitted that they were in the possession of NEPC India at all relevant times.
The question of NEPC committing theft of something in its own possession does not arise.
The appellant has therefore rightly not pressed the matter with reference to s.
378.
Section 403
31 S.
403 deals with the offence of dishonest misappropriation of property.
It provides that "whoever dishonestly misappropriates or converts to his own use any movable property", shall be punished with imprisonment of either description for a term which may extend to 2 years or with fine or both.
The basic requirement for attracting the section are:
"(i) the movable property in question should belong to a person other than the accused;
(ii) the accused should wrongly appropriate or convert such property to his own use; and
(iii) there should be dishonest intention on the part of the accused."
32.
Here again the basic requirement is that the subject matter of dishonest misappropriation or conversion should be someone else's movable property.
When NEPC India owns/possesses the aircraft, it obviously cannot 'misappropriate or convert to its own use' such aircraft or parts thereof.
Therefore s.
403 is also not attracted.
Section 405
33 We will next consider whether the allegations in the complaint make out a case of criminal breach of trust u/s.

405 which is extracted below :
"405.
Criminal breach of trust.
Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
34 A careful reading of the section shows that a criminal breach of trust involves the following ingredients:
"(a) a person should have been entrusted with property, or entrusted with dominion over property;
(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;
(c) that such misappropriation, conversion,"
35.
use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.
36 The following are examples (which include the illustrations u/s.
405) where there is 'entrustment' :
"(i) An 'Executor' of a will, with reference to the estate of the deceased bequeathed to legatees.
(ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.
(iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.
(iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.
(v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.
(vi) A servant or agent with reference to the property of the master or principal.
(vii) A pledgee with reference to the goods pledged by the owner/borrower.
(viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust.
(Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor)."
37 In Chelloor Mankkal Narayan Ittiravi Nambudiri v.
State of Travancore, Cochin [AIR 1953 SC 478], 1952 Indlaw SC 115 this Court held :
" to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it.
It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.
It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit." [Emphasis supplied]
38 In Jaswantrai Manilal Akhaney v.
State of Bombay [AIR 1956 SC 575], 1956 Indlaw SC 16 this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is 'entrustment'.
It, however, clarified:
" ..
But when S.
405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust.
It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."
39 The question is whether there is 'entrustment' in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession.

Both ownership of the movable property and possession thereof, remain with the debtor.
The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note : we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law).
The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available).
40.
The following definitions of the term 'hypothecation' in P.
Ramanatha Aiyar's Advanced Law Lexicon (Third (2005) Edition, Vol.2, Pages 2179 and 2180) are relevant:
"Hypothecation: It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership.
The borrower enters into an agreement with the lender to hand over the possession of the hypothecated asset whenever called upon to do so.
The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee."
41.
'Hypothecation' means a charge in or upon any movable property, existing in future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property.
(Borrowed from s.
2(n) of Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002)"
42.
But there is no 'entrustment of the property' or 'entrustment of dominion over the property' by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation.
When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor.
43 The question directly arose for consideration in Central Bureau of Investigation v.
Duncans Agro Industries Ltd., Calcutta [1996 (5) SCC 591].
1996 Indlaw SC 2982 It related to a complaint against the accused for offences of criminal breach of trust.
It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover credit facility and that the said goods were disposed of by the debtor.
44.
It was contended that the disposal of the goods amounted to criminal breach of trust.
Negativing the said contention, this Court after stating the principle as to when a complaint can be quashed at the threshold, held thus:
" .a serious dispute has been raised by the learned counsel as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not.
In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405, I.P.C.
Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract.
The expression 'entrusted' appearing in Section 405, I.P.C.
is not necessarily a term of law.
It has wide and different implications in different contexts.
It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.
The expression 'trust' in Section 405, I.P.C.
is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee.
When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods.

The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit.
In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee.
In the instant case, a floating charge was made on the goods by way of security to cover up credit facility.
In our view, in such case for disposing of the goods covering the security against credit facility, the offence of criminal breach of trust is not committed." (emphasis supplied)
45 The allegations in the complaints are that aircrafts and the engines fitted therein belong to NEPC India, and that a charge was created thereon by NEPC India, in favour of IOC, by way of hypothecation to secure repayment of the amounts due to IOC.
The terms of hypothecation extracted in the complaint show that the ownership and possession of the aircrafts continued with NEPC India.
Possession of the aircraft, neither actual nor symbolic, was delivered to IOC.
NEPC India was entitled to use the aircraft and maintain it in good state of repairs.
46.
IOC was given the right to take possession of the hypothecated aircrafts only in the event of any default as mentioned in the Hypothecation Deed.
It is not the case of the IOC that it took possession of the aircraft in exercise of the right vested in it under the Deed of Hypothecation.
Thus, as the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the Deed of Hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India.
The very first requirement of section 405, that is the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property" is, therefore, absent.
47 Learned counsel for the appellant, however, sought to distinguish the decision in Duncan Agro 1996 Indlaw SC 2982 on two grounds.
It was pointed out that Duncan Agro 1996 Indlaw SC 2982 itself recognizes that there can be criminal breach of trust where a beneficial interest exists in the other person, and the offender holds the property in trust for such person.
It is submitted that when the deed of hypothecation was executed by NEPC India in favour of IOC, the hypothecation created a beneficial interest in the property in favour of IOC, and vis-'-vis such 'beneficial interest' of IOC, the possession of the property by NEPC India was in 'trust'.
In support of this contention, reliance was placed on a decision of the Sind Judicial Commissioner in Gobindram C.
Motwani v.
Emperor : (1938) 39 Cr.L.J.
509.
In that case the complaint was that the accused had hypothecated the goods in their shop as collateral security against an advance and had agreed to hold the goods and proceeds thereof in trust and to pay the proceeds as and when received by them.
48 However, as they did not pay the proceeds, the complaint was that they committed criminal breach of trust.
The Magistrate took the view that as the hypothecated goods were still the property of the accused, they could not commit criminal breach of trust in respect of their own property.
The Judicial Commissioner did not agree.
He held:
"The test in this case appears to me to be whether the owner of the goods, the accused, created an equitable charge over the goods in their possession when they executed the trust receipt.
If they did so, they held the goods as trustees, they were "in some manner entrusted" with the goods, and if they dealt with them in violation of the terms of the trust, they committed an offence under this section, provided they had the necessary criminal intent.
I can myself see no reason why it should be said that by this trust receipt the accused did not give a beneficial interest in the goods to the applicant and did not hold the goods, with which they were entrusted as legal owners in trust for the applicant.

That being so, I think the learned Magistrate was wrong in his decision that the accused could not be guilty of criminal breach of trust because the goods were their own property."
49 It is evident that the said observations were made on the peculiar facts of that case where the Commissioner concluded that the goods were held by the accused in trust as trustee in view of execution of a 'Trust Receipt' by the accused.
50.
The facts were somewhat similar to example (viii) in Para 17 above.
Further the Judicial Commissioner finally observed that there was so much room for an honest difference of opinion as to the rights and liabilities of the parties to the trust receipt that no useful purpose could be served in interfering with the order of discharge by the Magistrate.
The said decision is therefore of no assistance to the appellant.
51.
If the observations relied on by the appellant are to be interpreted as holding that the debtor holds the hypothecated goods, in trust for the creditor, then they are contrary to the decision of this Court in Duncan Agro 1996 Indlaw SC 2982 (supra) which specifically holds that when goods are hypothecated, the owner does not hold the goods in trust for the creditor.
52 A charge over the hypothecated goods in favour of the creditor, cannot be said to create a beneficial interest in the creditor, until and unless the creditor in exercise of his rights under the deed, takes possession.
53.
The term 'beneficial interest' has a specific meaning and connotation.
When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the 'beneficial interest'.
The trustee has the power of management and the beneficiary has the right of enjoyment.
Whenever there is a breach of any duty imposed on the trustee with reference to the trust property or the beneficiary, he commits a breach of trust.
54 On the other hand, when the owner of a goods hypothecates a movable property in favour of a creditor, no 'beneficial interest' is created in favour of the creditor nor does the owner become a trustee in regard to the property hypothecated.
The right of the creditor under a deed of hypothecation is the right to enforce the charge created under the deed of hypothecation in the manner specified in the deed and by no stretch of imagination can such right be equated to a beneficial interest of a beneficiary in a property held in trust.
Therefore, the first contention that a creditor has a beneficial interest in the hypothecated property and the owner is in the position of a trustee with reference to the creditor is liable to be rejected.
55 The second ground on which learned counsel for the appellant sought to distinguish Duncan Agro 1996 Indlaw SC 2982 is that the said case dealt with a hypothecation deed creating a floating charge, whereas the case on hand related to a fixed charge and therefore, the principle laid down in Duncan Agro 1996 Indlaw SC 2982 will not apply.
56.
This contention is also without basis.
The principle stated in Duncan Agro 1996 Indlaw SC 2982 will apply in regard to all types of hypothecations.
It makes no difference whether the charge created by the deed of hypothecation is a floating charge or a fixed charge.
Where a specific existing property is hypothecated what is created is a 'fixed' charge.
The floating charge refers to a charge created generally against the assets held by the debtor at any given point of time during the subsistence of the deed of hypothecation.
For example where a borrower hypothecates his stock-in-trade in favour of the Bank creating a floating charge, the stock-in-trade, held by the borrower as on the date of hypothecation may be sold or disposed of by the debtor without reference to the creditor.
57 But as and when new stock-in-trade is manufactured or received, the charge attaches to such future stock- in-trade until it is disposed of.
The creditor has the right at any given point of time to exercise his right by converting the hypothecation into a pledge by taking possession of the stock-in-trade held by the debtor at that point of time.
The principle in Duncan Agro 1996 Indlaw SC 2982 is based on the requirement of 'entrustment' and not with reference to the 'floating' nature of the charge.
The second contention also has no merit.

58 We accordingly hold that the basic and very first ingredient of criminal breach of trust, that is entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of 'criminal breach of trust' as defined u/s.
405 IPC can be made out against NEPC India.
Section 415
The essential ingredients of the offence of 'cheating' are:
(i) deception of a person either by making a false or misleading representation or by other action or omission
(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.
59 The High Court has held that mere breach of a contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no 'cheating'.
The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise.
Illustrations (f) and (g) to s.
415 makes this position clear:
"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it.
A cheats."
"(g).
A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery.
A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contact and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."
In Rajesh Bajaj 1999 Indlaw SC 447 (supra), this Court held:
"It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging.
Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent.
..
The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.
The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear.
He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money.
Such averments would prima facie make out a case for investigation by the authorities."
In Hridaya Ranjan Prasad Verma 2000 Indlaw SC 248 (supra), this Court held :
"On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do.
In the first place he may be induced fraudulently or dishonestly to deliver any property to any person.
The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived.
In the first class of cases the inducing must be fraudulent or dishonest.
In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.
In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one.
It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test.

Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.
Therefore it is the intention which is the gist of the offence.
To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise.
From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."
60 In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud the IOC, had induced IOC to resume supply of aircraft fuel on cash and carry basis, by entering into a further agreement dated 20.9.1997 and undertaking to clear the outstanding amount of Rs.18 crores approximately within the time stipulated in the Hypothecation Agreements.
61.
The sum and substance of the said allegation read with other averments extracted above, is that NEPC India, having committed default in paying the sum of Rs.18 crores, entered into a fresh agreement dated 20.9.1997 agreeing to clear the outstanding as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts.
Though the supplies after 20.9.1997 were on cash and carry basis, the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC.
62.
This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court.
All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within s.
415.
We are clearly of the view that the allegations in the complaint constitute such an offence.
We are not concerned with the proof of such allegations or ultimate outcome of trial at this stage.
Section 425
S.
425 IPC provides :
"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".
The three ingredients of the Section are :
(i) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person;
(ii) causing destruction of some property or any change in the property or in the situation thereof; and
(iii) the change so made destroying or diminishing the value or utility or affecting it injuriously.
For the purpose of section 425, ownership or possession of the property are not relevant.
Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from illustrations (d) and (e) to s.
425.
The complaints clearly allege that NEPC India removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft.
The allegations clearly constitute the offence of 'mischief'.
Here again, we are not concerned with the proof or ultimate decision."
Conclusion:
63 In view of the above discussion, we find that the High Court was not justified in quashing the complaints/criminal proceedings in entirety.
The allegations in the complaint are sufficient to constitute offences u/ss.
415 and 425 of IPC.
64.

We accordingly allow these appeals in part and set aside the order of the High Court insofar it quashes the complaint u/ss.
415 and 425.
As a consequence, the Judicial Magistrate, Coimbatore and the Judicial Magistrate, Alandur before whom the matters were pending, shall proceed with the matters in accordance with law in regard to the complaints filed by IOC in so far as offences u/ss.
415 and 425 of IPC.
Parties to bear their respective costs.
Appeals allowed.

Gurpal Singh v State of Punjab and Others
Supreme Court of India

10 May 2005
Civil Appeal No.
2802-2803 of 2002
The Judgment was delivered by : Arijit Pasayat, J.
1 By the impugned judgment a Division Bench of the Punjab and Haryana High Court held that the appointment of the appellant as Auction Recorder of the Market Committee, Patran was invalid and illegal.
The said order came to be passed on the basis of a Writ Petition filed by respondent No.
4.
It is to be noted that the said petition was styled as a Public Interest Litigation (in short 'PIL').
A brief reference to the factual aspect would be necessary.
2 Appellant was appointed as Auction Recorder on 19.11.1986.
Appointment of the appellant was challenged by one Ashok Kumar, clerk of the Market Committee by filing a complaint before the competent authority alleging that the appellant having been convicted under Section 61(1)(a) of Punjab Excise Act in 1974 for alleged commission of offence on 21.5.1973 and was therefore ineligible for being considered for appointment.
3.
The complaint was looked into by the Market Committee and by order dated 22nd May, 1989 it was held that the appointment was not contrary to law.
The Standing Counsel of the Committee categorically opined that since no moral turpitude of any kind was involved, there was no ineligibility attached to the appellant and his appointment was in accordance with law.
4.
For the aforesaid purpose reliance was placed on a decision of the Punjab and Haryana High Court in the case of Narain Singh v.
N.S.
Chima (1997 SLWR 448).
On 5.9.1989 appellant's services were regularized under the Punjab Market Committees (Class III) Rules, 1989 which came to be operative after appellant was appointed.
Prior to that no specific Rules were there.
5.
A Civil Writ Petition No.
3451 of 1989 was filed by one Chandra Bhan before Punjab and Haryana High Court challenging the direct appointment of the appellant.
During pendency of the said Writ Petition Sukhjinder Singh filed a complaint before the Administrator, Market Committee questioning appellant's appointment.
6.
Notice was issued by the Administrator to the appellant, who filed his reply.
A revision in terms of Section 42 of the Punjab and Haryana Agricultural Produce Markets Act, 1961 (in short the 'Markets Act') was filed before the Special Secretary to the Government of Punjab, Department of Agriculture who passed orders to the effect that Administrator should look into the matter and take a decision as to whether action against the appellant was called for.
While Writ Petition No.
3451 of 1989 was pending, Civil Writ Petition No.
6180 of 2000 was filed by the respondent No.
4 challenging appointment of the appellant and as noted above the petition was stated to be one in public interest.

7.
Counter Affidavit was filed by the Punjab Mandi Board and the Market Committee taking the stand that since conviction of the appellant did not involve any moral turpitude the appointment was in accordance with law.
Appellant also filed counter affidavit before the Market Committee questioning locus standi of the Writ Petitioner to challenge his appointment.
8.
It was pointed out that no public interest involved and because of political and personal rivalry the petition had been filed.
The High Court by the impugned order held that since the appellant had been convicted by a Court of competent jurisdiction under Section 61 of the Punjab Excise Act, his appointment was not according to rules.
Therefore his appointment was set aside and the Punjab Mandi Board and the Market Committee were directed to start fresh process of selection for filling up of the post.
9 In support of the appeal, learned counsel for the appellant submitted that Writ Petition filed by the writ petitioner (respondent No.
4) was nothing but a sheer abuse of process of court.
It was by no stretch of imagination Public Interest Litigation and it was filed because of personal and political rivalry and ought to have been dismissed by the High Court.
10.
The assertion that appellant and respondent No.4 were pitted against each other in several elections has not been denied.
Even the Punjab Government has as back as on 22.6.1981 issued a Circular that only records of conviction for preceding five years were to be taken note of.
11 Learned counsel appearing for the Market Committee supported the stand of the appellant and submitted that there was nothing irregular in the appointment of the appellant and the same was in terms of the rules of appointment.
Learned counsel for the respondent No.
4, writ petitioner however, submitted that merely because the writ petition was filed after fourteen years and because there was some personal differences that cannot dilute the public interest element involved in the writ petition.
12.
It was further submitted that notwithstanding the clear direction of the High Court to start the process of selection afresh within four months, nothing has been done and this amounts to contempt of Court.
13 The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases.
The Court has to be satisfied about
(a)The credentials of the applicant;
(b)The prima facie correctness or nature of information given by him;
(c) The information being not vague and indefinite.
The information should show gravity and seriousness involved.
Court has to strike balance between two conflicting interests;
(i) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and
(ii) Avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.
14.
In such case, however, the Court cannot afford to be liberal.
It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.
15.
The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men.
They masquerade as crusaders of justice.
They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.
16 Courts must do justice by promotion of good faith, and prevent law from crafty invasions.

Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good.
(See State of Maharashtra vs.
Prabhu, (1994 (2) SCC 481), 1993 Indlaw SC 461 and Andhra Pradesh State Financial Corporation vs.
M/s GAR Re-Rolling Mills and Anr., (AIR 1994 SC 2151).
1994 Indlaw SC 1633 No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes.
17.
Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions.
(See Dr.
B.K.
Subbarao vs.
Mr.
K.
Parasaran, (1996 (7) JT 265).
1996 Indlaw SC 977 Today people rush to Courts to file cases in profusion under this attractive name of public interest.
They must inspire confidence in Courts and among the public.
18 As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else.
It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations.
Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases.
19.
Though in Dr.
Duryodhan Sahu and Ors.
v.
Jitendra Kumar Mishra and Ors.
(AIR 1999 SC 114), 1998 Indlaw SC 235 this Court held that in service matters PILs should not be entertained, the inflow of so called PILs involving service matters continues unabated in the Courts and strangely are entertained.
The least the High Courts could do is to throw them out on the basis of the said decision.
20.
The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them.
In one case, it was noticed that an interesting answer was given as to its possession.
It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents.
Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs.
21.
It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.
22 The aforesaid position was highlighted in Ashok Kumar Pandey v.
State of W.B.
(2004 (3) SCC 349).
2003 Indlaw SC 1010 It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants.
23.
Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-

represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc.
etc.
24.
Are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.
25 Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking.
It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens.
The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief.
26.
It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.
27.
As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration.
The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind.
Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves.
Often they are actuated by a desire to win notoriety or cheap popularity.
The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.
28 The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:
"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests.
Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests.
Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."
(See : Dr.
B.
Singh v.
Union of India and Others (2004(3) SCC 363) 2004 Indlaw SC 196
29.
When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object.
30.
Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when the petition is itself not maintainable.

In any event, by order dated 15.4.2002 this Court had stayed operation of the High Court's order.
31 Judged in the above said background the High Court was not justified in entertaining the Writ Petition.
The judgment of the High Court is indefensible and is therefore set aside.
The appeals are allowed with no orders as to costs.
Appeal allowed

Budh Singh and Others v State of Uttar Pradesh
Supreme Court of India

12 May 2006
Appeal (crl.) 1123 of 1999
The Judgment was delivered by : S.
B.
Sinha, J.
1.
The Appellants have preferred this appeal being aggrieved by and dissatisfied with the judgment and order dated 01 September 1999 passed by the High Court of Allahabad in Criminal Appeal No.
2079/93, whereby and whereunder the judgment and order dated 13 August 1993 passed by the IVth Additional Sessions Judge, Moradabad in S.T.
No.
604/2002 acquitting the Appellants herein for commission of offences under Sections 148, 302 and 307/149 of the Indian Penal Code ("IPC", for short) and under Section 27 of the Arms Act, 1959 was reversed convicting them under Sections 148, 307/149 and 302/149 of the Indian Penal Code for intentionally causing death of one Ram Gopal (deceased) and his wife Chatarvati, as also for attempt to commit murder of their son Rajveer Singh (the first informant).
2.
Appellant No.
1-Budh Singh, Appellant No.
2-Prem Singh and Appellant No.
3-Jagan Singh are real brothers.
The Appellant No.
4Mahesh Singh is son of Budh Singh whereas Appellant No.
6-Rajendra Singh is son of Prem Singh.
Appellant No.
5-Ram Raj is not related to other Appellants, but he is stated to be belonging to the group of the other appellants.
The deceased Ram Gopal owned agricultural land towards west side of the village Lalapur Pipalsana.
Some lands belonging to the Gram Samaj were situate adjoining the said land.
3.
Appellant No.
1-Budh Singh and one Kanhai were said to have illegally occupied about 40-45 bighas land of the said Gram Samaj.
4.
They allegedly intended to take possession of the land belonging to the deceased on the pretext that the same also belonged to Gram Sabha.
The dispute between the parties in regard to the said land had been pending for the long.
At about 9.00 p.m.
on 12 April 1992, the deceased and his wife Chatarvati were said to be irrigating their sugarcane field with the help of motor pump.
It was said to be a moonlit night.
A lantern had also been kept hanging from a nearby tree.
The Appellants, at that point of time, allegedly came to the agricultural land of the deceased.
Appellant No.
1-Budh Singh was said to be armed with double barrel gun, whereas Prem Singh, Jagan Singh and Ram Raj were armed with country made guns and Mahesh and Rajendra Singh were said to be armed with country made pistols.
5.

They stopped running of the motor, as a result whereof there had been exchange of abuses.
The appellants allegedly said that the land belonged to Gram Samaj and they would cultivate the same.
At that Time, hearing the noise, Chet Ram-P.W.
2, Shiv Singh-P.W.
3, Veer Singh and Sawan Singh allegedly arrived at the place of occurrence.
They were allegedly having torches is their hands.
The Appellant No.
1-Bugh Singh allegedly fired from his gun upon Ram Gopal, whereas Appellant No.5-Ram Raj fired a shot on the wife of the deceased Chatarvati.
Appellant No.
6-Rajendra Singh is said to have fired a shot on Rajveer Singh.
Other accused persons also stated to have fired their respective weapons.
On receiving injuries on their person, both Ram Gopal and his wife Chatarvati ran a few paces, but fell down dead at some distance.
P.W.
1Rajveer Singh, who was, at the material time, about 16 years old, thereafter went to the house of one Hori Singh and scribed a First Information Report (FIR).
He, thereafter, went to the Thakurdwara Police Station is a tractor belonging to one Jagraj Ram accompanied by two persons, namely, Chet Ram-P.W.
2 and Veer Singh.
The police station was situated, at a distance of about 28 kms.
from the place of occurrence.
He lodged a First Information Report at about 00.25 hours 13 April 1992.
The said FIR was dispatched to the Court at about 6.25 a.m.
on 13 April 1992, but the same reached the Court on 18 April 1992.
At the police station, one R.A.
Singh, Sub-Inspector was present.
A wireless message was also allegedly sent at about 1.00 a.m.
to P.W.
7-S.P.S.
Thomar, S.I.
of the police station, who was, at the relevant point of time, posted at the police outpost Suraj Nagar.
The said P.W.
7-S.P.S.
Thomar reached the place of occurrence.
He found the dead bodies lying on the field.
He also made an attempt to arrest the accused in the night.
In the meantime, P.W.
1, who had also received a gunshot injury, was examined by P.W.
4-Dr.
S.K.
Verma, the Medical Officer (Incharge) of the Primary Health Centre, Thakurdwara at about 4 a.m.
on 13 April 1992.
He advised P.W.
1 that an X-ray of the injured part of the body required to be taken.
X-ray however, was taken on 18 April 1992 by P.W.
6-Dr.
Om Mehrotra, Senior Radiologist, District Hospital, Moradabad, who found an opaque substance which, according to him, was a metallic pellet seen in upper part of right arm of P.W.
1.
6.
P.W.
1 allegedly came back to his village at about 6 a.m.
in the morning.
The inquest of the dead bodies started at 8 a.m.
and concluded at 9.30 in the morning on 13 April 1992.
The dead bodies were sent in a tractor for autopsy at about 12-12.30 during the day time by P.W.
5-Constable Chandra Sen.

The post-mortem examination of both the dead bodies were, however, not done on 13 April 1992, because no autopsy surgeon was available.
The post-mortem of the deceased was carried out by P.W.
9-Dr.
Madan Mohan, G.D.M.O., Central Police Hospital, Moradabad on 14 April 1992.
The ante-mortem injuries found on the dead bodies are as under.
"Injuries found on the dead body of Ram Gopal :
1.
Multiple gunshot wounds entry 0.3 cm x 0.3 cm in front of chest, abdomen above the interior sup.
Illiac spine in an area 40 cm x 2 cm.
Margins inverted and lacerated.
No charring blackening and tattooing present.
On opening the left lung and heart, pleura and pericardium underneath are lacerated.
Direction posterior and downward.
2.
Gunshot wound 0.3 cm x 0.3 cm entry in front and outer and upper part of right thigh above 12 cm below the ant.
Sup.
Illiac spine, margin lacerated and inverted.
No charring blackening and tattooing present.
3.
Gunshot wound entry 0.3 cm x 0.3 cm in front of left thigh 10 cm below interior, superior illiac spine .... with margins inverted.
No charring blackening present."
"Injuries found on the dead body of Chatarvati :
1.
Gunshot wound of entry 6 cm x 3 cm on rt.
Side chest upper part over clavical medical part x chest cavity deep.
Piece of left lung cavity out of no injuries.
Margin lacerated inverted.
Skin around this wound is charred, blackened and tattooing present.
The right clavical 1st rib, rt.
and IInd rib, right fractured.
Direction from anterior to posterally medially and size 18 metallic pellets, one Cap and two wadding recovered from the right lung and cavity with Abrasion 2 cm x + cm on left side chest below the left clavical middle part."
7.
Before the learned Trial Court, P.W.
1-Rajveer Singh, P.W.
2-Chet Ram and P.W.-Shiv Singh were examined as eye-witnesses to the occurrence.
Three police personnel being P.W.
5-Constable Chandra Sen, P.W.
7-S.P.S.
Tomar and P.W.
8-Constable Shailesh Tyagi were examined to prove the post-mortem report of the deceased as also the injury report of P.W.
1.
P.W.
4-Dr.
S.K.
Verma, P.W.
6-Dr.
Om Mehrotra and P.W.
9-Dr.
Madan Mohan were examined whereas the radiological report was proved by P.W.
6.
The learned Trial Judge, by reason of a judgment and order dated 13.8.1993, acquitted the appellants, inter alia, holding :
(i) The First Information Report was ante-timed and ante-dated;
(ii) The exact time of occurrence has not been proved;

(iii) The injuries on the person of P.W.
1 was doubtful;
(iv) The evidences of P.W.
2 and P.W.
3, who were chance witnesses, were not reliable;
(v) The medical evidence does not support the prosecution case.
8.
On an appeal preferred thereagainst by the State, a Division Bench of the High Court, on the other hand, by a judgment and order dated 01 September 1999, reversed the said judgment of the Trial Court.
9.
Mr.
Sushil Kumar, learned Senior counsel appearing on behalf of the appellant submitted that the High Court committed a manifest error in interfering with the judgment of the Trial Court without assigning sufficient and cogent reasons therefor.
The learned Senior Counsel urged that the prosecution has failed to prove that the injuries suffered by P.W.
1 was a gunshot injury.
The learned Counsel also contended that the prosecution failed to prove its case from all angles.
In this connection, our attention has been drawn to the fact that if, the medical evidence is taken to be correct, the mode and manner in which the occurrence took place cannot be said to have been proved.
It is further submitted that the prosecution has failed to explain as to why the FIR, which is said to have been lodge on 13 April 1992 at about 00.25 hours, was received by the Court of Chief Judicial Magistrate on 18 April 1992.
The explanation sought to be given that the said FIR was; not directly sent to the Court, but through the Circle Officer, also does not satisfy the mandatory requirement of the provisions contained in section 157 of the Code of Criminal Procedure ("Cr.P.C.", for short).
It was furthermore urged that P.W.
5, who had taken the dead bodies for getting the post-mortem examination done, although started at about 12.30 in the noon, failed to prove that as to why the post-mortem examination could not be held till 14 April 1992 and why the doctors were not available.
From the post-mortem report, the learned counsel would submit it would appear that the death could have taken place any time between 3.
p.m.
on 12 April 1992 and 3 pm.
on 13 February 1992, as only liquefied substance had been found in the stomach.
Even in regard to the time of arrival of P.W.
5 at the District Headquarters, the said explanation has not been entered in the General Diary.
He did not even given any statement before the Investigating Officer under Section 161 Cr.P.C.
The learned counsel would submit that P.W.
7, who, at the relevant point of time, was not the officer-in-charge of Thakurdwara Police Station, took up the investigation of the case.
He, however, investigated the matter only for eight days.
The prosecution has not produced any officer who had investigated the case thereafter.
It was further submitted that even in the site plan drawn by P.W.7, the place from where the cartridges had been recovered, has not been shown.
We have been taken through the deposition of the eye-witnesses.
Our attention has particularly, been drawn to the fact that the agricultural lands belonging to P.W.
3 being situated at a distance of half a kilometer from the place of occurrence, there was no reason as to why at the time when the incident took place, they would suddenly come together and witness the entire occurrence.
The said witnesses, according to the defence, were related to the deceased.
It was further submitted that the prosecution has also failed to explain as to why Veer Singh, who had accompanied P.W.
1 to the Police Station and who had admittedly on inimical terms with the Appellant No.
6, had not been examined.
Similarly no explanation has been offered by the prosecution for non-examination of the eye-witnesses.
10.

Mr.
Pramod Swarup, learned counsel appearing on behalf of the State, on the other hand, supported the impugned judgment of the High Court.
The learned counsel contended that in view of the consistent evidence adduced on behalf of the prosecution, that not only the FIR was lodged at about mid night at 00.25 hours on 13 April 1992, but the same having been dispatched to the Court at 6.24 hours, it was established that the FIR was not ante-timed.
Our attention, in this connection, has also been drawn to the fact that in the inquest report, the crime number has been mentioned, which would clearly prove that the FIR has been lodged prior thereto.
Under what circumstances it reached to the Court of Chief Judicial Magistrate only on 18 April 1992, according to Mr.
Swarup, might not have been explained but only because of the said, the prosecution case cannot be thrown out.
The learned counsel further urged that P.W.
1 was medically examined by Dr.
S.K.
Verma-P.W.
4.
He had only found a lacerated wound which was a simple injury and might not have thought it necessary to provide him with any further medical treatment or advised him to take any X-ray on that date itself and thus, the same had been taken on 18 April 1992.As the report had been proved by the Radiologist, Dr.
Om Mehrotra-P.W.
6, non-production of X-ray plate, according to the learned counsel, would not be material.
11.
Our attention has been drawn to the evidence of P.W.
9-Dr.
Madan Mohan.
It was submitted that from a perusal of the post-mortem examination report, it would appear that no undigested food was found in the stomach of the deceased.
They had taken their food at 10 a.m.
in the morning on 12 April 1992 and only some liquid was found in their stomach which would clearly go to show that they might have taken water or other liquid substance and in that view of the matter, the learned Trial Judge was not correct in doubting the time of death, as disclosed by PWs.
1, 2 and 3.
12.
The Trial Court, as noticed hereinbefore, recorded a judgment of acquittal upon assigning several reasons.
Before adverting to the rival contentions of the parties, it will be beneficial to remind ourselves about the established principles of law that the High Court does not ordinarily set aside a judgment of acquittal in case where two views are possible, although, the view of the Appellate Court is a more probable one.
It is, however, true that the High Court, while dealing with a judgment of acquittal, is free to consider the entire evidences on record so as to arrive at a finding as to whether the views of the Trial Judge is perverse or otherwise bad in law.
The Appellate Court shall also be entitled to take into consideration as to whether in arriving at a finding of fact, the Trial Judge has failed to take into consideration admissible evidence and has taken into consideration evidences brought on record contrary to law.
Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny by the Appellate Court.
13.
In Balak Ram v.
State of U.P., [1975] 3 SCC 219 1974 Indlaw SC 121 this Court has held:
"The aforesaid discussion of the various items of evidence must at least yield the result that the conclusion to which the learned Sessions Judge came was a reasonable conclusion to come to.
It cannot be denied that two views of the evidence are reasonably possible in regard to the participation of Nathoo, Dr.
Kohli and Banney Khan.

The High Court, therefore, ought not to have interfered with the judgment of the Sessions Court in their favour."
14.
In Shambhoo Missir & Anr.
v.
State of Bihar, [1990] 4 SCC 17 1990 Indlaw SC 348, it was held :
"The High Court did not deal with any of these circumstances pointed out by the trial court and has given no reasons to negative them or to show as to how they were either improper, unjustified or unreasonable.
We are, therefore, of the view that High Court has interfered with the order of acquittal passed by the trial court not only for no substantial reasons but also by ignoring material infirmities in the prosecution case."
15.
Yet again in Shailendra Pratap & Anr.
v.
State of U.P., [2003] 1 SCC 761 2003 Indlaw SC 8, the law was laid down in the following terms :
"Having heard learned counsel appearing on behalf of the parties we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse.
It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse.
In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."
16.
In Narendra Singh & Anr.
v.
State of M.P., [2004] 10 SCC 699 2004 Indlaw SC 266, wherein one of us (Sinha, J.) was a partly it was categorically held that the Court must bear in mind the presumption of innocence of the accused in setting the law.
The said view has been reiterated in Ranjitsing Brahmajeetsing Sharma v.
State of Maharashtra & Anr., [2005] 5 SCC 294 2005 Indlaw SC 272 in the following terms :
"Presumption of innocence is a human right Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure.
Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor.
Subsection (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles.
Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable restriction but clause (b) of subsection (4) of Section 21 must be given a proper meaning."
17.
The main contention of the appellant is that the FIR is ante-timed.
The learned Trial Judge, in his judgment, assigned three reasons in support of his finding that it was so.
18.
It is not in dispute that the written report, although, is said to have been lodged at 00.25 hours on 13.4.192, the same was received in the Court of the Judicial Magistrate as late as on 18 April 1992.
The only explanation offered by P.W.
5 was that although the same has been sent at 6.25 in the evening, it could not be sent directly, as in view of the provisions, the same was to be sent through the Circle Officer.
The State has not offered any explanation as to why the Circle Officer, a post held by an officer of the rank of Deputy Superintendent of Police, would not act responsibly.
Section 157 Cr.P.C.
as also Article 21 of the Constitution of India provide for a safeguard in such a manner directing that FIR should be sent to the Court of Chief Judicial Magistrate within a period of 24 hours.
19.

The learned Trial Judge further was of the opinion that the copy of the FIR had not been served upon the complainant P.W 1 forthwith and the signature of the informant had also not been obtained in chik report .
There was no reason as to why Rajveer Singh was not sent for medical examination immediately after registration of the case, although the Primary Health Centre was situated nearby the police station.
The Trial Judge further noticed that 'chiti mazroobi' had not been sent from the police station to examine the injured.
Such a 'chiti mazroobi', according to the learned Trial Judge, would contain not only the details of the accused, but full particulars of the case, as also the injuries appearing on the person of the victim.
20.
The High Court, however, reversed the said findings opining that issuance of 'chiti mazroobi' was not mandatory, particularly, when P.W.
1 was sent for medical examination along with a Head Constable.
It was further opined that the Investigating Officer not being present in the police station, there might have been a delay in medical examination by the doctor.
The High Court, without any evidence on record, held that the doctor might not be available and he must have gone to his house for taking rest.
It was further opined that P.W.
1 being a young man, must have acted in accordance with the directions of the police.
21.
There is some amount of surmises and conjectures in the opinion of the High Court.
The Investigation Officer-P.W.
7, although, might not have been present at the police station, but according to the evidence available on records one R.A.
Singh was present.
The medical examination report of Rajveer Singh bore the date as 04 April 1997.
Why such a wrong date was mentioned, has not been explained.
P.W.
1 in his cross-examination categorically admitted that he received the chik report in the morning.
A suggestion was given to P.W.
5 that when he reached the place of occurrence, the FIR was not in existence.
P.W.
7, the Investigating Officer, in paragraph 19 of his deposition admitted that no date below the signature of the Circle Officer in the first case diary had been mentioned.
22.
The date, which appeared in the case dairy, is 16.4.
In terms of the U.P.
Police Regulation, to which we may short to a little later, the copies of the case diary were required to be sent to the Superintendent of Police and other high officer the next day.
In this case the said requirement was not complied with.
23.
P.W.
7 further admitted that some numerical had been written on the said page but he could not say who wrote them and what was the significance thereof.
It further appears from his evidence that no name of the accused had been recorded on the inquest and other papers, which were 18 in number.
He could not infer even the gist of the incident from the face of the inquest report.
He admitted that he was not able to understand the contents of column 2 of the inquest, i.e., the manner of the report.
According to him, he had merely read in the said column "murder by gunshot".
He admittedly had not mentioned about the nature of the weapon or the person who was responsible for the murder, although in the FIR not only the nature of weapon was mentioned, it was categorically stated as to how the incident took place, including the fact that the DBBL gun held by appellant No.
1 herein was a licensed gun.
Yet again, to P.W.

8, Shailesh Tyagi, clear suggestion was given that "writing of diary was stopped" and FIR was recorded when Investigating Officer returned in the afternoon on 13 April 1992 from the place of occurrence and thereafter the special report was sent.
The FIR, according to the said witness, was sent by post.
He merely stated that the Constable who went to the police station, which was at a distance of 50 kms.
from the Headquarter, took with him the FIR also but no date or case number had been mentioned in the prescribed column.
24.
He accepted that the FIR was produced before the Court of Chief Judicial Magistrate on 18 April 1992.This Court in Meharaj Singh v.
State of U.P., [1994] 5 SCC 188 1994 Indlaw SC 450, as regards the requirement of sending of the FIR to the Court, the inquest report as also the requirements to comply with other formalities provided for external checks, categorically held :
"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial.
The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any.
Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought.
On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version of exaggerated story.
With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks.
One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate.
If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate.
Prosecution has led no evidence at all in this behalf.
The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report.
Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report.
The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-time to give it the colour of a promptly lodged FIR.
In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."
25.
The said decision of this Court was followed by a Three Judge Bench of this Court in Thanedar Singh v.
State of M.P., [2002] 1 SCC 487 2001 Indlaw SC 135 and also in, Rajeevan & Anr.
v.
State of Kerala, [2003] 3 SCC 355 2003 Indlaw SC 160 and Bijoy Singh & Anr.
v.
State of Bihar, [2002] 9 SCC 147 2002 Indlaw SC 1613.
26.
We are, however, not oblivious of the fact that Meharaj Singh 1994 Indlaw SC 450 (supra) has been distinguished in Rajesh @ Raju Chandulal Gandhi & Anr.
v.
State of Gujarat, [2002] 4 SCC 426 2002 Indlaw SC 155, stating :
"Relying upon the judgment of Meharaj Singh v.
State of U.P1994 Indlaw SC 450.

the learned counsel appearing for the appellants has submitted that FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led in the trial.
The object of insisting upon prompt lodging of the FIR is to obtain information regarding the circumstances in which the crime was committed including the names of actual culprits and the part played by them, the weapon of offence used as also the names of the witnesses.
One of the external checks which the courts generally look for is the sanding of the copy of the FIR along with the dead body and its reference in the inquest report.
The absence of details in the inquest report may be indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultation and was then ante-timed to give it a colour of promptly lodged FIR.
The reliance of learned counsel for the appellant on Meharaj Singh 1994 Indlaw SC 450 case is of no help to him in the instant case inasmuch as all requisite details are mentioned in panchnama Exhibit P-32.
Mere omission to mention the number of the FIR and the name of the complainant in Ext.
P-37 has not persuaded us to hold that the FIR was ante-timed in view of the peculiar facts and circumstances of the case as noticed by the trial court, the High Court and by us hereinabove."
27.
The State of U.P.
had made regulations in terms of the Police Act, 1861 which are statutory in nature.
Regulation 97 provides as to how and in what from the information relating to commission of a cognizable offence when given to an officer-in-charge of a police station, is to be recorded.
Such a First Information Report, known as chik (check) report, should be taken out in triplicate in the prescribed form and the true facts should be ascertained by a preliminary investigation'.
In the event a written report is received, an exact copy thereof should be made and the officer-in-charge of the station is required to sign on each of the pages and put the seal of the police station thereupon.
The duplicate copy is to be given to the person who brings the written report and the original thereof must be sent to the Superintendent of Police.
Regulation 108 emphasizes the need of maintaining the case diary stating that time and place should be noted in the diary by the Investigating Officer when beginning the investigation; whereafter only , he should inspect the scene of the alleged offence and question the complainant and any other person who may be able to throw light on the circumstances.
Regulation 109 provides that the case diary must contain the particulars required by Section 172 of the Code of Criminal Procedure in sufficient detail so as to enable the supervising officer to appreciate the facts.
28.
The learned Trial Judge, in view of the aforementioned conduct of the prosecution and the available materials on records, was of the opinion that defence version is possible.
The learned Trial Judge recorded that the statement of Veer Singh had not been recorded by the Investigating Officer.
The High court opined that Veer Singh was not an eye-witness of the FIR.
The High Court committed an error of record as in the FIR it has clearly been stated that Veer Singh went with the complainant P.W.
1-Rajveer Singh to lodge the FIR and he was present in the police station.
In the FIR it was clearly stated :
"On commotion my uncle Veer Singh and Chetram son of Kalu, Shiv Singh son of Chotte, Sawan son of Bhaggan of our village reached there flashing their torches."
29.
The High Court was of the view that evidence shows that the investigation of the case was entrusted to P.W.
7-S.P.S.
Tomar, but he was not present at the police station.
The said finding may be correct but it has also been brought on record that one R.A.
Singh was present.
There was no reason as to why he did not taken up the investigation immediately.
It is not the case of the prosecution that S.P.S.
Tomar was the officer-in-charge of the police station.
Shri R.A.
Singh could have recorded the statement of P.W.

1, as also the said Veer Singh.
According to P.W.
7, he recorded the statement of eye-witnesses after sunrise on 13 April 1992.
If that is so, he should have mentioned the said fact in the general diary after he came back to the police station.
He admittedly did not do so, although, the same was required to be done in terms of Section 44 of the Police Act, 1861, which is in the following terms :
"44.
Police-officers to keep diary.
It shall be the duty of every officer-in-charge of a police-station to keep a general diary in such from as shall, from time to time, be prescribed by the State Government and to record, therein, all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.
The Magistrate of the district shall be at liberty to call for and inspect such diary."
30.
Furthermore, even the statement of Sawan Singh had not been recorded under Section 161.
P.W.
1, who is an eye-witness, stated that his evidence has been taken at about 7.30 a.m.
and only thereafter, inquest had been carried out.
Although, inquest had been carried out in his presence, his signatures we're not taken on the 'Panchayatnama'.
P.W.
2-Chet Ram stated that the inspector did not examine him about the murder at all and he did not meet the inspector after sealing of the dead bodies.
The Investigating Officer, who was examined as P.W.
7 did not contradict him.
31.
We do not know as to whether copy of the statement of P.W.
2, recorded in terms of Section 161 Cr.P.C., had been handed over to the accused.
Even the same is not available on record.
32.
The High Court opined that the Investigating Officer might have taken the statement of the witnesses on the next day when he had conducted a raid on the house of the accused.
Admittedly, the copy of the FIR reached the place of occurrence only in the morning of 13 April 1992.
He did not have with him a copy of the FIR.
Without a copy of the FIR, it is surprising that he could make raids.
33.
P.W.
1 was stated to have been examined on 4 O'clock in the morning on 13 April 1992.
He, however, stated that he was examined at about 1/1.30 a.m.
34.
If, according to the doctor, some X-ray was to be taken, the same should have been taken immediately.
Assuming the High Court is right in its observations that he must have been busy in relation to the investigation in regard to death of his parents, he was admittedly available in the town on 13th April.
Post-mortem examination had only been carried out on 14 April 1992.
There was not reason as to why he was not taken for an X-ray on 13 April 1992.
Even assuming that there was good reason for taking the X-ray on 18 April 1992, it is significant to note, the X-ray plate had not been filed in the Court.
A supplementary injury report had been prepared by P.W.
6, but the said report is not admissible in evidence, as the primary document, on the basis whereof he prepared his report, was not made available.
He could have been effectively examined as regards the correctness or otherwise of the report only if the X-ray plate was placed on record.
According to the Trial Court, although, the number of FIR was mentioned, as we have noticed hereinbefore, other details were lacking.

There Investigating Officer also did not explain as to why he waited to make the investigation till 8 a.m.
or 9 a.m.
of 13 April 1992.
According to the High Court's opinion :
"It is quite likely that he may have thought of commencing inquest after finishing the daily chores of life like going to toilet, taking a bath and having some breakfast.
After touching a dead body many people do not eat anything without taking a bath.
It is quite likely that P.W.
7 may have thought of commencing holding of inquest after taking breakfast etc."
35.
No such explanation has been offered by P.W.
7.
The opinion of the High Court is based on the surmises and conjectures.
We may, at this juncture, also notice the medical evidences brought on record.
P.W.
9-Dr.
Madan Mohan, performed the post-mortem examination.
He conducted the post-mortem examination on 14 April 1992 both of Ram Gopal and Chatarvati.
The death, according to him, took place on 1 day before the examination, which would take us about 10 p.m.
on 12 April 1992.
The ante-mortem injuries found on the body of Ram Gopal are already mentioned.
He, in his evidence, stated :
"The direction of injury No.
1 of Ram Gopal was from upwards to downwards.
The injury No.
1 is possible is somebody is lying and one fires from the side of head towards the legs from the top keeping his barrel parallel to the direction of body, from a distance.
But then in that condition injuries No.
2 and 3 are not possible from one fire.
There is a bleak possibility that Ram Gopal had received all the three injuries, from three different shots."
36.
The direction and dispersal of injury sustained by Ram Gopal did not tally with the prosecution case, which, according to the learned Trial Judge, raises a doubt about the presence of the prosecution witnesses.
The High Court, however, opined that the pellets were of small size and could be deflected easily and there is a possibility of it that pellets could change their direction after hitting them with a force.
The said opinion was arrived at by the High Court on the premise that the dispersal of pellets, as mentioned in authoritative texts, were regular factory made cartridges.
The High Court failed to notice that appellant No.
1 was said to have been carrying licensed double barrel gun and thus authoritative text as regard direction and dispersal of the injuries could be relied upon.
The High Court, in this regard, opined as under :
"The dispersal of the pellets as mentioned in authoritative texts is with regard to regular factory made cartridges.
Besides Budh Singh, the remaining five accused were carrying country made pistols and country made guns.
It is quite likely that locally made or hand-filled cartridge had been used where the position of dispersal of pellets may be entirely different."
37.
We have not been shown that there was any injury to the bone.
Only Budh singh, according to P.W.
1, was responsible for firing from his double barrel licensed gun.
It had been noticed by the learned Trial Judge, as also by us, the ante-mortem injuries suffered by Ram Gopal.
The opinion of the High Court does not find support from the medical evidence.
38.

The prosecution witnesses, namely, P.Ws.
1, 2 and 3 further stated that the appellants and the deceased had been standing.
According to them, only appellant No.
1 fired one shot.
From the medical evidence, however, it appears that the direction of injury was from upwards to downwards, which belies the statement of the prosecution witnesses that both of them were in standing position and in fact, were quarrelling with each other.
The opinion of the doctor is that at the time of firing Ram Gopal must have been laying down and the firing must have been done from a distance, which would mean from a higher level.
In view of the nature of injuries suffered by Ram Gopal, such firing was possible from a distance of 40 to 45 feet and not from a close range.
He did not find any charring, bleeding and tattooing marks.
Furthermore, the margin of injury was found to be inverted.
No corresponding exit would of the bullet was found.
Even so far the injuries found on left thigh and right thigh are concerned, the same were inverted in nature.
The reasons assigned by the learned Trial Judge in this behalf, thus, cannot be said to be perverse.
39.
P.W.
4-Dr.
S.K.
Verma also noticed only a lacerated wound on the person of P.W.
1.
He did not see any pellet.
He did not find any inverted wound.
Had he noticed any, he would have mentioned the same.
The injury, according to the doctor was with a sharp round object, which, according to the defence, could have been self-inflicted.
It is also of some significance to note that both the learned Trial Judge as also the High Court did not place any reliance on the ballistic report of cogent reasons : Firstly, the site of recovery of pellet had not been shown in the site plan; Secondly, the envelope, in which the gun and the empty shell had been packed, did not bear the signatures of the witness and; Thirdly, the exhibits were sent to the ballistic expert after more than a month, i.e., on 15 May 1992.
40.
P.W.
1, in his evidence stated that apart from both his parents, he himself received gunshot injuries in a standing position and the accused were also standing.
According to him, his father Ram Gopal ran towards the southern direction after being shot, whereas his mother ran towards north-west.
He also ran towards the south.
If the medical evidence is to be relied upon, having regard to the nature of ante-mortem injuries suffered by Ram Gopal, it might not have been possible for him to stand up and then run to some distance at all.
The High Court referred to the Principles and Practice of Medical Jurisprudence (1984 Edition) by Taylor and Modi's Medical Jurisprudence and Toxicology (1967 Edition) for the purpose of showing that there are many instances where persons had been found to be walking to some distance after receiving gunshot injury in the heart or even run to some distance.
The learned counsel appearing on behalf of the State had not been able to show before us that having regard to the nature of the injuries suffered by Ram Gopal, it was possible for him to stand up as was in a laying down position and then, run a few yards.
41.
The learned Trial Judge had drawn an adverse inference as no agricultural implement, as spade etc., were found at the place of occurrence.
The High Court, however, reversed the said findings stating that the deceased and their son had been irrigating their field.
P.W.
1, however, in his evidence categorically stated :
"I was away from the Engine.
I flashed the torch as others who were having torches were also far from the engine.

I was working at about 10 steps from the engine when the accused came.
My mother and father were working near me.
I was towards south from the engine.
I was making bed (kyari) in the feld.
Father was making the bed (kyari).
Mother was sitting.
We both were making the bed (kyari) withheld of spade.
We left the there was the field.
When Inspector came at the spot, there was no spade.
I had shown to the Inspector the place where we were working.
I cannot state the reason if he has not shown the same in the map.
I cannot say who had taken away the spades."
42.
Apart from the place where they had been working had not been shown in the site plan, the High Court was also not correct to hold that the agricultural implements were not necessary for preparing kyaries.
43.
Indisputably it was P.W.
5, who had taken the dead bodies for post-mortem examination.
The High Court noticed that P.W.
5, Constable Chandra Sen gave contradicting statements.
He categorically stated that he had come to the place of occurrence at about 9 O'clock with the Inspector.
How the FIR reached the hands of the Investigating Officer at 6-6.30 in the morning is a mystery.
The High Court opined as under :
"It may be mentioned that in his examination-in-chief this witness has merely stated about carrying the dead bodies to the Head Quarter for their post mortem examination.
At three different places in his cross-examination he has said that the matter had become very old and he does not remember the facts.
He is not an eye witness of the occurrence nor he gave his statements after refreshing his memory from records.
As a constable posted to a police station he may have accompanied the Sub Inspector or Inspector of Police to scenes of commission of crime on many occasions and may have carried the dead bodies to the Head Quarter for post mortem examination.
It is quite likely that on account of confusion of mixing of facts with some other case, he may have stated that he reached the spot at 9 a.m.
If this is accepted, it would mean that all the three eye witnesses and P.W.
7 S.P.S.
Tomar gave false statements that the latter had reached the spot around 1.30 in the night.
If his entire cross examination is read, it will clearly show that he did not remember the fact regarding reaching of the I.O.
or distance of the bodies and place where they were lying and not much importance can be attached to the same."
44.
The evidence on record does not lead to such an inference.
If P.W.
5 is to be believed, the same would clearly suggest that three eye-witnesses, as also P.W.
7 gave false evidence.
If P.W.
5 made some mixing statement, it was for the prosecution to examine.
According to him, he had been present at the place of occurrence throughout the day, till the dead bodies were sent to the Head Quarter.
45.
The Trial Court disbelieved the evidence of P.W.
2 and P.W.
3.
But P.W.
3 had changed his statement regarding place of occurrence where Chatarvati had sustained injuries.

The ante-mortem injuries found on the dead body of the Ram Gopal clearly belied the statements of P.Ws.
1, 2 and 3.
The High Court, however, held that P.Ws.
2 and 3 were not related to the complainant.
The following statement of P.W.
2 in his cross-examination goes to show that they were related to the complainant :
"The name of my father was Kallu.
I have no knowledge how many brothers my grandfather, Guljari were.
I do not know my grandfather were five brothers.
I do not know if Bihari, Gangu, Bhola, Sandhu were brothers of my grandfather.
Ram Gopal and Veer Singh are son of Heera.
The name of Heers's father was Nannu.
The name of Nannu's father was Bihari.
Shiv singh was son of Chotte.
I do not know if Chotte was son of Bihari.
I do not know if Nannu and Chotte are brothers.
It is wrong to suggest that I am concealing deliberately that I am cognate to the Ram Gopal, Veer Singh and Shiv Singh.
Prem and Jagan are separated.
They have different fields and kitchens."
P.W.
3 also stated as under :
"My father were two brothers.
The name of father's brother was Thakura, I do not know the name of my grandfather.
It is wrong to suggest that Nanua was also brother of my father.
I do not know the name of my grandfather was Bihari.
Heera is son of Nanua.
The name of Nanua's father is not Bihari.
I have no relatoin with Chetram.
Chetram is witness in this case.
He has no relationship with me.
I am not uncle of Veer Singh."
46.
It will bear repetition to state that according to P.W.
2, his statements had not been taken by P.W.
7 under Section 161 Cr.P.C.
It is interesting to note what P.W.
7 in his evidence stated :
"...I cannot tell about the distance between the place where the dead body of Chatarvati was found and the road which goes towards village from fields which had been shown in site plan, as I had not measured the aforesaid distance.
I had not seen the fields of witnesses Veer Singh, Chetram, Shiv Singh & Savan Singh from where after completion of their work they had reached at the place of occurrence.
I cannot tell the length of the field having trees belonging to Meer Hasan which is South to the field of witness Chetram, it is very long.
No marks of blood was found between the place HD and 'G'.
There was heavy crowd in the night."
47.
We may notice that admittedly the accused No.
6 was not carrying any weapon.
He admittedly had a dispute with Veer Singh.
Veer Singh accompanied the complainant to the police station.
No role had been attributed to the said accused.
It is not clear as to why he was implicated.
He did not have any dispute with the deceased, namely, Ram Gopal and Chatarvati.
The prosecution did not lead any evidence as to why he would join the appellant Nos.
1 and 2 in commission of the crime.
Similarly, appellant Nos.
3 and 4 were cousins.

Except making a statement that they had been carrying some country made pistols and fired from their respective weapons, no evidence has been brought on record to that effect.
We also fail to understand as to why the Investigating Officer, who took over the investigation from P.W.
7 and who had investigated only for 8 days, had not been examined.
No explanation whatsoever has been offered by the prosecution in this regard.
48.
The version of the prosecution is that the lands belonging to P.Ws.
2 and 3 were half a kilometer away and they do not have any field near the field of the deceased.
There was no standing crops in the field.
The view of the Trial Court, having regard to the aforementioned facts and circumstances of the case, was, therefore, a possible view and as such we need not go into the other contentions as regards the motive or time of death, vis- -vis, the medical opinion etc.
49.
For the reasons mentioned hereinbefore, we are of the opinion that the High Court was not correct in arriving at the conclusion that the view of the Trial Court was wholly perverse and could not be sustained on the materials brought on record by the prosecution.
This appeal is, therefore, allowed.
50.
The impugned judgment of the High Court is set aside.
The appellants are on bails.
They are discharged from their bail bonds.

Anil Kumar v State of U.P.
Supreme Court of India

13 February 2003
Appeal (Crl.) 139 of 1996
The Judgment was delivered by : S.
N.
Variava, J.
1 This Appeal is against a Judgment dated 22nd November, 1994.
Briefly stated the facts are as follows:
2 On 11th June, 1978 one Manoj Kumar (P.W.2) was returning to his home.
At that time he was way laid by Chaman (the Appellant in Criminal Appeal Nos.
934-936 of 1995, which Appeals have been dismissed today by a separate Judgment) and four other persons way laid him and assaulted him with iron bars, knives and Dandas.
On hearing his cries his younger brother Sanjay rushed forward to protect him and embraced Manoj in order to save his life.
The younger brother was only 10 years old at that time.
Even on seeing that a 10 years old boy has embraced Manoj the assailants did not stop but continued to inflict knife and Danda blows even on the young boy of 10 years.
On hearing the cries of Manoj and Sanjay, their father Shri Sidheswar Dwivedi, mother Smt.
Kaushalya Dwivedi and sister Sangeeta rushed to save them.
They were also assaulted.
3 Thereafter other people of the public came there and the assailants ran away.
A complaint was lodged by the father Shri Sidheswar Dwivedi.
In the first information report he named Chaman as having first attacked along with certain unknown persons.
He thereafter named certain other persons who were supposed to have come there and helped the assailants after he reached the spot.
On the basis of this complaint an investigation was made by the police.
Eight accused were put up for trial.
As Sanjay had died the charges were under Sections 302, 323, 325 read with 149 and Section 148 of the Indian Penal Code.
4 The prosecution examined a number of witnesses of whom P.W.1, was the father, P.W.2, was Manoj and P.W.4, was the mother.
They were eye-witnesses who narrated the incident and identified Chaman and the Appellant.
In spite of detailed cross examination their testimony could not be shaken.

Their evidence was corroborated by the evidence of the Doctor who disclosed that Sanjay had died a homicidal death and that Manoj, his father and the mother had also received injuries.
5 After trial six persons were acquitted by the trial Court.
Chaman and the Appellant were convicted by the trial Court under Sections 325 read with 149 I.P.C.
for which a sentence of 4 years was imposed.
They were also convicted under Sections 324 read with 149 I.P.C.
and a sentence of 2 years was imposed.
For offence under Sections 323 read with 149 I.P.C.
a sentence of 6 months was imposed.
For offence under Section 148 I.P.C.
a sentence of 1 year was imposed.
All the sentences were directed to run concurrently.
The Appellant (as well as Chaman) filed two criminal Appeals in the High Court.
6.
The State also preferred an Appeal against the acquittal under Sections 302 read with 149 and against the acquittal of other 6 persons.
The High Court heard all these Appeals together and disposed off the same by the impugned judgment.
The High Court has confirmed the finding of the trial Court that the prosecution had proved its case beyond a reasonable doubt as against Chaman and the Appellant.
It has also confirmed the conviction under Sections 325 read with 149, 324 read with 149, 323 read with 149 and 148 of the Indian Penal Code.
But the High Court has concluded, and in our view rightly, that an offence was made out under Sections 304 Part II read with 149 I.P.C.
and sentenced both Chaman and the Appellant to 5 years rigorous imprisonment.
Hence this Appeal.
7 Mr.
Tripurari Ray has submitted that both the trial Court and the High Court have erred in convicting the Appellant.
He submitted that in the FIR the Appellant has not been named.
He submitted that the scribe of the FIR was one Mr.
Umesh Kumar Dixit who was the nephew of the complainant.
He submitted that Umesh Kumar Dixit was a class-mate of the Appellant and he knew the Appellant.
He submitted that as Umesh Kumar Dixit knew the Appellant he would have named the Appellant in the written complaint if the Appellant had actually been present at that time.
He submitted that the prosecution did not examine Umesh Kumar Dixit and therefore the Appellant has been gravely prejudiced.
He submitted that an adverse inference must be drawn against the prosecution that if Umesh Kumar Dixit had been examined the Appellant would have been able to establish that he was not present at the time of the incident.
8.
We are unable to accept the submission.
Umesh Kumar Dixit was not an eye witness.
He did not see the incident and did not know who were present or who the assailants were.
He only scribed what was told to him by P.W.1.
It has come in the evidence of P.Ws.
1, 2 and 4 that they did not know the Appellant prior to the incident.
They therefore could not have named him in the FIR.
As Umesh Kumar Dixit was not an eye-witness to the incident there was no necessity to examine him.
Umesh Kumar Dixit could have showed no light.
He could not have stated whether the Appellant was present or not.
Therefore no prejudice has been caused to the Appellant.
9 It was next pointed out that the Appellant was arrested on 12th June, 1978.
It was submitted that on the same day the Appellant was taken to the hospital.
It was submitted that while taking the Appellant to the hospital no precautions were taken.
It was submitted that his face was not covered.
It was submitted that for this reason itself the trial gets vitiated.

In support of this submission reliance was placed upon the case of S.
V.
Madan v.
State of Mysore reported in (1980) 1 SCC 479 1979 Indlaw SC 403 wherein this Court found that there was no evidence adduced by the prosecution to show that precautions were taken to ensure that the witnesses did not see the accused and/or that the witnesses had no opportunity to see the accused before the identification parade.
On this ground it was held that reliance could not be placed on an identification parade.
Thus this case was based on the fact that there was no evidence that precautions were taken.
10.
We however note that P.Ws.
8 and 9, i.e.
the investigating officer and the officer in-charge of the police station, have deposed that they took the Appellant in a covered condition and that whilst the Appellant was in jail he was not shown to anybody.
In cross-examination their testimony, that they had taken these precautions, could not be shaken.
Thus in this case there is clear evidence that precautions were taken in order to ensure that the witnesses did not have the chance to see the Appellant.
11 It was next submitted that even though the Appellant was arrested on 12th June, 1978 the identification parade was held only on 27th July, 1978.
It was submitted that there was a delay of about 47 days in holding the test identification parade.
It was submitted that the test identification parade after such a delay cannot be relied upon and on this ground also the Appellant is entitled to be acquitted.
In support of this submission reliance has been placed on the case of Soni vs.
State of U.
P.
reported in (1982) 3 SCC 368 1981 Indlaw SC 608.
The entire Judgment consists of one paragraph which reads as follows:
"After hearing counsel on either side we are satisfied that the conviction of the appellant for the offence of dacoity is difficult to sustain.
The conviction rests purely upon his identification by five witnesses, Smt.
Koori, Pritam Singh, Kewal, Chaitoo and Sinru, but it cannot be forgotten that the identification parade itself was held after a lapse of 42 days from the date of the arrest of the appellant.
This delay in holding the identification parade throws a doubt on the genuineness thereof apart from the fact that it is difficult that after lapse of such a long time the witnesses would be remembering the facial expressions of the appellant.
If this evidence cannot be relied upon there is no other evidence which can sustain the conviction of the appellant.
We therefore allow the appeal and acquit the appellant."
12 It is to be seen that apart from stating that delay throws a doubt on the genuineness of the identification parade and observing that after lapse of such a long time it would be difficult for the witnesses to remember the facial expressions, no other reaSoning is given why such a small delay would be fatal.
13.
Reliance was also placed upon the case of Hari Nath vs.
State of U.
P.
reported in (988) 1 SCC 14 1987 Indlaw SC 28066.
In this case the importance of test identification parade was being considered.
It was held that the test identification parade only has corroborative value and that a test identification parade should be held with reasonable promptitude after the occurrence.
14 Based upon the aforesaid authorities it was submitted that the law, as laid down by this Court is that if there is delay in holding the test identification parade then it is difficult to believe that the witnesses would remember the facial expressions of the accused.
It was submitted that the law is that such identification becomes suspicious and the accused must be given the benefit of doubt.
We are unable to accept these submissions.
In the case of Brij Mohan v.
State of Rajasthan reported in AIR (1994) SC 739 1993 Indlaw SC 142 the test identification parade was held after 3 months.

15.
The argument was that it was not possible for the witnesses to remember, after a lapse of such time, the facial expressions of the accused.
It was held that generally with lapse of time memory of witnesses would get dimmer and therefore the earlier the test identification parade is held it inspires more faith.
It is held that no time limit could be fixed for holding a test identification parade.
It is held that sometimes the crime itself is such that it would create a deep impression on the minds of the witnesses who had an occasion to see the culprits.
It was held that this impression would include the facial impression of the culprits.
It was held that such a deep impression would not be erased within a period of 3 months.
16 In the case of Daya Singh vs.
State of Haryana reported in AIR 2001 SC 1188 2001 Indlaw SC 20277 the test identification parade was held after a period of almost 8 years inasmuch as the accused could not be arrested for a period of 7-1/2 years and after the arrest the test identification parade was held after a period of 6 months.
The cases of Hari Nath 1987 Indlaw SC 28066 (supra) as well as Soni 1981 Indlaw SC 608 (supra) were relied upon on behalf of the accused in that case.
Both these cases were considered by this Court.
The injured witnesses had lost their son and daughter-in-law in the incident.
It was pointed out that the purpose of test identification parade is to have the corroboration to the evidence of the eye witnesses in the form of earlier identification.
It was held that the substantive evidence is the evidence given by the witness in the Court.
17 It was held that if that evidence is found to be reliable then the absence of corroboration by the test identification is not material.
It was further held that the fact that the injured witnesses had lost their son and daughter-in-law showed that there were reasons for an enduring impression of the identity on the mind and memory of the witnesses.
Reliance was also placed upon the following paragraph in the case of State of Maharashtra v. Suresh reported in (2000) 1 SCC 471 1999 Indlaw SC 768:
"We remind ourselves that identification parades are not primarily meant for the Court.
They are meant for investigation purposes.
The object of conducting a test identification parade is twofold.
First is to enable the witnesses to satisfy themselves that he prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime.
Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence."
18 This Court therefore concurred with the High Court that the categorical evidence of the witnesses received corroboration from the test identification parade even though it was held late.
The conviction of the Appellants in that case was upheld.
19.
In the present case also Manoj was attacked by Chaman as well as the Appellant.
He had a clear look at his assailants.
Thereafter his younger brother came to save him and in that process got killed.
Manoj also received serious injuries.
These are circumstances which would impress upon the mind of Manoj the facial expressions of the assailants.
This impression would not diminish or disappear within a period of 47 days.
Similar is the case of the father and the mother of Manoj.
They have seen the assailants attacking their sons and one of the sons getting killed.
In their memory also the facial expressions of the assailants would get embossed.
A mere lapse of 47 days is not going to erase the facial expressions from their memory.
20 All these witnesses have identified the Appellant.
We are in agreement with the trial Court as well as the Appellate Court that their evidence is believable.
In this view of the matter we see no infirmity in the impugned Judgment.
We see no reason to interfere.
The Appeal stands dismissed.
The bail bond stands cancelled.
The Appellant should be taken into custody forthwith to serve out the remaining period of sentence.

Appeal dismissed

Ghurey Lal v State of Uttar Pradesh
Supreme Court of India

30 July 2008
Cr.A.
No.155 of 2006
The Judgment was delivered by: Dalveer Bhandari, J.
1 This appeal is directed against the judgment of the High Court of Allahabad dated 11th November, 2005 passed in Criminal Appeal No.
365 of 1981.
2 This is a murder case in which the trial court acquitted the accused.
The High Court reversed the trial court's decision, finding the accused guilty.
In doing so, the appellate court failed to give proper weight to the views of the trial court as to credibility of witnesses, thereby ignoring the standards by which the appellate courts consider appeals against acquittals.
3 We have endeavoured to set out the guidelines for the appellate courts in dealing with appeals against acquittal.
An overriding theme emanates from the law on appeals against acquittals.
The appellate court is given wide powers to review the evidence to come to its own conclusions.
But this power must be exercised with great care and caution.
In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal.
The appellate court should, therefore, reverse an acquittal only when it has "very substantial and compelling reasons."
4 In giving our reasons for reversing the appellate court's judgment and restoring that of the trial court, we provide a brief review of the facts, the reasoning of the trial and High Court as well as the standards by which appeals against acquittals are reviewed according to settled principles of criminal jurisprudence in our country.
5 Before turning to the facts that were before the trial court, we note that there is an interesting coincidence in this case.
6.
The names of both the accused and the deceased are Ghurey Lal.
Therefore, to avoid confusion, we have referred to them as "accused" and "deceased."
7 Brief facts, according to prosecution, which are necessary to dispose of this appeal are recapitulated as under:
8.
It appears that at the heart of this matter lies a property dispute.
The accused testified in favour of his great-grand daughter, Ram Devi.
This testimony went against the deceased, creating enmity between the parties.
9 On 14.3.1979, the deceased, Shiv Charan P.W.1, Brij Raj Singh P.W.2, Yad Ram P.W.4, Nathi Lal (not examined) and Bishambhar (not examined) had taken the customary Gur (Jaggery) during the Holi festival.
10 On their way home, they happened to pass by the home of the accused.
The accused was standing just outside his home and was holding a shot gun.
The accused began to verbally abuse the deceased.
Thereafter, the accused fired one single shot from his gun, killing the deceased with a bullet and causing injuries to Brij Raj Singh P.W.
2 with pellets.
Hearing the gun shot, some people quickly assembled at the scene.
The accused fled to his room, which he locked from inside.
The uncle of the deceased, Shiv Charan, lodged the FIR that very evening, the 14th March, 1979 at 6.15 p.m., at the Barhan Police Station in the District of Agra.
11 The accused provided his own version of the event.
According to the statement of the accused u/s.
313 of the Code of Criminal Procedure, he went to the place of Kanchan Singh where Gur (Jaggery) was being distributed.

One Bal Mukand told the accused to leave the Gur distribution ceremony, as the deceased, Brij Raj Singh P.W.
2, Yad Ram P.W.4, Nathi Lal and Bishambhar had collected pharsa, lathis and kattas declaring that they will deal with him (accused) when he comes there.
On hearing this, the accused returned to his home and grabbed his gun.
The deceased and others then arrived at his home, brandishing weapons.
12.
The deceased carried a pharsa, Nathi Lal had a katta, Brij Raj Singh a knife and Yad Ram and Bishambhar possessed lathis.
To threaten and check them, the accused aimed his gun at them.
This was to no avail.
The deceased and others struck at the accused, hitting his gun.
Nathi Lal fired his katta, causing pellet injuries to Brij Raj Singh P.W.2.
A scuffle ensued in which the deceased's group tried to snatch away his gun.
In the scuffle, the gun was accidentally fired, killing the deceased.
The accused sustained pharsa and lathi blows on the butt and barrel of the gun.
Fearing for his life, the accused went to his room and locked the door from inside.
13 Brij Raj Singh P.W.
2 was sent to the Government Hospital, Barhan for medical examination.
Dr.
Govind Prasad P.W.3 found the following injuries on the person of Brij Raj Singh, P.W.
2:
"1.
Round lacerated wound 0.3 cm x 0.3 cm on right side back 10 cms away from mid line 9 cms below border of scapula.
Margins burnt and inverted, and tattooing present in an area of 5 cms.
No pellets palpable.
Bleeding present.
2.
Lacerated wound of exit 1.5 cm x 0.5 cm on right side back 0.8 cm away and lateral from injury no.
1.
Skin burnt and tattooing present in the area of 5 cm x 5 cms.
Merging of the wound inverted.
No pellets palpable."
14 The Doctor opined that the injuries were caused by a firearm.
15.
He advised that x-rays be taken and that the injuries be kept in observation.
In his opinion, the injuries were caused by a gun shot and were of fresh duration.
In his opinion, the injuries could have been caused around 4 p.m.
The doctor sent the memo Ex.
Ka-4 on the same day, informing the case of Medico legal nature to the Barhan Police Station.
16 The autopsy on the deceased was conducted by Dr.
Ram Kumar Gupta, P.W.5, Medical Officer, SNM Hospital, Firozabad, District Agra.
It revealed the following ante-mortem injuries on the deceased:
"1.
Gun shot wound of entry 2.5 cm x 2.5 cm x through and through on right side neck 2 cm lateral to midline of neck front aspect.
2.
Gun shot wound of exit 5 cm x 4 cm x through and through on right side back of neck 5 cm below right ear corresponding to injury no.
1 with margins averted."
17.
The Doctor opined that the cause of death was due to shock and hemorrhage as a result of ante-mortem injury.
18 The prosecution examined Shiv Charan P.W.1, Brij Raj Singh P.W.2 and Yad Ram P.W.4 as eye witnesses of the occurrence.
Dr.
Govind Prasad P.W.3, Medical Officer Incharge, who had medically examined Brij Raj Singh, proved the injury report Ext.

Ka 3.
Dr.
Ram Kumar Gupta P.W.
5, who had conducted autopsy on the dead body of the deceased, was also examined.
On internal examination, he found semi digested food material in the small intestine and there was faecal matter present in the large intestines.
He prepared the post-mortem report Ex.
Ka-5.
In his opinion, the death of the deceased had taken place around 4 p.m.
on 14.3.79 on account of the said injuries and shock.
19 The accused was charged with killing the deceased u/s.
302 of the Indian Penal Code (For short, IPC) and with causing simple injuries to the injured u/s.
323 IPC.
He was also charged with attempting to murder Brij Raj u/s.
307 IPC.
The accused appellant denied the charges, pleaded not guilty and asked to be tried.
20 The crucial question which arose for consideration was whether the injuries caused to Brij Raj Singh P.W.2 could have been caused by the same shot that killed the deceased.
If that was possible, the prosecution version became probable.
But if the shot that killed the deceased and the shot that caused injuries to Brij Raj Singh were from different weapons, then the defence version was more probable.
Shri B.
Rai, Ballistic Expert, Forensic Science Laboratory, U.P.
was called as court witness No.1.
He was asked to explain the nature of the 12 bore cartridges and give an opinion, for which he wanted time to carry out experiments in the laboratory.
21.
The gun was given to him and he performed a test in his laboratory in the light of the statements of the eye-witnesses, medical report and site-plan.
He submitted his report, Ex.
CKa.1, wherein he clearly opined that injuries Nos.
1 and 2 of the deceased were possible by the gun Ex.3 of the accused and injuries Nos.1 and 2 of the injured Brij Raj Singh were possible by another fire.
By "fire", it is clear from the record that the Ballistic Expert was referring to a "firearm".
22 Ultimately, we must answer the following question: Whether the prosecution story of a single shot causing injury to two persons, that is bullet injury to deceased and pellet injury to Brij Raj Singh, with the accused as the aggressor, stands sufficiently proved beyond reasonable doubt?
17.
In order to decide whether a single shot was fired or in fact two different shots were fired, we must carefully examine the versions of the prosecution and the defence and the report of the Ballistic Expert.
According to the trial court, the medical evidence coupled with the Ballistic Expert report revealed the existence of two fires from two weapons and as such was inconsistent with the prosecution story.
The trial court further provided that it is difficult to separate falsehood from the truth, as some material aspects of the occurrence appeared to have been deliberately withheld.
"One has to separate the chaff from the grain and it is difficult to lay hand upon what part of the prosecution evidence is true and what part is untrue".
According to the accused, the trial court had taken a reasonable and possible view of the entire evidence on record.
23 The post-mortem report Ex.
Ka-5, photo lash Ex.
Ka-7 and the statement of Dr.
Ram Kumar Gupta P.W.5 indicate that the wound of entry was on the right side of the neck 2 cm.
lateral middle line on front aspect.
24.
The exit wound was on the right side back of neck 5 cm.
below the right ear.
This means that the bullet had entered from the front side of the neck from a distance of 2 cm.
lateral to middle line, and it had come out from the back of the neck at a place 5 cm.

below the right ear.
In this way, the trial court reasoned that the barrel of the gun, when discharging, was slanting vertical.
The mouth of the barrel was upward and its butt downward.
The barrel and the butt were not horizontal to the ground at that time.
25 The trial court observed that injury no.
1 (wound of entry) on Brij Raj Singh P.W.2 was on the right side of his back 10 cm.
away from the mid line, 9 cms.
below the lower border of scapula.
Injury no.
2 (wound of exit) was on the right side of his back 8 cm.
away and lateral from injury no.1.
This means that the exit wound was by the side of the entry wound at a distance of 8 cm.
26 The dictionary meaning of 'lateral' is "by the side" and this means that the two injuries caused by pellets to Brij Raj Singh P.W.2 were horizontal and not vertical.
The trial court opined that the single shot could not have caused vertical injury to one person and horizontal injury to another.
It found it doubtful and not sufficiently proved that the same shot could have injured Brij Raj Singh and killed the deceased.
27 This conclusion is further fortified by the report of the Ballistic Expert Sri B.
Rai court witness No.1.
He has given a definite opinion after making actual experiments by firing shots.
This was done from the distance at which the occurrence was said to have taken place.
The eye-witnesses had testified to this distance.
The Ballistic Expert opined that the injuries to Brij Raj Singh P.W.2 were from a different shot from the one that killed the deceased.
28 The relevant part of the evidence of the Ballistic Expert reads as under:
"2.
QuestionWhether bullet and Chharras both be used in 12 bore gun or not? Ans.12 bore gun have no bullet.
It has small chharas, big chharas or one single ball shot with diameter about 0645."
29 The Ballistic Expert after studying the post-mortem report observed as under:
"Studying the Post Mortem report No.
51/79 of deceased Ghurey Lal and injury report of Brijraj Singh dated 14.3.79, statement of doctor and witnesses and site plan and keeping the result of above experiments in mind, I reached in conclusion that injury No.
1 and 2 possible to sustain to deceased Ghurey Lal by this gun from the distance of 10 feet and injury No.
1 and 2 of injured Brij Raj Singh seems to sustain by some other shot."
30 The Ballistic Expert categorically stated that in cartridges of standard 12 bore shot guns, bullets from other rifles cannot be used with small and big chharas (pellets).
Therefore, the trial court concluded that both the injuries were not possible by a single firearm.
31 Leading experts of forensic science, particularly ballistic experts, do not indicate that from a single cartridge both bullets and pellets can be fired.
Professor Apurba Nandy in his book "Principles of Forensic Medicine", first published in 1995 and reprinted in 2001, discussed cartridges.
Professor Nandy mentioned that in some cases, instead of multiple pellets, a single shot or metallic ball, usually made of lead, is used.
We note that the discussion regarding cartridges exclusively mentions pellets.
No mention of bullets and pellets in cartridges is found in the numerous volumes of scholarly literature that we have consulted.
Relevant discussion reads as under:
"The Cartridges (the ammunitions)The cartridge of a shotgun and the cartridge of a rifled weapon are essentially different in their makes.
The cartridge of a shot gun (Fig.
10.69) The cartridge of a shotgun has the following parts and contents-
1.
The cartridge case The longer anterior part of the cartridge case is made of card board.
The posterior part and the posterior surface is made of brass.

The margin of the breach end of the cartridge case is rimmed, so that, the cartridge can be properly placed inside the chamber and with pressure on the rim the empty cartridge case can be easily ejected out of the chamber.
The anterior margin of the cartridge case is twisted inward to keep the pellets and other materials inside the case compact.
The anterior part of the cartridge case is made of cardboard, for which, with production of gas inside the cartridge case it can slightly expand so that, the twisted grip by the anterior margin will be released and the pellets can come out of the case.
The posterior metallic part keeps the shape of the breach end of the cartridge intact.
It helps to maintain the right position of the cartridge in the chamber, so that, the percussion pin of the hammer strikes the percussion cap rightly at the breach surface of the cartridge.
At the central part at the breach end inside the cartridge case is the percussion cap.
2.
The percussion cap It contains primer or priming mixture and there are some vents or openings on the wall of the percussion cap.
When the posterior surface of the percussion cap is struck by the percussion pin, the priming mixture which consists of a mixture either of mercury fulminate, pot, pot, chlorate and antimony sulphide or of antimony sulphide with lead styphnate, lead peroxide, barium nitrate or tetracene, gets ignited due to the pressure and friction and fire comes out through the vents or openings on the wall of the percussion cap.
3.
Contents inside the cartridge case.
Surrounding the percussion cap is the gun powder or the propellant charge which cannot ignite by pressure or friction and which on being ignited does not produce flame but produces huge amount of gas.
Usually the gunpowder of the shotguns contains charcoal, pot, nitrate and sulphur.
This combination of the gunpowder is known as black powder, as it produce much smoke.
Now-a-days semi smokeless gun powder is in use in shot guns which is a combination of 80% of black powder and 20% of smokeless powder.
Smokeless powder is ordinarily used in the cartridges of rifles (nitrocellulose or a combination of nitrocellulose and nitroglycerine).
The black powder produces 200 300 ml.
of gas per grain.
In front of the gunpowder, inside the cartridge case, there is a thin cardboard disc.
In front of the cardboard, disc is placed the wad.
The wad is made of soft substance like, felt, cork, straw or rug.
In front of the wad, there is another card board disc.
In front of this disc, the pellets are placed.
The pellets are spherical projectiles used in shot guns.
Their size may be variable, according to the need and make.
One ounce of pellets may consist of 6 to 2,600 of them.
In front of the pellets there is another cardboard disc on the anterior margin of which the anterior margin of the cartridge case is twisted.
The functions of the wad are to give compactness to the gunpowder, to prevent admixture of propellant charge and the pellets and prevent leakage of the gas produced after the firing.
Wad also cleans the inner surface of the barrel after the pellets pass out through the barrel.
To facilitate this cleaning, some greasy material is soaked in the wad.
In between the propellant charge and the wad there is a cardboard disc so that the greasy substance in the wad will not be soaked by the propellant charge and become useless.
In between the wad and the pellets there is a disc which in one hand prevents impregnation of the pellets in the soft wad and on the other, prevents leakage of the greasy substance from the wad in the pellets which would otherwise become adhesive to each other loosing their dispersion capacity.
The anterior most disc, placed in front of the pellets, give compactness to the pellets and the whole content of the cartridge case.
Shots of different sizes are suitable for different purposes.
Accordingly "Buck shots" or "Bird shots" have different sized shots or pellets for hunting wild birds or other prey.
In some cases instead of multiple pellets a single hot or metallic ball, usually made up of lead, is used.

"Rifled slugs" are single shot projectiles for shot guns with prominent parallel grooves on the surface."
32 In this book, the assessment of the direction of firing from the margin of the wound of entrance has also been given, which reads thus:
"Assessment of the direction of firing from the margin of the wound of entrance -
(i) (a) In case of shotgun injury, the pattern of dispersion of the pellets give the direction of the firing.
The pellets disperse over wider area as it travels more.
Hence firing is suspected to have been from the side opposite to the side of wider dispersion of the pellets.
....."
33 "Firearms in Criminal Investigation and Trials" was written by a distinguished professor Dr. B.R.
Sharma.
He has written in some detail about 12 bore guns.
This book also defines Pellet Pattern which reads thus:
"Pellet Pattern The area covered (pellet spread) by the pellets fired from a shotgun is proportional to the distance between the muzzle of the firearm and the target.
Greater the range, greater is the area covered by the pellets.
The spread of the pellets is affected mainly by the length of the barrel of the firearm and its muzzle characteristics (whether it is choked or not).
The condition of the ammunition also affects the results.
If experiments are performed with the same firearm and ammunition of the same make and batch, the test patterns provide fairly accurate estimates of the range.
Generally, the whole charge enters the body en masse up to a range of about two metres in a factory-made 12-bore shotgun.
It forms a rat-hole of about two to six centimetres in diameter.
The rat-hole is surrounded by individual holes when the range of fire is about two to seven metres..."
34 The trial court stated that in the FIR itself it is mentioned that the injuries to Brij Raj Singh were by pellets and that of the deceased by a bullet.
The Ballistic Expert has stated that the cartridge containing pellets cannot contain a bullet.
Accordingly, the trial court reasoned that two weapons were used.
35 The Ballistic Expert is a disinterested, independent witness who has technical knowledge and experience.
It follows that the trial judge was fully justified in placing reliance on his report.
36 The trial court also observed that removing the body of the deceased from the place of occurrence creates doubt that the prosecution was planning to substitute another story for the real facts.
As such, the possibility that the deceased and his group were the aggressors is not ruled out.
It is possible that pharsa and lathi blows had made the marks that were found on the gun.
The gun may have snatched all of a sudden, causing it to fire upon the deceased and Brij Raj.
Under the circumstances of the case, the use of another weapon, which had caused injuries to Brij Raj Singh P.W.2, is also not ruled out.
37 The trial court further observed that the substratum of the prosecution story about the injuries to Brij Raj Singh is not established beyond reasonable doubt and the story of shooting the deceased by the same shot fired by the accused is not separable from other doubtful evidence of eyewitnesses.
The circumstances show that the possibility of aggression on the part of the complainant side is not ruled out, then the benefit of doubt for killing the deceased by the accused would also go to the accused.
38 The trial court also found force in the plea of right of private defence as set up by the accused.
39.
The trial court mentioned that there is force in this argument where the circumstances of the case show that two fire arms were used in the occurrence.
The accused was all alone in his house at that time.
The availability of a second weapon is possible only when the complainant side had brought it to the scene.
This circumstance supports the defence case, that the complainants' side was the aggressor and they had come armed with weapons to the scene.

It follows that the accused would apprehend grievous hurt and danger to his life.
Accordingly, the right of self defence was open to him.
40 In the concluding paragraph of the judgment, the trial court observed that when neither the prosecution nor the defence version is complete, then it is obvious that both the parties are withholding some information from the court.
The burden of proving the charge to the hilt lies upon the prosecution.
It has failed to discharge its burden.
Thus, the benefit has to go to the accused.
41.
According to the trial court, the accused could not be convicted for the charges framed against him.
He was entitled to get the benefit of doubt and, consequently, the accused had to be acquitted of the charges under sections 302, 307 and 323 IPC.
42 The State, aggrieved by the trial court's judgment, preferred an appeal before the High Court.
43 The High Court in appeal re-appreciated the entire evidence and came to the conclusion that the trial court's judgment was perverse and unsustainable.
It therefore set aside the trial court judgment and convicted the accused u/s.
302 IPC for the murder of the deceased and u/s.
324 IPC for injuring Brij Raj Singh and sentenced him to life imprisonment and for six months R.I. respectively.
44 Against the impugned judgment of the High Court, the accused appellant has preferred appeal to this court.
We have been called upon to decide whether the trial court judgment was perverse and the High Court was justified in setting aside the same or whether the impugned judgment is unsustainable and against the settled legal position?
45 We deem it appropriate to deal with the main reasons by which the trial court was compelled to pass the order of acquittal and the main reasons of the High Court in reversing the judgment of the trial court.
MAIN REASONS FOR ACQUITTAL BY THE TRIAL COURT:
The trial court acquitted the accused for the following reasons:
"1.
The prosecution story of single shot injury to two persons one standing horizontally and the other vertically stands totally discredited by the medical and the evidence of Ballistic Expert.
2.
According to the FIR, the deceased received a spherical ball (ball shot) bullet injury and Brij Raj Singh P.W.2 received pellet injuries.
The accused's gun had a cartridge that could only contain pellets.
The Ballistic Expert has clearly stated that a cartridge containing pellets cannot contain a bullet.
As such, it appears that two weapons were used.
3.
Dr.
Ram Kumar Gupta, P.W.5 who conducted the post-mortem of the deceased, clearly stated that the deceased received injuries from a bullet whereas Dr.
Govind Prasad Bakara who had examined Brijraj Singh P.W.2 clearly stated that both injuries were caused by a pellet.
Therefore, according to medical evidence coupled with the evidence of the Ballistic Expert, two firearms must have been used.
This version is quite inconsistent with the prosecution story.
4.
The injuries received by Brij Raj Singh P.W.2 were from the back side and the injury received by the deceased was from the front side and this shows that two weapons may have been used.
5.
Removal of the body of the deceased from the place of occurrence also created doubt with regard to the veracity of the prosecution version.
6.
The possibility that the deceased and the complainant's side were aggressors and had gone there and caused pharsa and lathi blows on the accused cannot be ruled out because of the marks on the gun Ex.3.
That the said gun was fired in snatching all of a sudden, injuring the deceased also cannot be ruled out from the circumstances of the case.

7.
The trial court did not discard the defence version of right of private defence as pleaded by the accused.
8.
The trial court observed that it is difficult to separate falsehood from the truth, where some material aspects of the occurrence seem to have been deliberately withheld.
It is a wellestablished principle of criminal jurisprudence that when two possible and plausible explanations co-exist, the explanation favourable to the accused should be adopted."
MAIN REASONS FOR REVERSAL OF ACQUITTAL ORDER:
46 The High Court gave the following reasons for setting aside the acquittal:
"1.
A perusal of the post-mortem report goes to show that autopsy conducted on the dead body of the deceased revealed antemortem gunshot wound of entry 2.5 cm x through and through on right side neck 2 cm lateral to midline of neck front aspect having corresponding wound of exit 5 cm x 4 cm on right side back of neck 5 cm below right ear.
Therefore, this injury was almost horizontal.
2.
Medical examination of injured Brij Raj Singh revealed a round lacerated wound of entry 0.3 cm x 0.5 cm on right side back 10 cm away from midline and 9 cm below lower border of scapula having wound of exit 1.5 cm x 0.5 cm x 0.5 on right side back 0.8 cm away and lateral from injury no.
1.
Thus, this injury was also almost horizontal.
3.
The observation made by the trial judge that firearm injury caused to the deceased was vertical and to that of Brij Raj Singh horizontal is wholly fallacious.
4.
A layman does not understand the distinction between a cartridge containing pellets and the bullet.
In common parlance, particularly in villages when a person sustains injuries by gun shot, it is said that he has received 'goli' injury.
Ghurey Lal fired at his uncle with his gun causing him Goli (bullet) injury and Brij Raj Singh also received pellet (chhara) injury which goes to show that injuries received by them were caused by two different weapons.
There is hardly any difference between bullet and pellet for a layman.
From 12 bore gun cartridge is fired and 12 bore cartridge always contain pellets though size of pellets may be different.
5.
A perusal of the post-mortem reports goes to show that autopsy conducted on the dead body of the deceased revealed antemortem gun shot wound of entry 2.5 cms.
through and through on right side neck 2 cm lateral to midline of neck front aspect having corresponding wound of exit 5 cm x 4cm on right side back of neck 5 cm below right ear.
Therefore, this injury was almost horizontal.
6.
The medical examination of injured Brij Raj Singh revealed a round lacerated wound of entry 0.3 cm x 0.5 cm on right side back 10 cm away from midline and 9 cm below lower border of scapula having wound of exit 1.5 cm x 0.5 cm x 0.5 cm on right side back 0.8 cm away and lateral from injury no.1.
Thus, this injury was also almost horizontal.
7.
The learned trial judge had noted the evidence of B.
Rai, Ballistic Expert, C.W.1 that both the injuries would have been caused by two shots.
While B.
Rai, Ballistic Expert, C.W.1 had given the said opinion, he had also stated in his crossexamination by the prosecution that if the assailant fired from place 'C' and the person receiving pellet injury standing at place 'B' would have turned around, on dispersal of pellets he could have received the pellet injuries if deceased and injured both would have stood in the same line of firing."
OUR CONCLUSIONS:
47 We disagree with the High Court.
Admittedly, the deceased died of a bullet injury whereas Brij Raj Singh, P.W.

2 received pellet injuries.
It is well settled that a cartridge cannot contain pellet and bullet shots together.
Therefore, the injuries on deceased and injured P.W.
2 clearly establish that two shots were fired from two different fire arms.
48 The High Court also observed that the laymen, meaning thereby the villagers, hardly know the difference between a bullet and a pellet.
49.
This finding has no basis, particularly in view of the statement of all the witnesses on record.
Wherever the witnesses wanted to use 'bullet' they have clearly used 'Goli' or 'bullet' and wherever they wanted to use 'pellet' they have clearly used the word 'Chharra' which means pellets, so to say that the witnesses did not understand the distinction between the two is without any basis or foundation.
50 Mr.
Sushil Kumar, learned senior advocate appearing for the appellant, submitted that the judgment of the trial court was based on the correct evaluation of the evidence and the view taken by the trial court was definitely a reasonable and plausible.
Therefore, according to the settled legal position, the High Court was not justified in interfering with the judgment of the trial court.
51 Shri Ratnakar Das, learned senior advocate appearing for the respondent State submitted that the impugned order of the High Court is consistent with the settled legal position.
He submitted that once an order of acquittal is challenged then the appellate court has all the powers which are exercised by the trial court.
We agree that the appellate court is fully empowered to re-appreciate and re-evaluate the entire evidence on record.
52 We deem it appropriate to deal with some of the important cases which have been dealt with under the 1898 Code by the Privy Council and by this Court.
We would like to crystallize the legal position in the hope that the appellate courts do not commit similar lapses upon dealing with future judgments of acquittal.
53 The earliest case that dealt with the controversy in issue was Sheo Swarup v.
King Emperor AIR 1934 Privy Council 2271934 Indlaw PC 30.
In this case, the ambit and scope of the powers of the appellate court in dealing with an appeal against acquittal has been aptly elucidated by the Privy Council.
Lord Russell writing the judgment has observed as under:
"..the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.."
54.
The law succinctly crystallized in this case has been consistently followed by this Court.
On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence.
Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court.
The appellate court undoubtedly has wide powers of re-appreciating and reevaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally illfounded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse.
55 This Court again in the case of Surajpal Singh & Others v.
State, AIR 1952 SC 52 1951 Indlaw SC 23, has spelt out the powers of the High Court.
The Court has also cautioned the Appellate Courts to follow well established norms while dealing with appeals from acquittal by the trial court.
The Court observed as under:
"It is well established that in an appeal under S.
417 Criminal P.C., the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court

which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."
56 This Court reiterated the principles and observed that presumption of innocence of accused is reinforced by an order of the acquittal.
The appellate court could have interfered only for very substantial and compelling reasons.
57 In Tulsiram Kanu v.
The State, AIR 1954 SC 1 1951 Indlaw SC 75, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present.
In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal.
There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it.
Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.
58 In the same year, this Court had an occasion to deal with Madan Mohan Singh v.
State of Uttar Pradesh, AIR 1954 SC 637 1954 Indlaw SC 192, wherein it said that the High Court had not kept the rules and principles of administration of criminal justice clearly before it and that therefore the judgment was vitiated by non-advertence to and mis-appreciation of various material facts transpiring in evidence.
The High Court failed to give due weight and consideration to the findings upon which the trial court based its decision.
59 The same principle has been followed in Atley v.
State of U.P.
AIR 1955 SC 807 1955 Indlaw SC 135 , wherein the Court said:
"It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.
It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal."
60 The question was again raised prominently in Aher Raja Khima v.
State of Saurashtra AIR 1956 SC 217 1955 Indlaw SC 41.
Bose, J.
expressing the majority view observed:
"It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong; Ajmer Singh v.
State of Punjab (AIR 1953 SC 76,); and if the trial Court takes a reasonable view of the facts of the case, interference under S.
417 is not justifiable unless there are really strong reasons for reversing that view.
Surajpal Singh v.
State AIR 1952 SC 52 at 54 1951 Indlaw SC 23."
61 In Balbir Singh v.
State of Punjab AIR 1957 SC 216 1956 Indlaw SC 121, this Court again had an occasion to examine the same proposition of law.
The Court (at page 222) observed as under:
"It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge."

62 A Constitution Bench of this Court in M.G.
Agarwal v.
State of Maharashtra AIR 1963 SC 200 1962 Indlaw SC 520, observed as under:
"There is no doubt that the power conferred by cl.
(a) which deals with an appeal against an order of acquittal is as wide as the power conferred by cl.
(b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction.
That is one aspect of the question.
The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal.
In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled for the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case.
As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence.
Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence.
.....
The test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterize the findings recorded therein as perverse.
The question which the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case, is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was erroneous.
In answering this question, the Supreme Court would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court."
63 In Noor Khan v.
State of Rajasthan, AIR 1964 SC 286 1963 Indlaw SC 294, this Court relied on the principles of law enunciated by the Privy Council in Sheo Swarup1934 Indlaw PC 30 (supra) and observed thus:
"Sections 417, 418 and 423 give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed.
But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."
64 In Khedu Mohton & Others v.
State of Bihar, (1970) 2 SCC 450 1970 Indlaw SC 315, this Court gave the appellate court broad guidelines as to when it could properly disturb an acquittal.
The Court observed as under:
"3.
It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cr.
P.C.

are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption ofinnocence of accused persons which presumption is not weakened by their acquittal.
It must also bear in mind the fact that the appellate judge had found them not guilty.
Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions.
If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred.
The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal."
(emphasis supplied)
65 In Shivaji Sahabrao Bobade & Another v.
State of Maharashtra, (1973) 2 SCC 793 1973 Indlaw SC 181, the Court observed thus:
"An appellant aggrieved by the overturning of his acquittal deserves the final court's deeper concern on fundamental principles of criminal justice.....
.....
But we hasten to add even here that, although the learned judges of the High Court have not expressly stated so, they have been at pains to dwell at length on all the points relied on by the trial court as favourable to the prisoners for the good reason that they wanted to be satisfied in their conscience whether there was credible testimony warranting, on a fair consideration, a reversal of the acquittal registered by the court below.
In law there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration, In our view the High Court's judgment survives this exacting standard."
66 In Lekha Yadav v.
State of Bihar (1973) 2 SCC 424 1973 Indlaw SC 436, the Court following the case of Sheo Swarup1934 Indlaw PC 30 (supra) again reiterated the legal position as under:
"The different phraseology used in the judgments of this Court such as-
(a) substantial and compelling reasons:
(b) good and sufficiently cogent reasons;
(c) strong reasons.
are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified."
67 In Khem Karan & Others v.
State of U.P.
& Another AIR 1974 SC 1567 1974 Indlaw SC 396, this Court observed:
"Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony."
68 In Bishan Singh & Others v.
The State of Punjab (1974) 3 SCC 288 1973 Indlaw SC 425, Justice Khanna speaking for the Court provided the legal position:
"22.
It is well settled that the High Court in appeal u/s.
417 of the CrPC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed.
No limitation should be placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at

his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."
69 In Umedbhai Jadavbhai v.
The State of Gujarat (1978) 1 SCC 228 1977 Indlaw SC 138, the Court observed thus:
"In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court's conclusion unless there are compelling reasons to do so inter alia on account of manifest errors of law or of fact resulting in miscarriage of justice."
70 In B.N.
Mutto & Another v.
Dr.
T.K.
Nandi (1979) 1 SCC 361 1978 Indlaw SC 112, the Court observed thus:
"It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt.
If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt.
But, fanciful and remote possibilities must be left out of account.
To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him.
If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt.
It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable.
"A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons.
[Salmond J.
in his charge to the jury in R.V.
Fantle reported in 1959 Criminal Law Review 584.]"
{emphasis supplied}
71 In Tota Singh & Another v.
State of Punjab (1987) 2 SCC 529 1987 Indlaw SC 28143, the Court reiterated the same principle in the following words:
"This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal.
The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse.
Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."
72 In Ram Kumar v.
State of Haryana 1995 Supp.
(1) SCC 248 1994 Indlaw SC 105, this Court had another occasion to deal with a case where the court dealt with the powers of the High Court in appeal from acquittal.
The Court observed as under:
"..
the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible.

In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions u/ss.
378 and 379 CrPC are as extensive as in any appeal against the order of conviction.
But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of of seeing the witness.
No doubt it is settled law that if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.
We shall, therefore, examine the evidence and the material on record to see whether the conclusions recorded by the Trial Court in acquitting the appellant are reasonable and plausible or the same are vitiated by some manifest illegality or the conclusion recorded by the Trial Court are such which could not have been possibly arrived at by any Court acting reasonably and judiciously which may in other words be characterized as perverse."
73 This Court time and again has provided direction as to when the High Courts should interfere with an acquittal.
In Madan Lal v.
State of J & K, (1997) 7 SCC 677 1997 Indlaw SC 1460, the Court observed as under:
"8.
.....
that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction....."
74 In Sambasivan & Others v.
State of Kerala (1998) 5 SCC 412 1998 Indlaw SC 809, while relying on the case of Ramesh Babulal Doshi (Supra), the Court observed thus:
"The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled.
The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction.
But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court.
It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."
75 In Bhagwan Singh & Others v.
State of M.P.
(2002) 4 SCC 85 2002 Indlaw SC 1611, the Court repeated one of the fundamental principles of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.
The Court observed as under:-
"7.
The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.
Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection.
The paramount consideration of the court is to ensure that miscarriage of justice is avoided."
76 In Harijana Thirupala & Others v.
Public Prosecutor, High Court of A.P., Hyderabad (2002) 6 SCC 470 2002 Indlaw SC 1635, this Court again had an occasion to deal with the settled principles of law restated by several decisions of this Court.
Despite a number of judgments, High Courts continue to fail to keep them in mind before reaching a conclusion.
The Court observed thus:
"10.

The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court.
Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case.
The case on hand is one such case.
Hence it is felt necessary to remind about the well-settled principles again.
It is desirable and useful to remind and keep in mind these principles in deciding a case.
11.
In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged.
Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted.
In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused.
At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises.
The case of the prosecution must be judged as a whole having regard to the totality of the evidence.
In appreciating the evidence the approach of the court must be integrated not truncated or isolated.
In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused.
In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses.
It must be added that ultimately and finally the decision in every case depends upon the facts of each case.
12.
Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion.
However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened.
The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons.
If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."
77 In C.
Antony v.
K.G.
Raghavan Nair, (2003) 1 SCC 1 2002 Indlaw SC 1369 had to reiterate the legal position in cases where there has been acquittal by the trial courts.
This Court observed thus:
"6.
This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified.
In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court."
78 In State of Karnataka v.

K.
Gopalkrishna, (2005) 9 SCC 291 2005 Indlaw SC 78, while dealing with an appeal against acquittal, the Court observed:
"In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below.
If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal.
However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal."
79 In The State of Goa v.
Sanjay Thakran, (2007) 3 SCC 755 2007 Indlaw SC 182, this Court relied on the judgment in State of Rajasthan v.
Raja Ram (2003) 8 SCC 180 2003 Indlaw SC 630 and observed as under:
"15.
Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal.
The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.
...
The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so.
If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."
The Court further held as follows:
"16.
it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse.
Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below."
80 In Chandrappa & Others v.
State of Karnataka (2007) 4 SCC 415 2007 Indlaw SC 121, this Court held:
"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc.
are not intended to curtail extensive powers of an appellate court in an appeal against acquittal.
Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.
Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."
The following principles emerge from the cases above:
"1.
The appellate court may review the evidence in appeals against acquittal u/ss.
378 and 386 of the Criminal Procedure Code, 1973.

Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record.
It can review the trial court's conclusion with respect to both facts and law.
2.
The accused is presumed innocent until proven guilty.
The accused possessed this presumption when he was before the trial court.
The trial court's acquittal bolsters the presumption that he is innocent.
3.
Due or proper weight and consideration must be given to the trial court's decision.
"
81.
This is especially true when a witness' credibility is at issue.
It is not enough for the High Court to take a different view of the evidence.
There must also be substantial and compelling reasons for holding that trial court was wrong.
82 In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:
"1.
The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision.
"Very substantial and compelling reasons" exist when:
(i) The trial court's conclusion with regard to the facts is palpably wrong;
(ii) The trial court's decision was based on an erroneous view of law;
(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
(v) The trial court's judgment was manifestly unjust and unreasonable;
(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
(vii) This list is intended to be illustrative, not exhaustive.
2.
The Appellate Court must always give proper weight and consideration to the findings of the trial court.
3.
If two reasonable views can be reached one that leads to acquittal, the other to conviction the High Courts/appellate courts must rule in favour of the accused."
83 Had the well settled principles been followed by the High Court, the accused would have been set free long ago.
84.
Though the appellate court's power is wide and extensive, it must be used with great care and caution.
85 We have considered the entire evidence and documents on record and the reasoning given by the trial court for acquitting the accused and also the reasoning of the High Court for reversal of the judgment of acquittal.
We have also dealt with a number of cases decided by the Privy Council and this Court since 1934.
In our considered opinion, the trial court carefully scrutinized the entire evidence and documents on record and arrived at the correct conclusion.
We are clearly of the opinion that the reasoning given by the High Court for overturning the judgment of the trial court is wholly unsustainable and contrary to the settled principles of law crystallized by a series of judgment.
86 On marshalling the entire evidence and the documents on record, the view taken by the trial court is certainly a possible and plausible view.
The settled legal position as explained above is that if the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views.
The difference in treatment of the case by two courts below is particularly noticeable in the manner in which they have dealt with the prosecution evidence.
While the trial court took great pain in discussing all important material aspects and to record its opinion on every material and relevant point, the learned Judges of the High Court have reversed

the judgment of the trial court without placing the very substantial reasons given by it in support of its conclusion.
The trial court after marshalling the evidence on record came to the conclusion that there were serious infirmities in the prosecution's story.
87.
Following the settled principles of law, it gave the benefit of doubt to the accused.
In the impugned judgment, the High Court totally ignored the settled legal position and set aside the well reasoned judgment of the trial court.
88 The trial court categorically came to the finding that when the substratum of the evidence of the prosecution witnesses was false, then the prosecution case has to be discarded.
When the trial court finds so many serious infirmities in the prosecution version, then the trial court was virtually left with no choice but to give benefit of doubt to the accused according to the settled principles of criminal jurisprudence.
89 On careful analysis of the entire evidence on record, we are of the view that the reasons given by the High Court for reversing the judgment of acquittal is unsustainable and contrary to settled principles of law.
The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court.
An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.
90 On consideration of the totality of the circumstances, the appeal filed by the appellant is allowed and the impugned judgment passed by the High Court is set aside.
The appellant would be set at liberty forthwith unless required in any other case.
Appeal allowed.

Supdt.
and Remembrancer of Legal Affairs, West Bengal v Anil Kumar Bhunja and Others
Supreme Court of India

23 August 1979
Criminal Appeal No.
98 of 1973.
The Judgment was delivered by : Ranjit Singh Sarkaria, J.
1.
Whether the giving of fire-arms by a person holding a licence for repairing and dealing in firearms for repairs to mechanic who holds no such licence, but does the repair job at his workshop at a place different from the factory or place of business of the licence holder, amounts to "delivery of those arms into the possession of another person" within the contemplation of Section 29(b) of the Arms Act, 1959 (For short, called 'the Act'), is the principal question that falls to be answered in this appeal by special leave directed against a judgment, dated August 16, 1972, of the High Court of Calcutta.
It arises in these circumstances:
On or about April 17, 1971, the Calcutta Police while investigating a case, went to premises No. 4, Ram Kanai Adhikari Lane in Calcutta, and, on the ground floor of the building, they discovered a workshop run by Mrityunjoy Dutta, who was then working on a re- volver.
In the said premises, the police found several other guns, revolvers and rifles.
All these fire-arms were seized by the police.
2.
Mrityunjoy Dutta claimed to have received one of the guns so seized from one Matiar Rahaman gun-licensee and the rest from respondents 1 to 4 for repairs.
Mrityunjoy Dutta had no valid licence to keep or repair these fire-arms under the Act.
Respondents 1 to 4, however, were holding licences under the Act to run the business of repairing and dealing in fire-arms.
3.
On April 17, 1970, the police charge-sheeted Mrityunjoy Dutta, Matiar Rahaman and respondents 1 to 4 to stand their trial in the Court of the Presidency Magistrate, in respect of offences under Sections 25(1) (a) and 27 of the Act.

The trial Magistrate, while considering the question of framing charges, held that there were materials to make out a prima facie case under Section 25(1) (c) of the Act against Mrityunjoy Dutta and under Section 29(b) of the Act against Matiar Rahaman, and charged them accordingly. So far as respondents 1 to 4 are concerned, the Magistrate took the view that the giving of the arms to the accused Dutta, by respondents 1 to 4 for the limited purpose of repairs, did not amount to delivery of possession of those arms within the meaning of Section 29(b) of the Arms Act (Act IV/1959), and in the result, he discharged the respondents by an order, dated November 17, 1971.
4.
Aggrieved, the State of West Bengal filed a Criminal Revision against the Magistrate's order before the High Court, contending that delivery of the arms, into the possession of a person who did not have a valid licence for repairs of fire-arms, is not only a contravention of the provisions of Section 5 of the Act, but also amounts to delivery of fire-arms by the respondents into the possession of Mrityunjoy Dutta and, as such, the respondents were prima facie liable for an offence under Section 29(b) of the Act.
The Division Bench of the High Court, who heard the Revision, dismissed it with the reasoning, that Respondents 1 to 4, could not be said to have delivered the fire-arms, concerned into the possession of Mrityunjoy Dutta within the meaning of Section 29(b) of the Act, because the respondents who possessed valid licences for repairs as well as for sale of fire-arms, had given only temporary custody of those arms to Mrityunjoy Dutta for the limited purpose of carrying the repair job, while the effective control over those arms all the time remained with the respondents. In its view, there is no delivery of possession of the fire-arms so long as control over the arms and the authority to use those arms is not transferred to the custodian.
Hence, this appeal.
5.
The whole case pivots around the interpretation and application of the term "possession", used in Section 29(b) of the Act.
Learned counsel for the appellant-State contends that the question whether a person is in possession of an arm or had transferred and delivered it to another, is largely one of fact.
It is submitted that in the instant case, there were three stark facts which more than any other, unmistakably showed that the respondents had given possession of these fire-arms to Mrityunjoy Dutta:
(a) Mrityunjoy Dutta was not a servant or employee of the respondents, but was running his own business of repairing fire-arms.
(b) The fire-arms were handed over to Mrityunjoy Dutta to be repaired at his own residence-cum-workshop which was not the respondents licensed place of business, and was in the exclusive control and occupation of Dutta.
(c) Mrityunjoy Dutta had no licence for repairing or keeping fire-arms and the respondents were either aware of this fact or did not ascertain it before delivering the fire-arms to him.
It is maintained that "possession, within the purview of Section 29(b) means immediate possession, and consequently, delivery of even temporary possession and control to an unauthorised person falls within the mischief of the Section.
It is further urged that the delivery of fire-arms for repairs to the unlicensed mechanic for repairs, to be carried out at a place other than the factory or place of business specified in the licence of the owners, will amount to an offence under Section 30 read with Section 5 of the Act also.
6.
As against this, Mr.
Anil Kumar Gupta has addressed lengthy arguments to support the judgments of the Courts below.
The sum and substance of his arguments is that the mechanic, Dutta, was only in temporary custody of these arms for the limited purpose of repairing them, as an agent of the owners, who being licensees in Form IX entitled to repair and keep these fire-arms, throughout remained in their lawful possession and control.
It is maintained that the delivery of possession contemplated by Section 29(b) is something more than entrusting the arms to an agent for the limited purpose of repairs.
In support of this contention, Mr.
Gupta has cited several decisions.
Particular reliance has been placed on Manzur Hussain v.
Emperor Sadh Ram v.
State; Emperor v.

Harpal Rai; A.
Malcom v.
Emperor; Emperor v.
Koya Hansji; Parmeshwar Singh v.
Emperor 1933 Indlaw PAT 140; Gunwantlal v.
State of Madhya Pradesh 1972 Indlaw SC 558; and Sullivan v.
Earl of Caithness.
Reference was also made to Halsbury's Laws of England, Vol.
25, Third Edition, page 874, and Salmond's Jurisprudence, 11th Edition.
7.
It was next contended that even if the term "possession" in Section 29(b) is susceptible of two interpretations, the one favourable to the accused be adopted.
In this connection reference has been made to Woodage v.
Moss.
8.
The last submission of Mr.
Gupta is that since these criminal proceedings have been brooding over the heads of the respondents for the last eight years, this Court should not, even if it reverses the opinion of the courts below, direct the Magistrate to frame charges against the respondents and to proceed with the trial.
It is emphasised that in any event, the offence disclosed against the respondents was purely technical.
"Possession" is a polymorphous term which may have different meanings in different contexts.
It is impossible to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the contexts of all statutes.
Dias & Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorizing it is that of "possession".
Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edition, 1966) caused by the fact the possession is not purely a legal concept.
"Possession", implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention.
It involves power of control and intent to control.
(See Dias and Hughes)
9.
According to Pollock & Wright "when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing".
10.
While recognising that "possession" is not a purely legal concept but also a matter of fact; Salmond (12th Edition, page 52) describes "possession, in fact", as a relationship between a person and a thing.
According to the learned author the test for determining
"whether a person is in possession of anything is whether he is in general control of it".
11.
In Gunwantlal, this Court while noting that the concept of possession is not easy to comprehend, held that in the context of Section 25(a) of the Arms Act, 1959, the possession of a fire-arm must have, firstly, the element of consciousness or knowledge of that possession in the person charged with such offence, and secondly, he has either the Actual physical possession of the fire-arm, or where he has not such physical possession, he has nonetheless a power or control over that weapon.
It was further recognised that whether or not the accused had such control or dominion to constitute his possession of the fire-arm, is a question of fact depending on the facts of each case.
In that connection, it was observed:
"In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question".
12.

With this guiding criterion in mind, the Magistrate had to see whether the facts alleged and sought to be proved by the prosecution prima facie disclose the delivery of the fire-arms by the respondents into the possession of Mrityunjoy Dutta, without previously ascertaining whether the recipient had any licence to retain and repair those fire-arms within the contemplation of Section 29(b).
It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced.
The Magistrate had therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer.
At this stage, as was pointed out by this Court in State of Bihar v.
Ramesh Singh 1977 Indlaw SC 50, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged.
The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973.
At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of the offence.
13.
Now, in the instant case, at that initial stage, it was apparent from the materials before the Magistrate, that the basic facts proposed to be proved by the prosecution against the accused-respondents were as follows:
(a) That the respondents held licences, inter alia, in Form IX for repairing and dealing in fire-arms at the place of business, factory or shop specified in the Column 3 of their licences.
(i) The respondents handed over the fire-arms in question to Mrityunjoy Dutta for repairs.
(ii) Mrityunjoy Dutta did not have any license for repairing or dealing in fire-arms;
(iii) (a) Mrityunjoy Dutta was doing the repair job in respect of these fire-arms at his own residence-cum-workshop which was situated at a place different from the business places specified in the licences of the respondents.
(b) The fire-arms in question were seized from the workshop-cum-house in the occupation and control of Mrityunjoy Dutta, when the latter was actually in the Act of repairing working on a revolver.
14.
There is nothing in these materials to show that at the time of the seizure of these fire-arms, any of the respondents or any Manager of their concerns, was found present and personally supervising the repair work that was being done by the mechanic, Mrityunjoy Dutta.
These positive and negative facts, in conjunction with other subsidiary facts, appearing expressly or by implication from the materials which were before the Magistrate at that initial stage were, at least, sufficient to show that there were grounds for presuming that the accused-respondents had committed offences under Sections 29(b) and 30 of the Act.
Facts (iii) (a) & (b) listed above, inferentially show that by handing over the fire-arms to Mrityunjoy Dutta to be repaired at the latter's independent workshop, the respondents had divested themselves, for the time being, not only of physical possession but also of effective control over those fire-arms.
There is nothing in those materials to show that before handing over those firearms to Mrityunjoy Dutta for repairs, the respondents had done anything to ascertain that Mrityunjoy Dutta was legally authorised to retain those arms even for the limited purpose of repairing them.
Thus, prima facie the materials before the Magistrate showed that the respondents had delivered the fire-arms in question into the possession of Mrityunjoy Dutta, without previously ascertaining that he was legally authorised to have the same in his pos- session, and as such, the respondents appeared to have committed and offence under Section 29(b) of the Act.
Further, by allowing the fire-arms to be removed to a place other than the places of their business or factory specified in Column 3 of their licences in Form IX, the respondents appear to have contravened condition 1(c) of their licence, the material part of which reads as under:
"(c) This licence is valid only so long as the licensee carries on the trade or business in the permises shown in Column 3 thereof..
"
15.

Contravention of any condition of the licence amounts to an offence punishable under Section 30 of the Act.
In sum, the materials before the Magistrate, prima facie disclosed the commission of offences under Sections 29(b) and 30 of the Act by respondents 1 to 4.
The Magistrate was thus clearly in error in discharging these accused-respondents.
We do not think it necessary to notice and discuss in detail the various decisions cited by the counsel at the bar, because, as mentioned earlier, the question whether a particular person is or continues to be in possession of an arm (in the context of the Act) is, to a substantial extent, one of fact.
This question, often resolves into the issue: whether that person is or continues to be, at the material time, in physical possession or effective control of that arm.
This issue, in turn, is a mixed issue of fact and law, depending on proof of specific facts or definite circumstances by the prosecution.
16.
At this preliminary stage, therefore, when the prosecution has yet to lead evidence to prove all the facts relevant to substantiate the ingredients of the charge under Section 29(b) levelled against these respondents, a detailed discussion of the principles enunciated in the cited decisions, is apt to partake of the character of a speculative exercise.
It will be sufficient to say in passing that almost all the decisions of the High Courts cited before us were cases under the 'Old' Arms Act (Act 11 of 1878).
The ratio of cases decided under the 'Old' Act should not be blindly applied to cases under the Act of 1959 which has, in several aspects modified or changed the law relating to the regulation of arms.
For instance under the 'Old' Act, repairing of arms without a licence, was not punishable, as 'repair' was different and distinct from manufacture.
In Murli v.
Crown and Tola Ram v.
Crown it was held that a person in temporary possession of arms without a licence, for repairing purposes was not guilty under Section 19 of the Act of 1878.
But section 5 of the present Act of 1959, has materially altered this position by requiring the obtaining of a licence for-repairing fire-arms (or other arms if so prescribed).
Further, the word "keep" occurring in Section 5 of the 'Old' Act has been replaced by the words "have in his possession" in the present Section.
Then in three of these cases, namely, Manzur Husain, Sadh Ram v.
State, Emperor v.
Harpal Rai, the license-holder sent his licensed firearm for repairs through a person who had the license-holders' oral authority, expressly or impliedly given, to carry it to the repairer.
It was held that the carrier, though he held no licence to keep the fire-arm, could not be said to be in "possession" of it, nor could the license-holder be said to have parted with the "possession" of the fire-arm or delivered its possession to an unauthorised person.
Similarly, in one of the cases cited, the license-holder sent his fire-arm to the Magistrate through his servant or agent for getting the licence renewed.
In that case also, it was held that the servant was not guilty of any offence for having in his possession or "carrying" a gun without a licence.
The possession was held to be still with the license-holderowner of the weapon.
17.
The rule enunciated in these decisions has been given a limited recognition in the Proviso to Section 3 of the Act of 1959.
Under this Proviso, if a licensed weapon is carried to an authorised repairer by another having no licence, he will not be guilty for carrying that fire-arm, if he has a written authority of the license-holder for carrying that weapon to a repairer.
Similarly, for carrying a licensed fire-arm to the appropriate authority for renewal of the license, written authority of the owner of the weapon is essential to bring him within the protection of the Proviso.
In some of these cases referred to by the counsel, a person was carrying or was in custody of a licensed weapon for use by the licensee.
Now, the Proviso to Section 3 of the present Act, protects such carriers or custodians of weapons for use by the license holder, only if they do so in the presence of the license-holder concerned.
We have referred, by way of example, some of these changes brought about by the Act of 1959, only to impress on the trial court that in considering the application of the ratio of the cases

decided under the Act of 1878, to those under the present Act great caution and discernment is necessary.
18.
For all the reasons aforesaid, we allow this appeal and set aside the orders of the Courts below whereby respondents 1 to 4, herein, were discharged.
Although offences under Section 29(b) and 30 of the Act are summons cases, the Magistrate has followed the warrant procedure, obviously because an offence under Section 25 of the Act, for which Mrityunjoy Dutta was being jointly tried with Respondents 1 to 4, was a warrant case.
Moreover, trial of a summons case as a warrant case does not amount to an illegality, but is a mere irregularity that does not vitiate the trial unless there is prejudice.
We therefore, send the case back to the trial Magistrate with the direction that he should frame charges in respect of offences under Sections 29(b) and Section 30 of the Act against the accusedrespondents 1 to 4 and proceed further with the trial in accordance with law.
We decline the submission made on behalf of these respondents that on account of their prolonged harassment and expense, which are the necessary concomitants of protracted criminal proceedings extending over eight years, they should not be put on trial now for offences which, according to the counsel, are merely technical.
Even so, we think, this is a circumstance to be taken into consideration by the trial court in fixing the nature and quantum of sentence, in the event of the accused being found guilty.
19.
Before parting, with this judgment, we will however, set it down by way of caution that the Magistrate while assessing the evidence and recording his findings on its basis with regard to proof or otherwise the factual ingredients of the offences with which the accused may stand charged, shall not allow himself to be unduly influenced by anything said in this judgment in regard to the merits of the case.
Appeal allowed

Johney D Couto v State Of Tamil Nadu
Supreme Court of India

4 November 1987
Criminal Appeal No.232 of 1987
The Judgment was delivered by: Rangnath Misra, J.
1 This appeal is by special leave.
Appellant challenged his order of detention u/s.
3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA for short) by filing a writ petition before the High Court and that application, has been dismissed.
As many as six contentions had been advanced before the High Court.
2.
Though raised in the writ petition, the point relating to denial of a fair hearing before the Advisory Board has not been noticed by the High Court as a contention on behalf of the appellant, but counsel for the appellant has raised the same point before this Court and since the facts on which the ground is raised are not in dispute we find no objection to entertaining this contention now specifically raised in this appeal.
3 The hearing of the representation of the appellant by the Advisory Board was fixed for 25th November, 1986.
On that day the appellant had specifically requested the Advisory Board to permit one Mr. Sundararajan, a retired Assistant Collector of Central Excise to assist him as a friend.
The Board, as appears from the counter affidavit filed in this Court, turned down the request.
The counter affidavit states:-
"The Advisory Board has given its finding in rejecting the detenu's request for assistance of a friend, namely, Mr.
Sundararajan in paragraphs 2 and 3 of its report sent to the Government.
The Advisory Board has stated in paragraph 2 that the detenu filed a petition requesting the assistance of Mr.
Sundararajan, a retired Assistant Collector of Customs.
The Advisory Board has stated in paragraph 3 that Mr.
Sundararajan has appeared before it and had stated that he was formerly employed in the customs department and he would like to assist the detenu.

In the same paragraph, the Advisory Board has also stated that it was admitted by Mr. Sunderarajan before the Advisory Board that he is not a friend of the detenu and because of his professional experience he liked to help the detenu.
In the same paragraph the Advisory Board has given its findings and reasons for rejecting the request of the detenu on the ground that Mr.
Sundararajan not being a friend of the detenu, the Advisory Board did not consider it proper to allow him to represent the case of the detenu."
4 It is thus clear from the allegations in the special leave petition and the counter affidavit that the appellant had requested the Board to allow him the assistance of a friend at the hearing and for the reasons and in the manner indicated in the counter affidavit the request was turned down.
5 In paragraph 9 of the special leave petition the appellant had alleged that on 25th November, 1986, the detaining authority was represented by customs officers of the rank of Deputy Collector of Customs and Superintendent.
In the counter affidavit filed before this Court there has been no denial of this fact.
6.
Learned counsel appearing for the respondent did not dispute the allegation on the basis of the record as also the papers available with him that the department was represented at the hearing before the Advisory Board by a Deputy Collector of Customs.
The position, therefore, is that on 25th November, 1986 while the detaining authority was assisted by a Deputy Collector and a Superintendent of Central Excise the detent was denied the assistance of a retired Assistant Collector of Central Excise.
On the recommendation of the Advisory Board, the detention order was confirmed.
7 The appellant is a clearing and forwarding agent at Madras and is said to be a young man aged around 26 or 27 years.
The case before the Board involved certain facets which require acquaintance with the legal provisions and the procedure and practice adopted by the customs authorities.
8.
It is the case of the appellant that he was not very much acquainted with them and that is why he had sought the assistance of Sundararajan and even brought him before the Board that day.
In the facts of the case we are not in a position to reject the contention that if Sundararajan had been permitted to assist the appellant his case would have been better placed before the Advisory Board.
In the premises indicated above, two aspects have to be examined-
(1) Whether the appellant was entitled to the assistance of Sundararajan as a friend; and
(2) Whether when the detaining authority was assisted by a Deputy Collector and a Superintendent of Central Excise, was the request of the appellant to be assisted by a retired Assistant Collector of Central Excise unjust and should the same had been refused?
9.
A two-Judge Bench of this Court in Nand Lal Bajaj v.
State of Punjab, [1982] 1 SCR 718 1981 Indlaw SC 92 was considering the question of legal assistance for the detenu before the Advisory Board.
It referred to the decision of this Court in the case of Smt.
Kavita v.
State of Maharashtra, [1982] 1 SCR 138 1981 Indlaw SC 242 where Chinnappa Reddy, J.
made the following observation:
"It is true that while s.
8 (e) disentitles a detenu from claiming as of right to be represented by a lawyer, it does not disentitle him from making a request for the services of a lawyer."
The learned Judge further stated:-
"As often than not adequate legal assistance may be essential for the protection of the Fundamental Right to life and personal liberty guaranteed by Art.
21 of theConstitution and the right to be heard given to a detenu by s.
8(e), COFEPOSA ACT."
It was further observed by Reddy, J.
:-
"Therefore, where a detenu makes a request for legal assistance, his request would have to be considered on its own merit in each individual case.
In the present case, the Government merely informed the detenu that he had no statutory right to be represented by a lawyer before the Advisory Board.

Since it was for the Advisory Board and not for the Government to afford legal assistance to the detenu the latter, when he was produced before the Advisory Board, could have, if he was so minded, made a request to the Advisory Board for permission to be represented by a lawyer."
Sen, J.
in Nand Lal's case 1981 Indlaw SC 92 (supra) observed:
While the detenu was not afforded legal assistance, the detaining authority was allowed to be represented by counsel.
It is quite clear upon the terms of sub-s.
(4) of s.
11 of the Act that the detenu had no right to legal assistance in the proceedings before the Advisory Board, but it did not preclude the Board to allow such assistance to detenu, when it allowed the State to be represented by an array of lawyers."
10 A Constitution Bench of this Court in A.K.
Roy etc.
v.
Union of India & Anr., [1982] 2 SCR 272 1981 Indlaw SC 381 dealt with this aspect.
Chandrachud, CJ, speaking for the Court stated:
"We must therefore, held, regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board.
It is, however, necessary to add an important caveat.
The reason behind the provisions contained in Art.
22(4)(b) of theConstitution clearly is that a legal practitioner should not be permitted to appear before the Advisory Board for any party.
the Constitution does not contemplate that the detaining authority or the Government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu.
In any case, that is not what theConstitution says and it would be wholly inappropriate to read and such meaning into the provisions of Art.
22.
Permitting the detaining authority or the Government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu.
We must therefore make it clear that if the detaining authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board the detenu must be allowed the facility of appearing before the Board through a legal practitioner.
We are informed that officers of the Government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders.
If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take-shelter behind the excuse that such officers are not "legal practitioners" or legal advisers.
Regard must be had to the substance and not to the form since, especially, in matters like the proceedings of Advisory Boards, whosoever assist or advises on facts of law must be deemed to be in the position of a legal adviser.
We do hope that Advisory Boards will take care to ensure that the provisions of Art.
14 are not violated in any manner in the proceedings before them"
11 Learned counsel for the respondent does not dispute that what has been stated above is the law applicable to the facts of this case.
We have already found that the detaining authority had the assistance of the Deputy Collector of Central Excise and a Superintendent of Central Excise.
In the words of Chandrachud, CJ, "they play the role of legal advisers.
The Board had no justification to refuse assistance of Sundararajan to the appellant in such circumstances.
12 The rule in A.
K.
Roy's case 1981 Indlaw SC 381 (supra) made it clear that the detenu was entitled to the assistance of a 'friend'.
The word 'friend' used there was obviously not intended to carry the meaning of the term in common parlance.
13.

One of the meanings of the word 'friend', according to the Collins English Dictionary is "an ally in a fight or cause; supporter".
The term 'friend' used in the judgments of this Court was more in this sense than meaning 'a person known well to another and regarded with liking, affection and loyalty.' A person not being a friend in the normal sense could be picked up for rendering assistance within the frame of the law as settled by this Court.
14 The Advisory Board has, of course, to be careful in permitting assistance of a friend in order to ensure due observance of the policy of law that a detenu is not entitled to representation through a lawyer.
15.
As has been indicated by this Court, what cannot be permitted directly should not be allowed to be done in an indirect way.
Sundararajan, in this view of the matter, was perhaps a friend prepared to assist the detenu before the Advisory Board and the refusal of such assistance to the appellant was not justified.
16.
It is not for this Court to examine and assess what prejudice has been caused to the appellant on account of such denial.
This Court has reiterated the position that matters relating to preventive detention are strict proceedings and warrant full compliance with the requirements of law.
17 In view of the position of law and the facts of the case, we must hold that the refusal by the Advisory Board to permit the appellant to be assisted by Sundararajan as a friend was bad and continued detention of the appellant became vitiated.
Accordingly, this appeal is allowed and the order of detention is quashed.
The appellant is directed to be set at liberty forthwith.
Appeal allowed.

West Bengal State Electricity Board and Others v Desh Bandhu Ghosh and Others
Supreme Court of India

26 February 1985
Civil Appeal No.
562 of 1985
The Judgment was delivered by : O.
Chinnappa Reddy, J.
Special leave granted.
1 The West Bengal State Electricity Board is the principal appellant in this appeal by special leave which we have just now granted.
The first respondent, a permanent employee of the West Bengal State Electricity Board, filed the writ petition out of which the appeal arises in the Calcutta High Court to quash an order dated march 22, 1984 of the Secretary, West Bengal State Electricity Board terminating his services as Deputy Secretary with immediate effect on payment of three month's salary in lieu of three month's notice.
The order gave no reasons for terminating the services of the respondent and there was nothing in the order which could possibly be said to attach any stigma to the respondent.
Apparently the order was made under Regulation 34 of the Board's regulations which enables the Board to terminate the services of any permanent employee 'by serving three months' notice or on payment of salary for the corresponding period in lieu there-of'.
The High Court contrasted Regulation 34 with Regulation 33 which provides for the termination of services of both permanent and temporary employees of the Board on attaining the age of superannuation, as a result of the disciplinary action etc.
2 For the sake of convenience we extract below Regulation 33 and the first paragraph (which alone is relevant) of Regulation 34:
"33 (1) Unless otherwise specified in the appointment order in any particular case, the services of a permanent employee of the Board may be terminated without notice-
(i) On his attaining the age of retirement or by reason of a declaration by the competent medical authority that he is unfit for further service; or
(ii) as a result of disciplinary action;
(iii) if he remains absent from duty, on leave or other wise, for a continuous period exceeding 2 years.
(2) In the case of a temporary employee, his service may be terminated by serving of-

(a) one month's notice on other side or on payment of a month's salary in lieu thereof; or
(b) notice on either side for the period specified in the appointment order or contract or on payment of salary in lieu thereof, as the case may be.
(c) the service of a temporary employee shall also be deemed to have been terminated automatically if the period of extraordinary leave without pay and/or of unauthorized absence from duties exceeding(s) a maximum period of 90 days.
"34.
in case of a permanent employees, his services A may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof."
3 Contrasting Regulations 33 and 34 the High Court came to the conclusion that Regulation 34 was arbitrary in nature and suffered from the vice of enabling discrimination.
The High Court, therefore, struck down the first paragraph of Regulation 34 and as a consequence quashed the order terminating the services of the first respondent.
4 The learned counsel for the West Bengal State Electricity Board submitted that Regulation 34 did not offend Art.
14 of the Constitution, that sec.
18A and 19 of the Electricity Supply Act laid down sufficient guidelines for the exercise of the power under Regulation 34 and in any case the power to terminate the services of a permanent employee was vested in higher ranking officials and might be expected to be exercised in a reasonable way.
5 We are not impressed with the submission of the learned counsel for the Board.
On the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination- It is a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching.
Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers In Moti Ram Deka v.
North East frontier Railway, AIR 1964, S C.
600 1963 Indlaw SC 215 Rules 148 (3) and 149 (3) of the Indian Railway Establishment Code were challenged on the ground that they were contrary to Art.
311 (2) of the Constitution.
The challenge was upheld though no opinion was expressed on the question whether the rule offended art 14 of the Constitution.
Since then Art.
14 has been interpreted in several decisions of this Court and conferment and exercise of arbitrary power on and by the State or its instrumentalities have been frowned upon and struck down by this court as offending Art.
14.
In S.
S.
Muley v.
J.R.
D.
Tata and Ors., [1979] 2 S.L.R.
438 1979 Indlaw MUM 3781 P.
B.
Sawant, J.
of the Bombay High Court considered at great length Regulation 48 (a) of the Air India Employee's Service Regulations which conferred similar power on the Corporation as Regulation 34 confers on the Board in the present case.
6 The learned judge struck down Regulation 48 (a) and we agree with his reasoning and conclusion.
In Workman, Hindustan Steel Ltd.
v.
Hindustan Steel Ltd., A.I.R.
1985 S.C.
251 1984 Indlaw SC 249 this Court had occasioned to hold that a Standing Order which conferred such arbitrary, uncanalised and drastic power to enable the employer to dispense with an inquiry and to dismiss an employee, without assigning any reason, by merely stating that it was expedient and against the interest of the security to continue to employ the workman was violative of the basic requirement of natural justice.

7 The learned counsel for the appellant relied upon Manohar P.
Kharkhar v.
Raghuraj, [1981] II L.L.J.
459 1981 Indlaw MUM 4036 to contend that Regulation 48 of the Air India Employee's Service Regulations was valid.
It is difficult to agree with the reasoning of the Delhi High Court that because of the complexities of modern administration and the unpredictable exigencies arising in the course of such administration it is necessary for an employer to be vested with such powers as those under Regulation 48.
We prefer the reasoning of Sawant, J.
Of the Bombay High Court and that of the Calcutta High Court in the judgment under appeal to the reasoning of the Delhi High Court.
In the result the appeal is dismissed with costs.
Appeal dismissed.

Prabhakaran Nair, Etc.
v State Of Tamil Nadu And Ors.
Supreme Court of India

3 September 1987
Writ Petition No.
506 of 1986
The Judgment was delivered by: Sabyasachi Mukharji, J.
1 There is 'much ado about nothing' about these cases.
These petitions seek to challenge the vires of s.
14(1)(b) and s.
16(2) as well as incidentally s.
30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter called 'the Tamil Nadu Rent Act') on the ground of being arbitrary, discriminatory and unreasonable.
Different petitions deal with different facts.
It is not necessary to set these out exhaustively but it would be appropriate to deal with the facts of Writ Petition No.
506 of 1986 as a typical one in order to appreciate the points in issue.
In Writ Petition No.
506 of 1986, the respondent-landlord on or about 21st of March, 1978 after purchasing the premises No.95, Thyagaraja Road, T.
Nagar, Madras from the erstwhile owner, filed an eviction petition in the court of Small Causes, Madras for eviction of the petitioner herein from the premises where the petitioner had been carrying on a hotel business serving meals etc.
for four decades.
The grounds in the eviction petition were non-payment of rent under sec- tion 10(2)(1) of the Tamil Nadu Rent Act, unlawful sub- letting u/s.
10(2)(ii)(a), causing damages to the premises u/s.
10(2)(iii) and also for the purposes of demolition and reconstruction under s.
14(1)(b).
2 The learned Judge of the trial court ordered eviction under s.
14(1)(b) of the Tamil Nadu Rent Act only for demolition and reconstruction and dismissed the other grounds, and that is the only ground with which we are concerned in this appeal.
On 25th of February, 1981 the Appellate Court dismissed the petitioner's appeal by saying that the landlords were rich people and capable of demolition and reconstruction in order to put the premises to a more profitable use by putting up their own showroom.
On September 30, 1982 the High Court dismissed the civil revision petition of the petitioner and granted time till 31st of January, 1983 for the petitioner to vacate the premises in question.
The petitioner thereafter filed a special leave petition against the judgment and order of the High Court in this Court.
3.
This Court initially ordered show cause notice and also granted ad interim ex-parte stay of dispossession.
On 29th January, 1983 the City Civil Court, Madras granted interim injunction restraining the respondents from demolishing the building till the disposal of the application in the suit filed by

the petitioner against the erstwhile owner and the present landlords for specific performance of an agreement to sell the premises to the petitioner.
According to the petitioner the injunction was confirmed and was still continuing and the said suit for specific performance was also pending in the City Civil Court, Madras.
4 On 17th of February, 1986 this Court dismissed the special leave petition after notice but directed that the decree for eviction would not be executed till 17.11.86.
It was observed by this Court that the petitioner would be at liberty to file a writ petition u/art.
32 of the Constitution, if so advised, challenging the validity of s.
14(1)(b) of the Tamil Nadu Rent Act as mentioned on behalf of the petitioner.
The petitioner filed this writ petition challenging the validity of s.
14(1)(b) and s.
16(2) of the Tamil Nadu Rent Act on the ground that these were arbitrary, discriminatory, unreasonable and unconstitutional.
The petitioner contends in this writ petition that consequently the eviction order passed under s.
14(1)(b) and confirmed in appeal is also illegal.
The aforesaid several of the writ petitions are on this issue.
5 The main ground of attack on this aspect seems to be that while other Rent Acts in case of eviction for demolition permit and direct that after reconstruction the tenant should be inducted as tenant or given the opportunity to have the same space in the reconstructed building, in the instant Act no such option is given and no such obligation imposed upon the landlord and as such the impugned provision is illegal as being discriminatory against the tenant.
In order to examine the various aspects on this contention, it will be necessary to examine in detail the relevant provisions of the Act.
It should be borne in mind, however, that this was an Act passed to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants in the State of Tamil Nadu.
S.
14 of the Tamil Nadu Rent Act states as follows:-
" 14.
Recovery of possession by landlord for repairs or for reconstruction.
(1) Notwithstanding anything contained in this Act, but subject to the provisions of ss.
12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied-
(a) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated; or
(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.
(2) No order directing the tenant to deliver possession of the building under this section shall be passed-
(a) on the ground specified in cl.
(a) of subsection (1), unless the landlord gives an undertaking that the building shall, on completion of the repairs, be offered to the tenant, who delivered possession in pursuance of an order under sub-s.
(1) for his re-occupation before the expiry of three months from the date of recovery of possession by the landlord, or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow; or
(b) on the ground specified in cl.
(b) of subsection (1), unless the landlord gives an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months from the date he recovers possession of the entire building or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow.
(3) Nothing contained in this section shall entitle the landlord who has recovered possession of the building for repairs to convert a residential building into a non-residential building or a non-residential building into a residential building unless such conversion is permitted by the Controller at the time of passing an order under subs.
(1).
(4) Notwithstanding an order passed by the Controller under cl.

(a) of sub-s.
(1) directing the tenant to deliver possession of the building, such tenant shall be deemed to continue to be the tenant, but the landlord shall not be entitled to any rent for the period commencing on the date of delivery of possession of the building by the tenant to the landlord and ending with the date on which the building is offered to the tenant by the landlord in pursuance of the undertaking under cl.
(a) of subs.
(2).
(5) Nothing in this section shall entitle any landlord of a building in respect of which the Government shall be deemed to be the tenant to make any application under this section".
S.
15 empowers the tenant to re-occupy after repairs.
There is no such provision in case of eviction on the ground of bona fide need for demolition and reconstruction.
This is one of the grounds of challenge."
6 S.
16 deals with the right of the tenant to occupy the building if it is not demolished.
Sub-s.
(2) which was amended and introduced by Act 23 of 1973 dealing with the reconstructed building reads as follows:
"16(2) Where in pursuance of an order passed by the Controller under cl.
(b) of sub-s.
(1) of section 14, any building is totally demolished and a new building is erected in its place, all the provisions of this Act shall cease to apply to such new building for a period of five years from the date on which the construction of such new building is completed and notified to the local authority concerned."
7 In this connection s.
30 which exempts certain buildings may be referred to and sub-section (i) is important.
It reads as follows:
"30.
Exemption in the case of certain buildings- Nothing contained in this Act shall apply to-
(i) any building for a period of five years from the date on which the construction is completed and notified to local authority concerned; or
(ii) any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds (four hundred rupees)."
8 In this appeal we are not concerned with cl.
(ii) of s.
30 the challenge to whose validity has been accepted by this Court in Rattan Arya and others v. State of Tamil Nadu and another, [1986] 3 S.C.C.
3851986 Indlaw SC 417.
S.
30(ii) of the Tamil Nadu Rent Act has been struck down as violative of Art.
14.
9 Various submissions were urged in support of the several writ petitions.
Sree Raju Ramachandran contended that in most of the Indian statutes dealing with eviction of tenants, there are provisions of re-induction of the tenant where the eviction is obtained on the ground of reconstruction after the premises in question is reconstructed.
It was submitted that in those statutes, there is obligation on the landlord to reconstruct within a certain period and the corresponding right on the tenant evicted to be re-inducted at the market rate to be fixed by the Rent Controller or by such authority as the Court may direct.
10 Our attention was drawn to several statutes, namely, Maharashtra, Karnataka, Kerala, West Bengal and numerous others where there are provisions for re-induction of other tenants in the premises after reconstruction.
Most of the provisions of other statutes provide for such induction while the Tamil Nadu Rent Act does not.
On this ground it was submitted, that firstly, that this is violative of Art.
14 of the Constitution.
It was further submitted that s.
16(2) of the Tamil Nadu Rent Act says that where in pursuance of an order of eviction passed by the Rent Controller under s.

14(1)(b) any building is totally demolished and a new building is erected in its place, all the provisions of the Act shall cease to apply to such new building for a period of five years.
11.
It was submitted that neither the old tenant nor any new tenant was thus entitled to protection of the Rent Control Act after reconstruction.
The old tenant cannot also get into the new building as of right.
This discrimination against the tenants in Tamil Nadu is invidious and violates Art.
14 of the Constitution.
Secondly, it was submitted that if in case of repairs which also dislodges the tenants for limited period, the tenants have a right to get into the premises after repairs under the Tamil Nadu Rent Act, it is unreasonable that tenants should not have the same right in case of reconstruction.
It was urged that once the building is ready for occupation it should make no difference whether the readiness is after repairs or after construction.
It was urged that in both cases the tenants go out during the period of building work, and they should equally come back into the building after repairs or reconstruction.
It was submitted on this ground also that not enjoining re- induction of the evicted tenant after reconstruction is discriminatory and unconstitutional.
12.
The classification of buildings reconstructed differently from the buildings repaired is not valid, as it has no relation to the object or purpose of the Act.
Furthermore, that all the tenants belong to one class and they could not be treated differently.
On this aspect it was further submitted that the provisions of re-induction in most of the Rent Acts re- presented the standard of reasonableness in the landlord and the tenant law and the philosophy of Rent Control Legislation.
It re-presented the national consensus of reasonable standard.
Therefore, any provision which according to learned counsel appearing for the different parties in the writ petitions, was in variance with that standard was unreasonable and as such violative of Art.
14 of the Constitution.
In aid of this submission various contentions were urged.
We are, however, unable to accept this submission.
13 Learned Attorney General appearing for the respondents submitted before us that the main provision of s.
14(1)(b) enables a landlord to make an application to the Rent Controller and the Rent Controller, if he was satisfied that the building was bona fide required by the landlord for the immediate purpose of demolishing it for the purpose of erecting a new building on the site of the building sought to be demolished might pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.
In the case of an application under s.
14(1)(a) of the Tamil Nadu Rent Act namely bona fide requirement for carrying out repairs it cannot be carried out without the building being vacated and it has to be done within three months to enable the tenant to re-occupy the building.
It has further to be borne in mind that in the case of demolition and re-construction, the landlord has to undertake that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and the entire demolition work shall be completed before the expiry of three months from the date he recovers possession of the entire building.
14.
See in this connection the provisions of s.
16 of the said Act.
The demolition has therefore to be completed within three months.
In the case of massive buildings demolition can overtake six months or even a year and hence the provision that for reasons to be recorded in writing, the Controller may allow such further period.
It has further to be borne in mind that after such demolition the re-construction of a new building on the same site is bound to take time and such time depends upon the nature of the building to be erected and it might take years it was argued.
During that period a tenant was bound to have found some other suitable alternative accommodation; on the other hand in the case of a building for repairs, a tenant may arrange for temporary accommodation for a few months and return back to the building.

Therefore provision for reinduction in the case of repairs and absence of such a provision in the case of demolition and reconstruction is quite understandable and rational.
15 It has to be borne in mind that it is not practicable and would be anamolous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodation elsewhere.
This is the true purpose behind s.
14(1)(b) read with s.
14(2)(b).
In the aforesaid view of the matter, we are unable to accept the submission that in providing for re-induction of the tenant in case of repairs and not providing for such re-induction in case of reconstruction, there is any unreasonable and irrational classification without any basis.
16 The other submission as noted above was that in most of the Rent Acts, there was provision for re-induction of the tenants but there was no such provision in case of reconstruction in the Tamil Nadu Rent Act.
In The State of Madhya Pradesh v.
G.C.
Mandawar, [1955] 1 S.C.R.
599 1954 Indlaw SC 40, a Constitution Bench of this Court observed that Art.
14 of the Constitution does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory.
Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments.
The source of authority for the two statutes being different, Art.
14 can have no application' it was observed.
17 It is necessary now to deal with the submission that the section is unreasonable.
For this, one has to bear in mind the public purpose behind the legislation.
The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was passed in 1960.
A similar enactment which was in operation from 1949 to 1960 did not contain any provision like ss.
14 to 16 providing for eviction of the tenant on the ground of demolition and reconstruction.
18 In 1949, however, the enactment contained a provision empowering the Government to exempt any building or class of buildings from all or any of the provisions of the Act.
When the landlords desired to evict tenants on the ground of demolition and re-construction, they resorted to the remedy of moving the Government by an application for exemption u/s.
13 of the 1949 Act.
19.
The Government by notification used to exempt any building or class of buildings from all or any of the provisions of the Act.
In this connection reference may be made to the decision in S.
Kannappa Pillai and another v.
B.
Venkatarathnam, (78 Law Weekly 363).
The Government in that case when passing the order of exemption used to impose condition that the landlord should complete the re-construction within four months from the date on which the premises were vacated by the tenants and that he should take back the old tenants into the reconstructed building at the rate demanded by the landlord subject to the fixation of fair rent.
However, in view of the tenants' conduct in resorting to writ proceedings challenging the order of exemption and in filing suits and having delayed the process of demolition and reconstruction, the Court in the exercise of discretion refused to extend the benefit of the condition as to re-induction in favour of the tenants.
The further remedy was by writ proceedings before the High Court by the landlord or the tenant who felt aggrieved as the case may be.
20 It was submitted on behalf of the respondents by the learned Attorney General that the Legislature in view of the experience gained from 1949 to 1960 enacted ss.
14 to 16 of the Act and which were introduced in the Act of 1960.
21 It was urged that the 1960 Act had improved the position.
It had provided as a ground of eviction of the tenant the requirement of the landlord for demolition and re-construction of the building leaving it to a judicial authority viz.

Rent Controller to decide the matter with one statutory right of appeal and a further right of revision to the District Court or the High Court as the case may be.
It was on this ground urged that leaving the matter to judicial adjudication as to the ground for eviction, it cannot be held to be arbitrary, unreasonable or unjust.
This point has to be judged keeping in view the main purpose of the Act in question and the relevant submissions on this aspect.
22 It may be borne in mind that historically the Constitutionality of s.
13 of the Act of 1949 was upheld on the touchstone of Art.
14 both by the Madras High Court and on appeal by this Court in P.J.
Irani v.
The State of Madras, [1962] 2 S.C.R.
169 1961 Indlaw SC 69.
It was held that s.
13 of the Act did not violate Art.
14 and was not unconstitutional.
Enough guidance, according to the judgment of the majority of learned judges, was afforded by the preamble and the operative provisions of the Act for the exercise of the discretionary power vested in the government.
It was observed that the power u/s.
13 of the Act was to be exercised in cases where the protection given by the Act caused great hardship to the landlord or was the subject of abuse by the tenants.
It was held by Sinha, C.J., Ayyangar and Mudholkar, JJ.
that s.
13 was ultra vires and void.
An order made u/s.
13 was subject to judicial review on the grounds that (a) it was discriminatory, (b) it was made on grounds which were not germane or relevant to the policy and purpose of the Act, and (c) it was made on grounds which were mala fide.
While S.K.
Das and A.K.
Sarkar, JJ.
emphasised that the order passed by the government u/s.
13 was a competent and legal order.
All that the court had to see was whether the power had been used for any extraneous purpose, i.e.
not for achieving the object for which the power was granted.
23 The Act of 1960 contains a corresponding provision for exemption in s.
29 of the Act which corresponds to s.
13 of the Act of 1949 was also upheld by this Court in S.
Kandaswamy Chettiar v.
State of Tamil Nadu and another, [1985] 2 SCR 398 1984 Indlaw SC 354.
Dealing with s.
29 of the Act this Court observed that the rationale behind the conferral of such power to grant exemptions or to make exceptions was that an inflexible application of the provisions of the Act might under some circumstances result in unnecessary hardship entirely disproportionate to the good which will result from a literal enforcement of the Act and also the practical impossibility of anticipating in advance such hardship to such exceptional cases.
In the matter of beneficial legislations also there were bound to be cases in which an inflexible application of the provisions of the enactment might result in unnecessary and undue hardship not contemplated by the legislature.
The power to grant exemption under s.
29 of the Act, therefore, has been conferred not for making any discrimination between tenants and tenants but to avoid undue hardship or abuse of the beneficial provisions that might result from uniform application of such provisions to cases which deserve different treatment.
24.
The decision reiterated that the Tamil Nadu Rent Act was a piece of beneficial legislation intended to remedy the two evils of rackrenting (exaction of exorbitant rents) and unreasonable eviction generated by a large scale of influx of population to big cities and urban areas in the post Second World War period creating acute shortage of accommodation in such areas and the enactment

avowedly protects the rights of tenants in occupation of buildings in such areas from being charged unreasonable rents and from being unreasonably evicted therefrom.
In that view of the matter it had made a rational classification of buildings belonging to government and buildings belonging to religious, charitable, educational and other public institutions and the different treatment accorded to such buildings u/s.
10(3)(b) of the Act.
25 The scope of this Act was discussed by this Court in Raval and Co.
v.
K.C.
Ramachandran & Ors., [1974] 2 S.C.R.
629 1973 Indlaw SC 283, where the majority of the court at pages 635 to 636 observed:-
"All these show that the Madras Legislature had applied its mind to the problem of housing and control of rents and provided a scheme of its own.
It did not proceed on the basis that the legislation regarding rent control was only for the benefit of the tenants.
It wanted it to be fair both to the landlord as well as the tenant.
Apparently it realised that the pegging of the rents at the 1940 rates had discouraged building construction activity which ultimately is likely to affect every body and therefore in order to encourage new constructions exempted them altogether from the provisions of the Act.
It did not proceed on the basis that all tenants belonged to the weaker section of the community and needed protection and that all landlords belonged to the better off classes.
It confined the protection of the Act to the weaker section paying rents below Rs.250.
It is clear, therefore, that the Madras Legislature deliberately proceeded on the basis that fair rent was to be fixed which was to be fair both to the landlords as well as to the tenants and that only the poorer classes of tenants needed protection.
The facile assumption on the basis of which an argument was advanced before this Court that all Rent Acts are intended for the protection of tenants and, therefore, this Act also should be held to be intended only for the protection of tenants breaks down when the provisions of the Act are examined in detail.
The provision that both the tenant as well as the landlord can apply for fixation of a fair rent would become meaningless if fixation of fair rent can only be downwards from the contracted rent and the contract rent was not to be increased.
Of course, it has happened over the last few years that rents have increased enormously and that is why it is argued on behalf of the tenants that the contract rents should not be changed.
If we could contemplate a situation where rents and prices are coming down this argument will break down.
It is a realisation of the fact that prices and rents have enormously increased and therefore if the rents are pegged at 1940 rates there would be no new construction and the community as a whole would suffer that led the Madras Legislature to exempt new buildings from the scope of the Act.
It realised apparently how dangerous was the feeling that only "fools build houses for wise men to live in".
At the time the 1960 Act was passed the Madras Legislature had before it the precedent of the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956.
That Act provides for fixation of fair rent.
It also provides that the contract rent, if lower, will be payable during the contract period.
Even if the contract rent is higher only the fair rent will be payable.
After the contract period is over only the fair rent is payable.
The Madras Legislature having this Act in mind still made only the fair rent payable and not the contract rent if it happens to be lower.
It is clear, therefore, that the fair rent under the present Act is payable during the contract period as well as after the expiry of the contract period."
26 The Act sought to restore the balance in the scale which is otherwise weighted in favour of the stronger party which had larger bargaining power.
The Act balances the scales and regulates the rights of the parties fairly and cannot be construed only in favour of the tenant.
27 In Murlidhar Agarwal and another v.
State of U.P.
and others, [1975] 1 S.C.R.
5751974 Indlaw SC 264 this Court had occasion to deal with this matter.

In that case, powers of High Court to interfere with revisional orders passed by State Government under section 7F of U.P.
Temporary Control of Rent and Eviction Act, 1947 were challenged.
The Court was of the view that if a provision was enacted for the benefit of a person or class of persons, there was nothing which precluded him or them from contracting to waive the benefit, provided that no question of public policy was involved.
In doing so, the question arose what was the 'public policy' involved in the said Rent Act.
There can be no doubt about the policy of the law, namely, the protection of a weaker class in the community from harassment of frivolous suits.
But the question is, is there a public policy behind it which precludes a tenant from waiving it?
Mathew, J.
reiterated that public policy does not remain static in any given community.
It may vary from generation to generation and even in the same generation.
Public policy would be almost useless if it were to remain in fixed moulds for all time.
The Rent Act, however, balances both the sides, the landlord and the tenant.
28 The main provision of S.
14(1)(b) enables a landlord to make an application to the Rent Controller and the Rent Controller, if he is satisfied that the building is bonafide required by the landlord for the immediate purpose of demolishing it for the purpose of erecting a new building on the site of the building sought to be demolished may pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.
29 S.
16 provides for the tenant to occupy the building if it is not demolished in certain contingencies.
The scheme of the section was very carefully analysed in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v.
Subbash Chandra Yograj Sinha, [1962] 2 S.C.R.
159 1961 Indlaw SC 472.
30 In Metalware and Co.
etc.
v.
Bansilal Sharma and Ors.
etc., [1979] 3 S.C.R.
11071979 Indlaw SC 225 this Court emphasised that the phrase used in s.
14(1)(b) of the Act was "the building was bona fide required by the landlord" for the immediate purpose of demolition and reconstruction and the same clearly referred to the bona fide requirement of the landlord.
This Court emphasised that the requirement in terms was not that the building should need immediate demolition and reconstruction.
The state or condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future would not be a totally irrelevant factor while determining "the bona fide requirement of the landlord." This Court emphasised that if the Rent Controller had to be satisfied about the bona fide requirement of the landlord which meant genuineness of his claim in that behalf the Rent Controller would have to take into account all the surrounding circumstances including not merely the factors of the landlord being possessed of sufficient means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction.
All these factors being relevant must enter the verdict of the Rent Controller on the question of the bona fide requirement of the landlord under s.
14(1)(b).
31.
The fact that a landlord being possessed of sufficient means to undertake the project of demolition and reconstruction by itself might not be sufficient to establish his bona fide requirement if the building happened to be a very recent construction in a perfectly sound condition and its situation might prevent its being put to a more profitable use after reconstruction.
The Rent Controller has thus to take into account the totality of the circumstances and the factors referred to in the judgment by lesser or greater significance depending upon whether in the scheme of the concerned enactment there is or there is not a provision for re-induction of the evicted tenant into the new construction.

Reference was made to the decision of this Court in Neta Ram v.
Jiwan Lal, [1962] Suppl.
2 S.C.R.
623 1962 Indlaw SC 123.
There must be bona fide need of the landlord on all the conditions required to be fulfilled.
That being the scheme of the section, it cannot be said, in our opinion, that the section was arbitrary and excessive powers were given to the landlords.
Absence of provision for re-induction does not ipso facto make the provisions of the Act unfair or make the Act self defeating.
32 It has been borne in mind that the provisions of the Act imposed restrictions on the landlord's right under the common law or the Transfer of Property Act to evict the tenant after termination of his tenancy.
The rationale of these restrictions on the landlord's rights is the acute shortage of accommodation and the consequent need to give protection to the tenants against unrestricted eviction.
The nature, the form and the extent of the restrictions to be imposed on the landlord's right and the consequent extent of protection to be given to the tenants is a matter of legislative policy and judgment.
It is inevitably bound to vary from one State to another depending on local and peculiar conditions prevailing in the State and the individual State's appreciation of the needs and problems of its people.
When we are confronted with the problem of a legislation being violative of Article 14, we are not concerned with the wisdom or lack of legislative enactment but we are concerned with the illegality of the legislation.
There may be more than one view about the appropriateness or effectiveness or extent of the restrictions.
There may be also more than one view about the relaxation of the restrictions on the landlord's right of eviction.
This fact is reflected in the different provisions made in different Acts about the grounds for eviction.
For example, in case of Assam, Meghalaya, Andhra Pradesh, Delhi, Haryana, Orissa, Tripura, East Punjab, Madhya Pradesh, Tamil Nadu, Kerala, Mysore, Himachal Pradesh and Pondicherry, no particular duration for arrears of rent is prescribed, which would entitle a landlord to maintain an action for ejectment of his tenant.
However, in other cases a certain period is prescribed.
For instance, two months in Bihar, West Bengal and Jammu and Kashmir, three months in Goa and Tripura, four months in Uttar Pradesh, six months in Bombay and Rajasthan.
Again some Rent Acts require that before an action for ejectment on the ground of arrears is instituted, a notice demanding rent should be served on the tenant-for example- Bombay, Delhi, Kerala, Tripura, Jammu and Kashmir, Madhya Pradesh and U.P.
Rent Acts.
In such cases the tenant is given one chance to pay up the arrears.
Again different Rent Acts provide different facts and circumstances on the basis of which premises could be recovered on the ground of bona fide personal requirement.
Generally the bona fide requirement extends both to residential as well as commercial premises.
However, the Delhi Rent Control Act restricts the right on account of the bona fide need of the landlord's right to premises let for residential use only.
Further, Bihar, Bombay, Goa, Jammu and Kashmir, Karnataka, Tamil Nadu, U.P.
and West Bengal Rent Acts provide for partial eviction.
But there is no such provision in the other Acts.
It is obvious from the above that there can be no fixed and inflexible criteria or grounds governing imposition of restrictions on the landlord's right or for relaxation of those restrictions in certain cases.
Ultimately it is a matter of legislative policy and judgment.
Courts are not concerned with the unwisdom of legislation.
"In short, unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review.".
33.
See in this connection the observations of Krishna Iyer, J.
in Murthy Match Works, etc.
etc.

v.
The Asstt.
Collector of Central Excise, etc., [1974] 3 S.C.R.
121 1974 Indlaw SC 509.
This Court approved the above passage from the American Jurisprudence and emphasised that in a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things.
It is important to bear in mind the Constitutional command for a state to afford equal protection of the law sets a goal not attainable by the invention and application of a precise formula.
Therefore, a large latitude is allowed to the States for classification upon any reasonable basis.
See also in this connection the observations of this Court in Re The Special Courts Bill, 1978, [1979] 2 S.C.R.
476 1978 Indlaw SC 352 where Chandrachud, C.J.speaking for the Court at pages 534to537 of the report laid down the propositions guiding Art.
14 and emphasised that the classification need not be constituted by an exact or scientific exclusion nor insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case.
Classification therefore, is justified if it is not palpably arbitrary.
We also in view of the different provisions we have discussed bear in mind the fact that there is no such consensus among the different States about the right of re-induction of tenant in case of eviction required for demolition.
It will depend on the particular State and, appreciation of the need and problem at a particular point of time by that State concerned.
The purpose underlying s.
14(1)(b) read with s.
16(2) of the Tamil Nadu Rent Act is to remove or mitigate the disinclination on the part of landlords to expend moneys for demolition of dilapidated buildings and reconstruct new buildings in their places.
It is a matter of which judicial notice can be taken that the return from old and dilapidated buildings is very meagre and in several cases such buildings prove uneconomic for the landlords with the result that the condition of the building deteriorates and there are even collapses of such buildings.
It is for this purpose that the landlord is given by s.
14(1)(b) read with s.
16 an incentive in the form of exemption from the provisions of the Rent Act in respect of reconstructed building for the limited and short duration of five years.
The policy under s.
14(1)(b) read with s.
16 is not in essence different from the policy adopted by different States of giving exemption for a limited duration to newly constructed buildings.
34.
These provisions, namely, exemption of new buildings from the provisions of the Rent Act for a period of five years or ten years has been upheld as constitutional.
See in this connection the observations of this Court in the case of Punjab Tin Supply Co., Chandigarh & Ors.
v.
The Central Govt.
& Ors., [1984] 1 SCC 206 1983 Indlaw SC 259 and Mohinder Kumar v.
State of Haryana and Anr, [1985] 4 S.C.C.
221 at pages 226-2271985 Indlaw SC 262.
There the Court emphasised that it is entirely for the Legislature to decide whether any measures, and if so, what measures are to be adopted for remedying the situation and for ameliorating the hardship of tenants.
The Legislature may very well come to a conclusion that it is the shortage of buildings which has resulted in scarcity of accommodation and has created a situation where the demand for accommodation is far in excess of the requisite supply, and, it is because of such acute scarcity of accommodation the landlords are in a position to exploit the situation to the serious detriment of the tenants.
The Court observed at pages 226to227 of the report as under:

"The Legislature in its wisdom may properly consider that in effecting an improvement of the situation and for mitigating the hardship of the tenanted class caused mainly due to shortage of buildings, it will be proper to encourage construction of new buildings, as construction of new buildings will provide more accommodation, easing the situation to a large extent, and will ultimately result in benefiting the tenants.
As in view of the rigours of Rent Control Legislation, persons with means may not be inclined to invest in construction of new houses, the Legislature to attract investment in construction of new houses may consider it reasonable to provide for adequate incentives so that new constructions may come up.
It is an elementary law of economics that anybody who wants to invest his money in any venture will expect a fair return on the investment made.
As acute scarcity of accommodation is to an extent responsible for the landlord and tenant problem, a measure adopted by the Legislature for seeking to meet the situation by encouraging the construction of new buildings for the purpose of mitigating the hardship of tenants must be considered to be a step in the right direction.
The provision for exemption from the operation of the Rent Control Legislation by way of incentive to persons with means to construct new houses has been made in S.
1(3) of the Act by the Legislature in the legitimate hope that construction of new buildings will ultimately result in mitigation of the hardship of the tenants.
Such incentive has a clear nexus with the object to be achieved and cannot be considered to be unreasonable or arbitrary.
Any such incentive offered for the purpose of construction of new buildings with the object of easing the situation of scarcity of accommodation for ameliorating the conditions of the tenants, cannot be said to be unreasonable, provided the nature and character of the incentive and the measure of exemption allowed are not otherwise unreasonable and arbitrary.
The exemption to be allowed must be for a reasonable and a definite period.
An exemption for an indefinite period or a period which in the facts and circumstances of any particular case may be considered to be unduly long, may be held to be arbitrary.
The exemption must necessarily be effective from a particular date and must be with the object of promoting new constructions.
With the commencement of the Act, the provisions of the Rent Act with all the restrictions and rigours become effective.
Buildings which have been constructed before the commencement of the Act were already there and the question of any kind of impetus or incentive to such buildings does not arise.
The Legislature, therefore, very appropriately allowed the benefit of the exemption to the buildings, the construction of which commenced or was completed on or after the commencement of the Act.
This exemption in respect of buildings coming up or to come up on or after the date of commencement of the Act is likely to serve the purpose of encouraging new buildings to be constructed.
There is therefore nothing arbitrary or unreasonable in fixing the date of commencement of the Act from which the exemption is to be operative."
35 S.
14(1)(b) has sufficient inbuilt guidelines.
The requirements to be satisfied before initiating action under this provision have been judicially laid down by the Madras High Court by Anantanarayanan, J.
as he then was, in Mehsin Bhai v.
Hale and company, G.
T.
Madras, [1964] 2 Madras Law Journal 147.
Anantanarayanan, J.
observed at page 147 as follows:
" What the section really required is that the landlord must satisfy the Court that the building was bona fide required by him, for the immediate purpose of demolition.
I am totally unable to see how the present state of the building, and the extent to which it could stand without immediate demolition and reconstruction, in the future, are not relevant considerations in assessing the bona fides of the landlord.
On the one hand, landlords may bona fide require such buildings, particularly old buildings, in their own interest, for demolition and reconstruction.

On the other hand, it is equally possible that the mere fact that the building is old, is taken advantage of by the landlord to put forward such pretext his real object being ulterior, and not bona fide for the purpose of reconstruction.
The Courts have to apply several criteria, and to judge upon the totality of the facts.
But the Courts cannot exclude the possibility that the ancient or relatively old character of the building which may nevertheless be in quite a good and sound condition, is being taken advantage of by a landlord in order to make such an application with an ulterior purpose, which purpose might be, for instance, to obtain far more advantageous terms of rent in the future.
What the section really contemplates is a bona fide requirement; that necessarily implied that it is in the interests of the landlord to demolish and reconstruct the building, and that the fact that the building is old is not merely a pretext for advancing the application, with the object of evicting the tenant, and of obtaining higher rentals."
36 This Court also emphasised this aspect in the decision of Metalware & Co.
etc.
v.
Bansilal Sharma and others etc., [1979] 3 S.C.R.
1107 at pages 1117-11181979 Indlaw SC 225.
37 We are therefore unable to accept the submission that absence of the right of induction of tenants in reconstructed premises is either arbitrary or unreasonable.
The submission that s.
16(2) which provides that when a building is totally demolished and on which a new building is erected shall be exempt from all the provisions of the Act for a period of five years is bad is also unsustainable.
See in this connection the observations of this Court in M/s.
Punjab Tin Supply Co., Chandigarh etc.
etc.
v.
The Central Government and others, [1984] 1 S.C.R.
428 1983 Indlaw SC 259 and Motor General Traders and another etc.
etc.
v.
State of Andhra Pradesh and others etc.
etc., [1984] 1 S.C.R.
594 at page 605 1983 Indlaw SC 256.
It was submitted that the fact that in these cases exemption was after the first construction of the building and not after demolition and re-construction but that would not make any difference to the principle applicable.
38.
The principle underlying such exemption for a period of five years is not discriminatory against tenants, nor is it against the policy of the Act.
It only serves as an incentive to the landlord for creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business.
It does not create a class of landlords who will forever be kept outside the scope of the Act as the provision balances the interests of the landlords on the one hand and the tenants on the other in a reasonable way.
This Court in Atam Prakash v.
State of Haryana and others, [1986] 2 S.C.C.
249 1986 Indlaw SC 276 also judged the rules of classification in dealing with the Punjab Pre-emption Act, 1913.
39 This Court emphasised in Panchamal Narayan Shenoy v.
Basthi Venkatesha Shenoy, [1970] 3 S.C.R.
734 1970 Indlaw SC 346 that in considering the reasonable and bona fide requirements of the landlord under this clause, the desire of the landlord to put the property to a more profitable use after demolition and reconstruction is also a factor that may be taken into account in favour of the landlord.
It was also emphasised that it was not necessary that the landlord should go further and establish under this clause that the condition of the building is such that it requires immediate demolition.
40 Our attention was drawn to certain observations of Chatterjee, J.
of the Calcutta High Court in Jiwanlal & Co.

and others v.
Manot and Co., Ltd., (64 Calcutta Weekly Notes 932 at page 937) that where the landlord had established a case of building and rebuilding the tenants undoubtedly would suffer on ejectment.
The learned Judge was of the view that though the landlords required the premises for the purpose of building and rebuilding, it was not desirable that the tenants should be ejected.
The learned Judge emphasised that the purpose of the Act was to protect the tenants as long as possible and to eject them only when it was not otherwise possible.
The landlords did not require it for their own use and occupation.
41.
They wanted it for the advantage of increased accommodation.
The learned Judge was of the view that if the tenants were ejected, then for the time being, far from the problem being solved, it would create difficulties for the public as well as for themselves.
We are, however, unable to accept this principle.
It is true that the Act must be so construed that it harmonises the rights of the landlords and at the same time protects the tenants and also serves best the purpose of the Act and one of the purposes of the Act is to solve the acute shortage of accommodation by making a rational basis for eviction and to encourage building and rebuilding which is at the root of all causes of shortage of accommodation.
42 It was held by a learned single Judge of the Madras High Court (one of us-Natarajan J.) in M/s. Patel Roadways Private Limited, Madras v.
State of Tamil Nadu and others, (A.I.R.
1985 Madras 119) 1984 Indlaw MAD 261 that the provisions of the Tamil Nadu Act were not violative of Art.
14 and Art.
19(1)(f) of the Act.
But that was in a slightly different context.
43 Post war migration of human beings en bloc place to place, the partition of the country and uprooting of the people from their hearth and home, explosion of population, are the various vital factors leading to the present acute shortage of housing.
It has to be borne in mind that the urge for land and yearning for hearth and home are as perennial emotions as hunger and sex are, as Poet Rabindranath would say meaning thereby, it is not wealth-I seek, it is not fame that I want, I crave for a home expressing the eternal yearning of all living beings for habitat.
44 It is common knowledge that there is acute shortage of housing, various factors have led to this problem.
The laws relating to letting and of landlord and tenant in different States have from different States' angles tried to grapple the problem.
Yet in view of the magnitude of the problem, the problem has become insoluble and the litigations abound and the people suffer.
More houses must, therefore, be built, more accommodation and more spaces made available for the people to live in.
The laws of landlord and tenant must be made rational, humane, certain and capable of being quickly implemented.
Those landlords who are having premises in their control should be induced and encouraged to part with available accommodation for limited periods on certain safeguards which will strictly ensure their recovery when wanted.
Men with money should be given proper and meaningful incentives as in some European countries to build houses, tax holidays for new houses can be encouraged.
The tenants should also be given protection and security and certain amount of reasonableness in the rent.
Escalation of prices in the urban properties, land, materials and houses must be rationally checked.
This country very vitally and very urgently requires a National Housing Policy if we want to prevent a major breakdown of law and order and gradual disillusionment of people.
After all shelter is one of our fundamental rights.
New rational housing policy must attract new buildings, encourage new buildings, make available new spaces, rationalise the rent structure and rationalise the rent provisions and bring certain amount of uniformity though leaving scope for sufficient flexibility among the States to adjust such legislation according to its needs.
This Court and the High Court should also be relieved of the heavy burdens of this rent litigations.

Tier of appeals should be curtailed.
Laws must be simple, rational and clear.
45.
Tenants are in all cases not the weaker sections.
There are those who are weak both among the landlords as well as the tenants.
Litigations must come to end quickly.
Such new Housing Policy must comprehend the present and anticipate the future.
The idea of a National Rent Tribunal on an All India basis with quicker procedure should be examined.
This has become an urgent imperative of today's revolution.
A fast changing society cannot operate with unchanging law and preconceived judicial attitude.
46 For the reasons aforesaid the contentions urged in writ petitions fail and are accordingly dismissed.
In the facts and circumstances of the case there will be no order as to costs.
Interim orders if any are vacated.
Petition dismissed

Bani Singh & Ors.
v State Of U.P.
Supreme Court of India

9 July 1996
Cr.A.
No.
82 of 1995 (From the Judgment and Order Dt.
28 November 1990 of the Allahabad High Court in Cr.
A.
No.
1894 of 1979)
The Judgment was delivered by : A.
M.
Ahmadi, J.
1.
The short question that we are called upon to decide in this appeal is whether the High Court at Allahabad was Justified in dismissing the appeal filed by the accused- appellants against the order of conviction and sentence issued by the trial court, for non-prosecution.
2.
The facts relevant for our consideration can be briefly stated.
On 13.6.1979, the VII Addl.
Sessions Judge, Bulandshahar, recorded an order convicting the appellants under Sections 366 and 368 of the Indian Penal Code and sentenced them to rigorous imprisonment for three years with a fine of Rs.100/- each.
The appellants filed an appeal against this order in the High Court of Allahabad.
On 18.6.1979, the appeal was admitted by the High Court and notice was issued.
The High Court also issued an interim stay on the execution of the sentence and the realization of fine while granting bail to the appellants.
On 28.11.1990, the matter came up for hearing before the High Court.
While dismissing the appeal for non-prosecution, the Court recorded the following order :
"The List has been revised.
No one present to argue the case on behalf of the appellant, Sri T.B.
Islam A.C.A.
is present on behalf of the State.
In view of the law laid down in the case of Ram Naresh Yadav & Ors.
Vs.
State of Bihar, reported in 1986 Indlaw SC 790, the appeal is dismissed for non- prosecution without going into the merits of the case"
3.
The appellants preferred an appeal before this Court.
On 19.1.1995, a Division Bench of this Court, while hearing the matter, examined the judgment in Ram Naresh Yadav & Ors.

Vs.
State of Bihar 1986 Indlaw SC 790 and came to the conclusion that it was in conflict with the earlier ruling of this Court in Shyam Deo Pandey & Ors.
Vs.
State of Bihar 1971 Indlaw SC 811.
It, therefore, directed that the matter be heard by a larger bench.
Subsequently, the matter was posted before this Bench.
4.
At this juncture, it would be pertinent to make a brief reference to the relevant provisions of law having a bearing on this case.
Chapter XXIX of the Code of Criminal Procedure, 1973 (hereinafter called 'Code') comprising Sections 372-394 deals with 'Appeals'.
For the purpose of our examination, the relevant provisions are Sections 384- 386.
Section 384, which deals with summary dismissal of appeals, enables the Appellate Court to summarily dismiss an appeal "if upon examining the petition of appeal and copy of the judgment received", it "considers that there is no sufficient ground for interfering".
Section 385 provides that "if the Appellate Court does not dismiss the appeal summarily", it "shall cause notice of the time and place at which such appeal will be heard to be given" to the parties involved.
It further provides that thereafter, the Appellate Court shall "send for the record of the case if such record is not already in Court" and "hear the parties".
The relevant part of Section 386 provides that "after perusing such record and hearing the appellants or his pleader, if he appears, and the Public Prosecutor, if he appears", the Appellate Court "may, if it considers that there is no sufficient ground for interference, dismiss the appeal".
5.
From the facts of the present case, it is clear that when the matter came up before the High Court, it admitted the appeal and, following the procedure laid down in Section 385 of the Code, issued notice to the State.
In the circumstances, it is clear that Section 384 of the Code, which enables the High Court to summarily dismiss an appeal, is not applicable to the present case.
Since the High Court proceeded to dismiss the appeal when it was next listed for hearing, it is clear that the provision applicable to these facts is Section 386 of the Code, though the order of the High Court does not mention the provision.
From the order of the High Court, it is clear that upon finding the appellants and their pleader absent, it dismissed the appeal for non- prosecution without going into the merits of the case.
6.
The law relating to the central issue in this case has been authoritatively laid down by a Division Bench of this Court in Shyam Deo's case.
Though the case was decided in the context of Section 423 of the Code of Criminal Procedure, 1898, (hereinafter called the Old Code) since that provision materially corresponds to the present Section 386, the interpretation laid down in that case continues to be sound.
The facts of that case were similar, in that, while hearing an appeal against a conviction, the concerned High Court, finding the appellants' pleader absent, perused the judgment under appeal, and, finding no merit in the case, dismissed the appeal.
This Court took the view that once the appeal was admitted, it was the duty of the Court to peruse the record of the case before dismissing it.
The Court considered this to be a mandatory requirement and, since, in its view, the record of a case is not confined only to the judgment under appeal, it held that the order of the High Court was not in conformity with the requirement of the provision and ordered it to be set aside.
7.
In Ram Naresh Yadav's case, a Division Bench of this Court was faced with a case where the High Court had confirmed an order for conviction and sentence without hearing the appellants.
Against these facts, the Court took the view that, in criminal matters, convicts must be heard before their matters are decided on merits.
It, therefore, set aside the order of the High Court and remanded the matter to it for "passing an appropriate order in accordance law after hearing the appellants or their counsel and on their failure to engage counsel, after hearing counsel appointed by the Court to argue on their behalf".
8.
The Division Bench of this Court which referred this matter to us was of the view that these decisions, rendered by separate two-judge benches of this Court, are in conflict with each other.

Before we decide on this issue, we must closely examine the scheme envisaged by the Code in this regard.
The relevant portions of Sections 385 and 386 of the Code are extracted as under:
"385.
Procedure for hearing appeals not dismissed summarily -- (1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given -
(i) to the appellant or his pleader;
(ii) ....
....
....
(iii) ....
....
....
(iv) ....
....
....
(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and hear the parties:
Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.
(3) ....
....
....
386.
Powers of the Appellate Court -- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may --
xxxx xxxx xxxx "
9.
Section 385(2) clearly states that if the Appellate Court does not dismiss the appeal summarily, it 'shall', after issuing notice as required by subsection (1), send for the record of the case and hear the parties.
The proviso, however, posits that if the appeal is restricted to the extent or legality of the sentence, the Court need not call for the record.
On a plain reading of the said provision, it seems clear to us that once the Appellate Court, on an examination of the grounds of appeal and the impugned judgment, decides to admit the appeal for hearing, it must send for the record and then decide the appeal finally, unless the appeal is restricted to the extent and legality of the sentence.
Obviously, the requirement to send for the record is provided for to enable the Appellate Court to peruse the record before finally deciding the appeal.
It is not an idle formality but casts an obligation on the court to decide the appeal only after it has perused the record.
This is not to say that it cannot be waived even where the parties consent to its waiver.
This becomes clear from the opening words of Section 386 which say that 'after perusing such record' the court may dispose of the appeal.
However, this Section imposes a further requirement of hearing the appellant or his pleader, if he appears, and the public prosecutor, if he appears.
This is an extension of the requirement of Section 385(1) which requires the court to cause notice to issue as to the time and place of hearing of the appeal.
Once such a notice is issued the accused or his pleader, if he appears, must be heard.
10.
The question is, where the accused is the appellant and is represented by a pleader, and the latter fails to appear when the appeal is called on for hearing, is the Appellate Court empowered to dispose of the appeal after perusing the record on its own or, must it adjourn the appeal to a future date and intimate the accused to be present on the next date of hearing?
11.

In Shyam Deo's case, this Court ruled that the Appellate Court must peruse the record before disposing of the appeal; the appeal has to be disposed of on merits even if it is being disposed of in the absence of the appellant or his pleader.
Interpreting Section 423 of the Old Code (the corresponding provisions are Sections 385-386 of the present Code), this Court in paragraph 19 of the judgment held as under:
"The consideration of the appeal on merits at the stage of final hearing and to arrive at a decision on merits and to pass final orders will not be possible unless the reasoning and findings recorded in the judgment under appeal are tested in the light of the record of the case.
After the records are before the court and the appeal is set down for hearing, it is essential that the Appellate Court should (a) peruse such record, (b) hear the appellant or his pleader, if he appears, and (c) hear the public prosecutor, if he appears.
After complying with these requirements, the Appellate Court has full power to pass any of the orders mentioned in the section.
It is to be noted that if the appellant or his pleader is not present or if the public prosecutor is not present, it is not obligatory on the Appellate Court to postpone the hearing of the appeal.
If the appellant or his counsel or the public prosecutor, or both, are not present, the Appellate Court has jurisdiction to proceed with the disposal of the Appeal; but that disposal must he after the Appellate Court has considered the appeal on merits.
It is clear that the appeal must be considered and disposed of on merits irrespective of the fact whether tne appellant or his counsel or the public prosecutor is present or not.
Even if the appeal is disposed of in their absence, the decision must be after consideration on merits."
(Emphasis added)
12.
In our view, the above-stated position is in consonance with the spirit and language of Section 386 and, being a correct interpretation of the law, must be followed.
13.
In Ram Naresh Yadav's case, this Court, without making a specific reference to Section 386 or any other provision of the Code and without noticing the ratio of Shyam Deo's case concluded thus:
"It is an admitted position that neither the appellants nor counsel for the appellants in support of the appeal challenging the order of conviction and sentence, were heard.
It is no doubt true that if conunsel do not appear when criminal appeals are called out it would hamper the working of the court and create a serious problem for the court.
And if this happens often the working of the court would become well nigh impossible.
We are fully conscious of this dimension of the matter but in criminal matters the convicts must be heard before their matters are decided on merits.
The court can dismiss the appeal for non prosecution and enforce discipline or refer the matter to the Bar Council with this end in view.
But the matter can be disposed of on merits only after hearing the appellant or his counsel.
The court might as well appoint a counsel at State cost to argue on behalf of the appellants."
14.
What then is the area of conflict between the two decisions of this Court? In Shyam Deo's case, this Court ruled that once the Appellate Court has admitted the appeal to be heard on merits, it cannot dismiss the appeal for non- prosecution for non-appearance of the appellant or his counsel, but must dispose of the appeal on merits after examining the record of the case.
It next held that if the appellant or his counsel is absent, the Appellate Court is not bound to adjourn the appeal but it can dispose it of on merits after perusing the record.
In Ram Naresh Yadav's case, the Court did not analyze the relevant provisions of the Code nor did it notice the view taken in Shyam Deo's case but held that if the appellant's counsel is absent, the proper course would be to dismiss the appeal for nonprosecution but not on merits; it can be disposed of on merits only after hearing the appellant or his counsel or after appointing another counsel at State cost to argue the case on behalf of the accused.
15.
We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case appears to be sound except for a minor clarification which we consider necessary to mention.
The plain language of Section 385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after

the record is received, the Appellate Court may dispose of the appeal after hearing the accused or his counsel.
Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simplicitor.
On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record.
The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record.
The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record.
Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav's case that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.
16.
Secondly, the law expects the Appellate Court to give a hearing to the appellant or his counsel, if he is present, and to the public prosecutor, if he is present, before disposal of the appeal on merits.
Section 385 posits that if the appeal is not dismissed summarily, the Appellate Court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader.
Section 386 then provides that the Appellate Court shall, after perusing the record, hear the appellant or his pleader, if he appears.
It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant.
So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard.
It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing.
This is the requirement of the Code on a plain reading of Sections 385-386 of the Code.
The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent.
If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter.
It can dispose of the appeal after perusing the record and the judgment of the trial court.
We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present.
If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so.
We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav's case did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the Appellate Court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.
17.
Such a view can bring about a stalemate situation.
The appellant and his lawyer can remain absent with impunity, not once but again and again till the Court issues a warrant for the appellant's presence.
A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal.
If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the Court in the same situation.
Such a procedure can, therefore, prove cumbersome and can promote indiscipline.
Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation is there has been a failure of justice.
This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.

18.
In view of the position in law explained above, we are of the view that the High Court erred in dismissing the appeal for non-prosecution simplicitor without examining the merits.
We, therefore, set aside the impugned order and remit the appeal to the High Court for disposal on merits in the light of this judgment.
The appeal will stand allowed accordingly.
Appeal allowed

Ashok Kumar Chatterjee v State of Madhya Pradesh
Supreme Court of India

2 May 1989
Cr.A.
No.
417 of 1978 (From the Judgment and Dt.
7 May 1977 of the Madhya Pradesh High Court in Cr.A.
No.
307 of 1977)
The Judgment was delivered by: RATNAVEL PANDIAN, J.
1 This appeal under special leave is directed against the judgment passed by the High Court of Madhya Pradesh at Jabalpur disposing Criminal Reference No.
1 of 1977 submitted by the learned Sessions Judge, Raipur u/s.
366(1) of the Criminal Procedure Code for confirmation of the sentence of death awarded by him in Session Trial No.
5 of 1977 and the criminal Appeal No.
307 of 1977 preferred by the appellant, Ashok Kumar Chatterjee challenging the correctness and legality of the judgment made by the trial court convicting him u/s.
302 and 201 IPC and sentencing him to death and to undergo rigorous imprisonment for 3 years respectively.
The facts of the case briefly stated are as follows
2 The deceased Ravindra, who was 19 years of age at the time of occurrence in 1976 was the son of Pritosh Kumar Chatterjee who was employed in Bhatapara as Laboratory Assistant in Government Multi-Purpose Higher Secondary School.
He hailed from West Bengal.
The appellant, aged about 22 years, is a cousin of Pritosh.
3 Pritosh was living with his wife (PW 2), his only daughter, aged about 15 years namely Supriya @ Bina and the appellant in Bhatapara in the house of PW 11.
The deceased who was a student in Raipur College had come to Bhatapara during the summer vacation.
4 Though the motive for the appellant to murder Ravindra, as put forth now by the prosecution, is that there was a quarrel between Ravindra and the appellant on some money matters, the real motive seems to be a story of shameful intrigue as disclosed from the evidence of PW 2, the wife of Pritosh.
According to PW 2, her husband Pritosh was a man of very bad and indecent character and he was living in a private hell of his own satisfying his lust with his own daughter, Supriya.
In the cross-examination also PW 2 affirms that her husband had illicit relations with Supriya.
On account of this abnormal sexual and obnoxious behaviour of Pritosh, there used to be frequent quarrels between PW 2 and her husband.
It further transpires from the evidence that the appellant who was none other than the cousin brother of Pritosh, was also making overtures to Supriya and this was resented by the deceased Ravindra who was in the prime of his youth.
5 During that summer vacation, PW 2 along with her daughter Supriya had been to her village Gangoria, leaving her husband, the appellant and the deceased at Bhatapara.
Some time later, Pritosh also come to the village where PW 2 and her daughter Supriya were staying.
After the arrival of Pritosh, PW 2 left the village taking her daughter with her to Bhadria by travelling in a bus.
But even before she reached Bhadria, she sent her daughter back to Gangoria from Barasal, probably a place midway between Gangoria and Bhadria.
In Gangoria, PW 2's mother and brother were living.

6 Pritosh came to Bhadria from Bhatapara.
By that time Supriya also came there.
PW 2 took a strong objection to the conduct of her husband coming to Bhadria and had a quarrel with him.
Then she sent Supriya back to Gangoria on the very next day of the arrival of her husband.
Thereafter PW 2 and her husband went to the village Mongram where the appellant also joined with them.
It may be stated that the appellant's parents and brothers were residing at Mongram.
At Mongram, PW 2 made enquiries with the appellant about her son Ravindra to which the appellant replied that Ravindra had gone to Bombay in search of some employment.
Leaving the appellant and Pritosh at Mongram PW 2 went Gangoria.
After some days PW 2 with her mother came to Bhatapara and asked her husband and the appellant about her son Ravindra to which both of them replied that Ravindra had gone in search of a job somewhere.
PW 2 asked them to make a search for her son and if they failed to do so, she would herself make a search by handing over a photo of her son to the police.
7 Be that as it may, it appears from the evidence that the deceased was last seen with the appellant in Bhatapara on June 8, 1976.
On June 11, 1976, a headless body of a male without the limbs was found by PW 1 and the villagers in the field at Bhatapara.
Some of the limbs of the body were also found at different places on the same day.
At about 8.15 a.
m.
on June 11, 1976, PW 1 lodged a report (Ex.
P-1) before PW 20, the then Section House Officer of Bhatapara Police Station.
On the basis of Ex.
P-1, the first information report, Ex.
P-57 was prepared.
8 PW 20 took up investigation, proceeded to the scene, held inquest over the headless body and the limbs and prepared the inquest report Ex.
P-23.
He also prepared a sketch of the scene Ex.
P-50 and seized a rope, a pair of shoes and a cycle lying there.
9 He sent that trunk and the limbs for post-mortem examination.
On the very next day i.
e.
on June 12, 1976 on information, near the railway station he seized the decapitated head, over which he held an inquest and prepared the report Ex.
P-59.
He caused the photograph of the head to be taken under Ex.
P-12.
Then he sent the head for post-mortem.
10 PW 10, the Medical Officer who conducted the autopsy on the headless trunk and the decapitated head opined that both were parts of the same body of a male of fair complexion of an estimated age of 17 to 25 years.
According to the prosecution, the dead body was of Ravindra who of a fair complexion, aged 19 years at that time.
Exs.
P-45 and 47 are the post-mortem certificates.
PW 10 states the body had not decomposed.
11 PW 21, at the instruction of PW 20, inspected the house of the deceased and drew a sketch Ex.
P-60.
He found blood stains at wooden door at three points which he scraped.
12 While the matter stood thus, PW 2 not being satisfied with the reply of her husband and the appellant both at Mongram and thereafter at Bhatapara about the missing of her son Ravindra, went to the police station of Bhatapara and handed over two photographs of her son Ex.
P-2 and Ex.
P-3 and also gave a report Ex.
P-82 dated July 13, 1976.

13 On the same day i.
e.
on July 13, 1976 after PW 2 had submitted the report Ex.
P-82 to the police, Pritosh committed suicide by throwing himself before a running train.
14 PWs 6 and 7 who were the Lecturers of the High School in which Pritosh was employed and in which the deceased studied and completed has matriculation, came to the police station and informed the suicidal death of Pritosh to PW 30 (Station House Officer).
While PWs 6 and 7 were returning from the station, they saw the appellant entering the police station.
The appellant told both these two witnesses that he knew of the death of Pritosh and further confessed that he was the person who murdered the deceased Ravindra and added that he had come there to surrender before the police.
15 PW 30 arrested the accused, examined him and recorded his confessional statement in the presence of PWs 6 and 7.
In pursuance of that statement, several articles and letters were seized.
On June, 16, 1977, certain applications written by Pritosh were also recovered.
During the inspection of the house, PW 30 found blood stains on the walls of the house which he scraped and recovered Ex.
P-20 is the recovery mahazor.
Among the letters seized, Exs.
P-13 to P-15 (letters written in Bengali) and Ex.
P-29 and Ex.
P-31 (letters written in Hindi) and the envelopes Exs.
P-30 and P-32 were found.
Exs.
P-61 and P-63 are the specimen Hindi writings of the appellant and Exs.
P-18 to P-20 are the specimen Bengali writing of the appellant.
These letters along with specimen handwriting were sent to PWs 22 and 23 who were the Additional and Assistant Station Examiners of Questioned Documents (i.
e.
handwriting experts) for comparison of the writings of these letters with the specimen writings of the appellant.
The experts on comparison have opined that all the seized letters were in the handwriting of the appellant.
16 Besides the opinion of the experts, PW 2 who claims to have studied up to 3rd standard and to have been conversant with the handwriting of the appellant also has deposed that the writings in Exs.
P-13 to P-15, P-29 and P-31 are in the handwriting of the appellant.
In Exs.
P-13 and P-15 (addressed to his father), and in Ex.
P-14 (addressed to Jamai Baboo), the appellant had given the detail of his love towards Supriya (@ Bina) and of his guilt of murdering the deceased.
It may be pointed out that these letters were not posted.
Exs.
P-29 and P-31 (dated nil) found in the postal covers (Exs.
P-30 and P-32) were addressed to the Collector and the Station House Officer but they too were not posted.
The contents of those letters reveal that the appellant wanted to put an end to his life by committing suicide for the sin of murder he committed.
It seems that the appellant could not muster courage to end his life and so surrendered before the police.
Before leaving for the police station, the appellant wrote Ex.
P-104 a postcard addressed to his father and posted the same.
This postcard (Ex.
P-104) written in Bengali was posted on July 13, 1976 at Bhatapara and it reached his father in Kalopur village on July 17, 1976.
This is an important document about which we shall discuss in the ensuing portion of the judgment.
17 During the investigation, a knife and some letters inclusive of Ex.
P-104 were seized from the house of the father of the appellant in Kalopur village by PW 18.

Exs.
P-5 to P-11, P-16 and P-17 are the letters proved to be in the handwriting of Pritosh through PWs 2, 3 and 22.
25 Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers u/art.
136(1) of the Constitution
26 In Ramaphupala Reddy v.
State of Andhra Pradesh this Court expressed its view on this proposition of law thus:
27 Although the powers of this Court under that article (Art.
136 of the Constitution) are very wide, this Court following the practice adopted by the Judicial Committee has prescribed limits on its own power and in criminal appeals, except under exceptional circumstances it does interfere with the findings of facts reached by the High Court unless it is of the opinion that the High Court had disregarded the forms of legal process or had violated the principles of natural justice or otherwise substantial and grave injustice has resulted. This Court does not ordinarily reappraise the evidence if the High Court has approached the case before it in accordance with the guidelines laid down by this Court unless some basic error on the part of the High Court is brought to the notice of this Court.
It is best to bear in mind that except in certain special cases, the High Court is the final court of appeal and this Court is only a court of special jurisdiction.
28 Chandrachud, J as he then was in Balak Ram v.
State of U.
P.
speaking for the bench said:
29 The powers of the Supreme Court u/art.
136 are wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.
In Ramaphupala Reddy v.
State of A.
P., it was observed that it was best to bear in mind that normally the High Court is a final court of appeal and the Supreme Court is only a court of special jurisdiction.
This Court would not therefore reappraise the evidence unless, for example, the forms of legal process are disregarded or principles of natural justice are violated or substantial and grave injustice has otherwise resulted.
30 This Court in Bharwada Bhoginbhai Hirjibhai v.
State of Gujarat wherein the High Court had affirmed the pure findings of facts recorded by the Sessions Court, observed:
31 Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established:
(1) that the finding is based on no evidence or
(2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or
(3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or
(4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded
32 In a recent decision in Appabhai v.
State of Gujarat the following dictum is laid down:
Before we consider the contentions urged for the appellants, we may recall that these are appeals by special leave u/art.
136 of the Constitution.
If conclusions of the courts below are supported by acceptable evidence, this Court will not exercise its overriding powers to interfere with the decision appealed against.
This Court also will not consider the contentions relating to re-appreciation of the evidence which has been believed by the courts below.
The fact that the special leave has been granted should not make any difference to this practice.
The grant of special leave does not entitle the parties to open out and argue the whole case.
The parties are not entitled to contest all findings recorded by the courts below unless it is shown by error apparent on the record that substantial and grave injustice has been done to them.

33 We shall now, bearing in mind the scope of interference by this Court in an appeal against concurrent findings, dispose this appeal in this light of the principle of law enunciated by this Court in the abovementioned authoritative judicial pronouncements.
34 This appeal arises against the concurrent findings of facts except for the modification of the sentence made by the High Court.
There is no direct evidence to prove this case and the conviction is founded solely on circumstantial evidence.
This Court in a line of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests
(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused
(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.
35 See also Rama Nand v.
State of Himachal Pradesh, Prem Thakur v.
State of Punjab, Earabhadrappa v.
State of Karnataka, Gian Singh v.
State of Punjab and Balwinder Singh v.
State of Punjab
36 Before adverting to the arguments advanced by the learned counsel, we shall first of all dispose of the contention with reference to the identity of the victim
37 The unfortunate victim in this case is one Ravindra who was aged about 19 years at the time of the occurrence and who was the only son of Pritosh and PW 2.
According to the prosecution, the scene of occurrence was the house of the deceased himself and he was done away with at about 4.45 a.
m.
on June 10, 1976.
Indisputably, it is a very macabre incident in which the deceased had been brutally parts of Bhatapara city.
Though the headless body and the various limbs were seen and recovered on June 11, 1976, the decapitated head was seen and recovered only on June 12, 1976.
A photograph of the head was taken under Ex.
P-12.
Though PW 2, the mother of Ravindra on seeing Ex.
P-12 identified it to be that of her son, the learned Judges held that since the features of the face in x.
P-12 cannot be deciphered, it is impossible for any person to identify the deceased from Ex.
P-12.
In view of this, they were reluctant to place reliance on the identification by PW 2 on seeing Ex.
P-12.
However, the High Court relying on other facts of the case concurring with the trial court came to the conclusion that the deceased was Ravindra.
38 According to the evidence, Ravindra was of a fair complexion aged about 19 years.
The Medical Officer has deposed that the skin of the deceased was of fair complexion.
In the post-mortem certificate (Ex.
P-45), the approximate age of the male body is given as 18 to 29 years and the skin was of fair colour.
The Medical Officer has further stated that the decapitated head was that of the body recovered on the earlier day.
The scrapings of the wall of the kitchen portion of the scene house are proved to have been stained with human blood.
The pillow recovered from the house also is proved to have been stained with human blood.

These circumstances indicate that the occurrence had taken place inside the house of the deceased.
In the number of letters inclusive of Ex.
P-104 the appellant himself has unequivocally conferred that the deceased was Ravindra.
The letters written by Pritosh about which we have made reference in the narrative portion of this judgment also refers to the murder of Ravindra.
In view of the above unassailable circumstances, we are fortified in our view that both the courts have rightly found that the dead body was that of Ravindra and we do not see any reason to dislodge that concurrent finding.
39 The prosecution rests its case on a number of attending circumstances, which establish the guilt of the appellant.
As was pointed out during the earlier part of this judgment though the prosecution has suggested the motive for the accused to commit this murder on a money dealing, the real motive behind the occurrence seems to be a gross indecent behavior of the appellant towards Supriya @ Bina, who is done other than the sister of the deceased.
It is in the evidence of PW 2 that even Pritosh, the father of Supriya had sexually assaulted his own daughter on earlier occasions and that this appellant was also making overtures towards Supriya thereby exhibiting his asinine behaviour.
Therefore, it is but natural that the deceased should have taken a strong objection to the conduct of the appellant and this had resulted in the murder of Ravindra.
40 At the time when the victim was murdered except the appellant and the deceased, there was none in the scene house because PW 2 had left Bhatapara with her daughter and Pritosh and followed them some time later.
In the evidence of PW 11 who is the landlord of the scene house it is said that Ravindra was seen in the house in the company of the appellant up to June, 1976.
The appellant was not found in the village after this murder till he surrendered before the police i. e.
on June 13, 1976.
After this incident, the appellant went to Mongram where his parents and brothers reside and met Pritosh and PW 2.
When PW 2 asked the appellant at Mongram about her son's whereabouts, the appellant falsely replied that Ravindra had gone to Bombay in search of some employment.
The conduct of the appellant in giving this manifestly blatant false reply to PW 2's enquiry, spells out his guilty conscience.
The number of letters namely Exs.
P-13 to P-15, Exs.
P-29 and P-31 written in Bengali and Hindi were seized from the house.
These letters are proved to be in the handwriting of the appellant, as seen from the evidence of PW 22 and PW 23 who were the State Examiners of Questioned Documents.
PW 2 who claims to have studied up to 3rd standard has also deposed that the writing of those letters are in the handwriting of the appellant.
In fact the accused also did not deny his handwriting but would try to explain that those letters were got written under pressure brought by the police on him.
In these letters which were not posted, the accused had confessed that he had murdered the deceased.
There is one more clinching evidence connecting the appellant with the crime in question is the contents of the postcard (Ex.
P-104).
This postcard had been posted at Bhatapara on July 13, 1976 i.
e.
on the very same day of the suicidal death of Pritosh.
Much argument was advanced on this postcard.
According to the prosecution this postcard which was posted at Bhatapara on July 13, 1976 reached the appellant's father on July 17, 1976 at Kalopur.
This postcard is written in Bengali.
PW 23 has testified that the writing in the postcard is that of the appellant.
This Ex.
P-104 is dated July 11, 1976.

The learned counsel for the defence advanced his argument contending that since the postcard is dated July 11, 1976, the appellant should have been taken to the police custody even much earlier to July 13, 111976 and this letter was fabricated.
We are unable to accept this contention.
41 In fact, a similar argument was raised before the High Court which repelled the same.
Admittedly Pritosh committed suicide on July 13, 1976.
In the postcard there is reference to the death of Pritosh Therefore, it is evident that this postcard should have been written after the death of Pritosh and then posted.
Presumably, the appellant would have put the date on the postcard as July 11, 1976 by mistake.
In view of the surrounding circumstances and the contents found in the postcard we are in total agreement with the finding of the High Court that the appellant should have put the date by mistake, and hold that this argument of the learned counsel for the appellant is not acceptable.
The contents of this letter clearly show that Ravindra was murdered by the appellant on June 10, 1976 and that the appellant coming to know about the suicide of his cousin brother, Pritosh had decided to surrender before the police and suffer the consequences.
Though the appellant in general had stated that he was tortured by the police and pressurised to write certain letters and documents and to sign them, he when specifically questioned u/s.
313 CPC answered that he did not know anything about those letters.
42 The learned defence counsel in support of his contention that there was police torture would draw the attention of this Court to certain admissions of PW 2 in the cross-examination admitting that the police had harassed all of them and persistently enquired about the reason for Pritosh to commit suicide, and that the appellant on being arrested by the police was highly perplexed and all of them went on admitting what the police said.
We have carefully scanned these admissions of PW 2 but found that these admissions could not in any way affect the veracity of the prosecution case.
As we have pointed out Pritosh committed suicide in very tragic circumstances by throwing himself before a running train only after PW 2 had approached the police by lodging Ex.
P-82 and handing over two photographs of her son with the request to make an investigation about the missing of her son.
Evidently Pritosh who on being put to painful ignominy by his obnoxious conduct of having sexual relationship with his own daughter should have resorted to putting an end to his life apprehending that the whole shameful intrigue would come out and he would be exposed to the public.
PW 2 by then had not come out with the story of her husband's abnormal sexual behaviour Therefore, the police in order to unearth the real cause for the suicidal death Pritosh would have taken all the inmates of the house to the police station and subjected them to intensive and searching examination.
It was only during such examination of these witnesses over the cause of the death of Pritosh, the whole truth about this case came out.
It is not surprising that the appellant would have been in an agitated and perplexed state of mind because he was in exclusive knowledge of his own conduct of having committed the murder of the deceased which led to the suicidal death of Pritosh who on account of his uncivilized and filthy conduct in our opinion was only a beast in the human form.
Hence we hold that this argument of the earned counsel does not merit consideration.
43 For all the discussions made above we are of the view that there are number of impelling circumstances attending this case leading to an irresistible and inescapable conclusion that it was the appellant and the appellant alone who caused the death of the deceased, Ravindra in a very ghastly manner by cutting him into pieces and throwing his various parts of body at different parts of the city, Bhatapara and there cannot be any dispute that this cold-blooded murder is diabolical in conception and extremely cruel in execution.
The evaluation of the findings of the High Court does not suffer from any illegality, or manifest error or perversity nor it has overlooked or wrongly discarded any vital piece of evidence.
Hence was hold that the findings of facts recorded by the courts below do not call for any interference.
In the result, the appeal is dismissed
Appeal dismissed.

High Court of Punjab and Haryana Through R.
G v Ishwar Chand Jain and Another
Supreme Court of India

26 April 1999
Appeal (Civil) 2465 of 1999
The Judgment was delivered by : D.
P.
Wadhwa, J.
Leave granted.
Delay condoned in S.L.P.
(C) No.
1830 of 1999.
1 High Court of Punjab and Haryana is aggrieved by the judgment dated May 22, 1998 of a Division Bench of its own High Court on judicial side setting aside the order of the State of Haryana, Respondent No.
2, pre-maturely retiring the first respondent Ishwar Chand Jain (hereinafter referred to as "Jain"), a member Of the superior judicial service of the State of Haryana on the recommendation of the High Court.
2 Jain, a practising advocate of 14 years standing, joined the superior judicial service of the State of Haryana after his selection by the High Court.
He joined service on May 2, 1983 and under Rule 10 of the relevant rules put on probation for a period of two years.
He was posted at Hissar as Additional District and Sessions Judge.
In The year 1983-84 inspection of his court was made by the inspecting judge of the High Court, who graded his work as "B-satisfactory".
Full Court of the High Court reduced this grading to "B-average/satisfactory".
For the subsequent year 1984-85 Jain was posted at Narnaul.
The inspecting judge graded him "B+(Good)".
Full Court of the High Court, however, graded it to "C-Below Average".
While the inspecting judge considered "knowledge of law and procedure" of the officer as "good", High Court recorded it as "Poor".
Against the column "If the Officers was Industrious and prompt in disposal of the cases and has he coped effectively with heavy work" inspecting judge gave him the remarks as "yes", High Court said it is "No".
Against the column "whether the judgments'and orders were well written and clearly expressed", the inspecting judge said "Yes+B(Good)".
There is no such column in the form of recording ACR by the High Court.
Inspecting judge said officer was an efficient judicial officer and had maintained the judicial reputation for honesty and impartiality.
According to High Court there was "scope for improvement", About his attitude towards members of the Bar and the public the inspecting judge recorded that "some members of the Bar were complaining about his unaccommodating nature." High Court used this entry to say "scope for improvement".
3 In the Full Court meeting of the High Court held on March 21, 1985 the High Court resolved that the work and conduct of Jain was not satisfactory and that his services deserved to be dispensed with forthwith.
It made recommendation to the State Government for issuing necessary orders in mis respect.
Extract of the proceedings of Pull Court meeting of the High Court held on March 21, 1985 is as under
"The matter regarding Shri I.C.
Jain, Additional District and Sessions Judge, was considered.
In view of the fact that his period of probation of two years is going to expire on 2nd May, 1985 his performance as Additional District and Sessions Judge was reviewed.
It was decided on further consideration mat during this period, his work and conduct was not satisfactory and his services deserve to be dispensed with forthwith.
Consequently, a recommendation be made to the State Government for issuing necessary orders in this respect."
4 Jain challenged the recommendation of the High Court terminating his probation by filing a writ petition in the High Court (CWP No.
2213 of 1986).
A Division Bench of the High Court by its judgment dated December 9, 1986 dismissed the same.
The Division Bench also observed that the Governor had since accepted the recommendation of the High Court dispensing with the services of Jain in terms of Rule 10(3) of me Rules.

Then it directed that formal order in that regard shall be issued by the State Government without further delay.
Against that Jain came to this Court seeking leave to appeal.
This Court granted him leave and by judgment dated May 26, 1988 set aside the judgment of the High Court This Court held that the modification of the ACR by the Full Court for the year 1984-85 from "B+Good" to " C- Below Average" was based on no material and unsustainable in law.
The result was that Jain was put back in service.
He joined his duty on June 9,1988.
He was, however not granted consequential benefits on his reinstatement and he approached this Court again by filing an Interlocutory Application, which was allowed by order dated September 11, 1988 and the original seniority of Jain was restored by the High Court.
5 ACRs of Jain for the years 1985-86, 1986-87 and 1987-88 were not written because he was not in service during the period.
For the year 1988-89 the inspecting judge graded him "B+(Good)" by his report dated March 21, 1989.
Full Court the High Court, however, graded it as "B(Satisfacotry)".
After being reinstated Jain was posted at various places in the State.
His complaint was also that he was entitled to be posted as District and Sessions Judge and even Legal Remembrancer to the State, which was encadered post, yet these were not given to him.
However, this is not relevant for our purpose and we need not go into the grievance of Jain.
6 For the year 1991 Jain was posted as Additional District and Sessions Judge at Jind.
It is alleged that during his tenure at Jind several complaints were received from members of the Bar relating to his judicial work.
On the basis of the complaint Full Court of the High Court directed the District and Sessions Judge (Vigilance), Haryana to conduct an inquiry into the allegations levelled against Jain.
District and sessions Judge (Vigilance) submitted his Inquiry Report on April 10,1992, which was placed before the Full Court for necessary action .
It is not that complaints were made by the Bar of the Jind District and these were made only by one advocate Shri K.C.
Sharma.
They were in all ten complaints.
These Were thoroughly gone into by the Inquiry Officer and his conclusion is reproduced as under :
"Out of the ten cases mentioned herein before, bias of the Presiding Officer is prima facie proved in cases mentioned at serial Nos.
2,4,5,6,8 and 10.
From these eases, nothing can be inferred about any other consideration having played part in delivering these judgments.
Thus, as far as these complaints are concerned, these do not make out prima facie case against the Presiding Officer, except that it does show element of bias against the complainant.
I would, therefore, suggest mat the complaints be filed but the directions be given to the District Judge to transfer all the cases of the complainants from the court of Shri Jain and fix them either before himself or other Additional District and Sessions Judge.
In future also he should not send any case of the complainant to the Court of Shri Jain till he remains posted in that District or any other orders deemed fit."
7 After considering the conclusion aforesaid in the Inquiry Report Full Court in its meeting held on April 24, 1992, decided that Jain be charge-sheeted and judicial work be withdrawn from his eoort.
Relevant extract of the minutes of the Full Court meeting is as under :-
"6 ' 8.
The matter regarding preliminary enquiry report submitted by Shri B.L.
Gulati, District and Sessions Judge (Vig) Haryana with regard to the complaint dated 26.12,91 made by Sh.
K.C.
Sharma Advocate of Jind and some other matters concerning Sh, I.C.
Jain, Additional District ' Sessions Judge, Jind and that of preliminary enquiry report dated 10.4.92 submitted by Sh.
B.L.
Gulati, DJ.V.

(Haryana) on the complaints dated 17.8.91, 28.8.91, 29.8.91, 3.9.91 and 22.10.91 made by Shri Krishan Chander Sharma, Advocate, Jind was considered along with the note of the Registrar and it was decided that the Officer be charge-sheeted and judicial work be withdrawn from his court,"
8 A charge-sheet was served upon Jain on July 29, 1992 and he was called upon to submit his-reply thereto.
His reply was considered by the Full Court and was found to be wholly urlsatisfactory.
It was, therefore, directed that a departmental inquiry be conducted against Jain and that in (he meantime he be placed under suspension.
This was by resolution of the Full Court meeting dated September 28, 1992.
Extract of this meeting of Full Court is as under :-
"13 The matter regarding reply to the charge-sheet submitted by Shri I.C.
Jain, Additional District ' Sessions Judge, Jind was considered along with the note of the Registrar and the same was found unsatisfactory.
It was accordingly decided that a regular departmental enquiry be held against him.
Hon'ble Mr.
Justice V.K.
Jhanji and Shri H.S, Gill, Advocate, were appointed Enquiry Officer and Presenting Officer respectively.
It was further decided that Shri I.C.
Jain be placed under suspension forthwith."
9 Order placing Jain under suspension is dated October 3, 1992.
By order dated April 8, 1993 headquarters of Jain were shifted from Jind to Chandigarh and he was informed of this decision of the High Court by communication dated May, 8 1993.
There is another episode that in spite of the order Jain did not shift his headquarters from Jind to Chandigarh and did not vacate the Government accommodation allotted to him at Jind despite various directions issued to him in this regard from time to time.
This, according to High Court, constituted an irresponsible behaviour, gross misconduct, disobedience of me orders and directions of the High Court and had amounted to acting in a manner unbecoming of a judicial officer, Second charge sheet dated May 12, 1995 on this account was also served on Jain.
We are, however, not concerned with the second charge.
10 There is no record of ACRs of Jain for the years 1989-90 and 1996-91.
For the year 1991-92 the inspecting judge in the column "net result" recorded "Integrity Doubtful."
As regards "Knowledge of law and procedure, industrious and promptness of disposal of cases, nature of the officer, writing of judgments" he gave him "Good B+-", As regards the attitude of the officer towards his superiors, subordinates and colleagues it was said "Not what it should be", and against the column 'Behaviour towards members of the Bar and the Public' remark was "Not Good" Against the column 'has he maintained judicial reputation for honesty and impartiality the inspecting judge recorded: "See note attached." This note is as under :-
"Note
This Officer does not enjoy the reputation which a judicial officer is expected to have.
Many complaints regarding his poor reputation were received from Advocates and the members of the Bar.
There are some complaints which now form the subject matter of the disciplinary proceedings against him; Sd/-
(Inspecting Judge) 251.92.
11 High Court in its Full Court meeting, however, graded .the officer "C- integrity Doubtful" and recorded that his knowledge of law and other judicial qualification were just average and that he was not industrious and had not coped effectively with heavy work and was also not prompt in the disposal of the cases.
Full Court said that the officer was not having reputation for integrity arid impartiality and further that his attitude towards the superior officers etc.
and his behaviour towards the members of the Bar and the public was unsatisfactory.
ACR for the year 1991-92 was written by the Full Court only on September 20, 1995 as will be presently seen.
It was communicated to the officer on September 22, 1995.
12 Meanwhile a meeting note was prepared by the registry of the High Court in respect of the retention in service of Jain beyond the age of 55 years.
In this note it was pointed out that the date of birth of Jain was October 7, 1940 and he would be attaining the age of 55 years on the afternoon of October 6, 1995.

His service were terminated w.e.f.
December 30, 1986 and he was reinstated on June 9, 1988 in pursuance to the order of Supreme Court in Civil Appeal No.
811 of 1988 (arising out of SLP No.
15776 of 1986).
He was placed under suspension w.e.f.
October 3, 1992 in contemplation of disciplinary proceedings initiated against him which were still pending.
With this note extracts of the relevant rule i.e.
cl.
(d) of Rule 3.26 of the Punjab Civil Services Rules Volume I Part I (as applicable to the sate of Haryana).
instructions regarding retention in service of class I and class II officers beyond the age of 55 years issued by the State of Haryana by its letter dated September 24, 1974 relevant guidelines prescribed by the High Court as contained in its letter dated September 20, 1979 and the precis of the confidential remarks on the work and conduct of the officer, were attached.
As per direction of the Chief Justice of he High Court the matter was placed before the Full Court.
In the meeting of the Full Court held on September 20, 1995 consideration of the case of Jain (under suspension) for his retention in service beyond the age of 55 years was deferred it was resolved to recorded the annual confidential report of the officer for the year 1991-92 and at the same time graded it as "C Integrity Doubtful".
Further note was prepared by the Registry on September 21 , 1995 for consideration of the Full Court meeting to be held on December 12, 1995.
In this it was included the remark recorded by the High Court in me ACR of Jain for the year 1991-92.
Full Court in its meeting on December 12, 1995 resolved to make recommendation to the Haryana Government to retire Jain forthwith by giving him three months" pay and allowances in lieu of notice.
The resolution of the Full Court is as under :-
"6.
The matter regarding retention in service of Sh.
I.C.
Jain (under suspension), a member of the Haryana Superior Judicial Service beyond the age of 55 years was considered along with the note of the Registrar and it was decided that in light of his annual confidential reports, recommendation be made to he Haryana Government that he be retired forthwith by giving him three months pay and allowances in lieu of notice as required by the rules as it would be in the public interest to do so.
It was further decided to continue the enquiry against him for the limited purpose for imposing the cut on his retiral benefits."
13 Further in its meeting on January 11, 1996 Full Court modified its earlier decision of December 12, 1995 in the following manner:-
"12.
The modification of earlier Full Court decision dated 12 12.1995 regarding retention in service beyond the age of 55 years of Sh.
Ishwar Ghand Jain (under suspension), a member of Haryana Superior Judicial Service was taken up along with the report and the earlier Full Court decision was substituted as indicated below:-
(i) That in light of his annual confidential reports, recommendation be made to the Haryana Government to retire him forthwith by giving him three months pay and allowances in lieu of notice as required by the rules as it would be in the public interest to do so.
(ii) That in view of the above recommendation, the departmental proceedings against shri Ishwar Chand Jain be not proceeded with of the present.
(iii) That in the event of acceptance of above recommendation of this Court by the State Government, the period of suspension of Sh.
Ishwar Chand and the departmental enquiries against him shall be deemed to have been dropped from the date of acceptance of the recommendation of this Court regarding compulsory retirement of Shri Ishwar Chand Jain."
14 When the communication was received from the High Court by the State Government recommending the pre-mature retirement of the appellant, a letter dated April 2, 1996 was sent to the High Court seeking clarification as to whether a suspended official could be compulsorily retired.

High Court sent its reply on April 16, 1996 stating that the retirement of Jain was made on the biasis of an overall assessment of the service record as reflected in his confidential reports and not on the basis of the departmental inquiry.
Thereafter State Government issued letter dated May 10, 1996 retiring the appellant.
We may reproduce this order, which was impugned by Jain in the High courts
"ORDER
Whereas on the recommendation of he Punjab ' Haryana High Court, it has been decided by the State Government to retire sh.
Ishwar Chand Jain, a member of the Haryana Superior Judicial Service (under suspension) from service in public interest.
2.
Now, therefore, in terms of the provisions contained in cl.
(d) of rule 3.26 of Punjab Civil Services Rules, Volume I, Part-I read with clause A(c) of rule 5.32 of Punjab Civil Service Rules, Volume II, as applicable to the Sate of Haryana, the Governor of Haryana hereby orders the retirement of Sh.
Ishwar Chand Jain, Additional District ' Sessions Judge (under suspension) from service with effect from the date of communication to him of this order on payment of three months salary and allowances in lieu of the period of notice.
Sd/-
(M.C.
Gupta) Chief Secretary to
Dated Chandigarh Government, Haryana
10th May, 1996."
15.
We may as well reproduce the relevant the rules mentioned in the order-
"Rule3.26(a)
Except as otherwise provided in other clause of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.
He must not be retained in service after the age of compulsbry retirement except in exceptional circumstances with the sanction of the competent authority in pubic interest, which must be recorded in writing ;
"Provided that the age of compulsory retirement for the members of the Judicial services and Class IV Government employees shall be sixty years"
XXX XXX XXX
(d) The appointing authority shall if it is of the opinion that it is in the public interest so to do.
have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three months" pay arid allowances in lieu of such notice :-
(i) If he is in Class I or Class II service or post arid had entered Government service, before attain ing the age of thirty five years, after he has attained the age of fifty years ; and
(ii) (a) If he is Class III service of Post, of
(b) If he is Class I or Class It Service or post and entered Government service after attaining the age of thirty-five years-After he has attained the age of fifty five years
"Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age.
The Government employee would stand retired immediately on payment of three months" pay and allowances in lieu of the notice period and will not be in service thereafter."
16.
In the Full Court meeting in which decision was taken to make recommendation for pre-mature retirement of Jain Registry had submitted the precis of annual confidential remarks on the work and conduct of Jain as under :-
"(Appointed as AddI, District ' Sessions Judge, w.e.f, 2.5.l983 direct recruit from the Bar).
Year Remarks by the High
Court
1983-84 B(Average/Satisfactory
(In accordance with the meeting 1984-85 'C-Below Average' decision dated 21.3.
l985, a recommendation was sent to the Haryana Government for 1985-86 No Scope dispensing with his services arid 1986-87 No Scope Judi.

work from his court was 1987-88 No Scope also withdrawn.
1988-89 B- Satisfaotory 1989-90 B-Plus (Good)
(His services were dispensed 1990-91 Dispensed with with vide Haryana Governor's 1991-92 C-Integrity doubtful)
order dt.
30,1186"
(In view of Supreme Court orders dated 26,5.88 passed in Civil Appeal No.
81] of 88 arising out of S.L.P.
15776 of S6 Sh.
I.C.
Jain has been reinstated vide meeting decision dt.
2 638 and posted vide orders dt.
3.6.88 at Namaul).
(The Judicial work has been withdrawn vide letter dated 27.4.1992) (Placed under suspension vide this Court's Office order dt.
3.10.1992 pending departmental inquiry)."
17 Now we may refer to the article of charges which were subject matters of departmental proceedings against Jain and in contemplation of which he was placed under suspension.
There were five charges.
First charge was that white acting as Motor Accident Claims Tribunal he in a revengeful spirit and with some ulterior motive had initially dismissed the claim petition when the petitioner therein did not accept the offer of Jain conveyed to him through his uncle that if the petitioner promised to pay half the claim amount Jain would allow his claim petition in full.
However, after two days when the petitioner threatened to make complaint against Jain he changed his decision from dismissal to allowing the petition and awarded Rs.
12,000 as compensation.
Second charge was that while acting as Additional District and Sessions Judge, Jind changed his judgment with some ulterior motive.
Third charge was that without awaiting the orders of the High Court he got shifted his official telephone from office to his residence and got STD facility thereon, thus committing financial irregularity in an irresponsible manner and being guilty of insubordination.
Fourth charge related to seven land acquisition cases where it was alleged that with some ulterior motive he got deposited an amount of Rs.
2 laces in two banks at Delhi through the decree-holder, who belonged to Jind after obtaining their statements under the duress.
Fifth charge related to the cases conducted by Shri K.C.
Sharma, advocate, where it was alleged that he had shown vindictiveness and bias mind towards the advocate, which was highly objectionable and unbecoming of a judicial officer.
18 On various dates inquiry proceedings were held and ultimately these proceedings came to be dropped.
It is not that Jain was in any way responsible for any delay of inquiry proceedings.
In between inquiry officer had also been changed by the Full Court.
The Order by which the inquiry against Jain was dropped is dated February 2, 1996 and we reproduce the same as under :-
"Enquiry case of Mr.
I.C.
Jain Present : Mr.
H.S.
Gill, Presenting Officer I have been shown the extract from the Confidential proceedings of the meeting of the Hon'ble Judges held on 11th of January, 1996 at 3.00 p.m.
The proceedings reveal that the Full Court has taken a decision that the departmental proceedings against Shri I.C Jain be not proceeded with for the present.
It is in view of the decision first taken by the Full Court that in light of the annual confidential reports of Shri I.C.
Jain, recommendation should be made to the Haryana Government to retire him forthwith by giving him three months pay and allowances in lieu of notice as required by the rules as it is in public interest to do so.
That being the situation, enquiry against Shri I.C.
Jain is dropped for the time being and would be revived if at all required to be so done:

In view of the above, bailable warrants issued against Jai Bhagwan so ordered on 10th of January, 1996, are recalled.
Sd/.
(V.
K.
Bali, J)
February 2, 1996 Inquiring Authority.
By order dated May 29, 1996 suspension of Jain was also invoked.
This order is as under :-
"ORDER Dated, Chandigarh the 29.5.1996
In supersession of this Court's order dated 3.10.92 placing Shri I.C.
Jain, a member of Haryana Superior Judicial Services under suspension, Hon'ble the Acting Chief Justice and Judges have been pleased to revoke the said suspension order and to re-instate Shri I.C.
Jain in service from the date of acceptance of the recommendation of this Court regarding the compulsory retirement Their Lordships have further been placed to order that his period Of suspension be treated as spent on duty.
BY ORDER OF HON"BLE THE ACTING CHIEF JUSTICE AND JUDGES.
Sd/-.
B.L.
Gulati REGISTRAR"
19 Jain also represented against adverse entries in his ACRs.
First he wanted certain records which was the basis of recording of adverse entries against him.
He was informed that his request for supply of some documents had been declined by the Chief Justice.
It was pointed out to us that against recording of the adverse entries of the year 1991-92 Jain filed another writ petition in the High Court which is perhaps still pending.
20 We have reproduced the note attached to the ACR of Jain for the year 1991-92 prepared by the inspecting judge which is dated February 25, 1992.
It is submitted before us (and there is no challenge to that) that the inspecting judge himself visited Jind only on March 16/17, 1992, That being so representations made to the inspecting judge at Chandigarh must have been received in writing and if orally then at least the names of the advocate, who came to Chandigarh, could have been mentioned and informed to Jain but this was not done.
21 Jain challenged his pre-mature retirement on the ground that the action of the High Court and the Sate Government was arbitrary, malice in law and was in violation of the Punjab Civil Service Rules as applicable to Class I officers.
He also pleaded that the impugned rule was ultra vires Arts.
14 and 16 of the Constitution inasmuch as it did not prescribe the minimum service which an officer must render before he could be retired from service pre-maturely.
Then there was a challenge to pre-mature retirement on the ground that it was violative of Art.
311 of the Constitution as pre-mature retirement is punitive in character.
High Court did not go into the question if the impugned rule 3.26(d) of the Punjab Civil Services Rules was violative of Arts.
14 and 16 of the Constitution and also that in any case the Rule was violated inasmuch as on account of non-payment of three months" pay and allowances to Jain.
In the writ petition Jain had sought setting aside (i) adverse entries in the ACR against him for the year 1991-92, and (2) decision of the High Court taken in its Full Court meeting on December 12, 1995 recommending pre-mature retirement of Jain and consequently the impugned order dated May 10, 1995 of the State Government pre-maturely retiring him, he being a member of Haryana Superior Judicial Service.
22 A Division Bench of the High Court speaking through G.S.
Singhvi, J., in its well considered judgment, which is now impugned before us, set aside the order of pre-mature retirement of Jain on the ground that no inquiry consistent with Article 311, Haryana Civil Services (Punishment and Appeal) Rules, 1970 and principles of natural justice, had been conducted against him.
It came to the conclusion that the decision to retire Jain was founded on the allegation of misconduct which was subject-matter of inquiry and formed the basis of adverse remarks made by the inspecting judge and the Full Court.
Then it proceeded to hold as under :-

"We do find some substance in the argument of Shri Jain that the rejection of his representation against the adverse remarks does not satisfy the test of fairness because no reasons have been recorded by the High Court for not accepting the points and contentions raised in the representation and the record also does not show the existence of such reasons, we do not want to express any conclusive opinion on this issue because even after invalidation of the pre-mature retirement of the petitioner, the departmental inquiries can be continued and the fate of the remarks made in his ACR of 1991-92 will ultimately depend on whether the Court upholds the allegations levelled against the petitioner, The issue regarding claim of the petitioner for grant of selection grade and other benefits will also be dependent on the final conclusion of the departmental inquiries which may be continued against the petitioner in view of the quashing of order of pre-mature retirement.
Therefore, we do not want to entertain his claim for grant of selection grade at this stage.
For the reasons mentioned above, the writ petition is allowed.
The pre- mature retirement of the petitioner brought about vide order dated 10.5.1996 is declared illegal and the said order is quashed.
The petitioner shall get consequential benefits.
However, we make it clear that the competent authority shall be entitled to revive the proceedings of inquiries and take appropriate decision in accordance with."
23 The foremost question arising for our consideration is if the order of pre- mature retirement of Jain is based on sound legal principles and is not punitive in nature.
Further question connected with this would be if recording of adverse remarks in the ACR for the year 1991-92 is justified in the circumstances and whether the Full Court was misled by the precis of ACR prepared by the Registry for the meeting of the Full Court held on December 12,1995.
24 In Shyam Lal V.
The State of Uttar Pradesh, [1995] 1 SCR 26 1954 Indlaw SC 30, the appellant was compulsorily retired under the provisions of Article 465-A of Civil Service Regulations.
Note 1 to Article 465-A provides that the Government retains the absolute right to retire any Government servant after he has completed 25 years of qualifying service without giving any reasons and that this right will not be exercised except when it is in the public interest to dispense with the services of an officer.
This Court said that the two requirements for compulsory retirement were that the officer had completed 25 years of service and that it was in public interest to dispense with his further services.
Then the Court added: "it is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity."
25 In Ram Ekbal Sharma v.
State of Bihar and another, [1990] 3 SCC 504 1990 Indlaw SC 808, it was laid down that court can lift the veil of an innocuous order in appropriate cases to find the real basis of the order of compulsory retirement of an officer.
This is how the Court said :-
"On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes.
Mere form of the order in such cases cannot deter the court from delving into the basis of the order if the order in question is challenged by the concerned government servant as has been held by this Court in Anoop Jaiswal case [1984] 2 SCC 369.
25.
In Anoop Jaiswal v.
Government of India, [1984] 2 SCC 369 1984 Indlaw SC 99, this Court said :-
"It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order.

If the court holds that the order though in the form is merely a determination of employment is in reality a clock for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."
26.
In Baikuntha Nath Das and another v.
Chief District Medical Officer Baripada and another, [1992] 2 SCC 299 1992 Indlaw SC 1228 this Court laid the following principles, which a Court has to keep in mind while considering the question of compulsory retirement :-
"34.
The following principles emerge from the above discussion :
(i) An order of compulsory retirement is not a punishment.
It implies no stigma nor any suggestion of misbehaviour,
(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily.
The order is passed on the subjective satisfaction of the government.
(iii) Principles of natural justice have no place in the context of an order of compulsory retirement.
This does not mean that judicial scrutiny is excluded altogether.
While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary-in the sense that no reasonable person would form the requisite opinion on the given material; is short, if it is found to be a perverse order.
(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years.
The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse.
If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so if the promotion is based upon merit (selection) and not upon seniority.
(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration.
That circumstance by itself cannot be a basis for interference.
Interference is permissible only on the grounds mentioned in (iii) above."
27.
In State of U.P.
and another v.
Abhai Kishore Masta, [1995] I SCC 336 1994 Indlaw SC 2175 this Court relied on its earlier decision in Baikuntha Nath Doss case [1992] 2 SCC 2991992 Indlaw SC 1228.
It was observed that it cannot be said as a matter of law nor can it be said as an invariable rule, that any and every order of compulsory retirement during the pendency of disciplinary proceedings is necessarily penal.
It may be or it may be not.
It is a matter to be decided on a verification of the relevant record or the material on which the order is based.
28.
In a recent judgment in Madan Mohan Choudhary v.
The State of Bihar and others, JT (1999) 1 SC 459 1999 Indlaw SC 445 this Court was considering the order of compulsory retirement of the appellant, who was a member of superior judicial service in the State of Bihar.
On a writ petition filed by the appellant in the High Court challenging his order of compulsory retirement by the Full Court of the High Court, the High Court on the judicial side refused to interfere and dismissed the petition.
The appellant came in appeal before this Court.
This Court found that while on various earlier occasions remarks were given by the High Court but there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94.
The entries for these years were recorded at one time simultaneously and the appellant was categorized as "C" Grade Officer.

The date on which these entries were made was not indicated either in the original record or in the counter affidavit filed by the respondent.
These were communicated to the appellant on 29.11.1996 and were considered by the Full Court on 30.11.1996.
It was clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the office on 6.11.1996 to put up a note for compulsory retirement of the appellant.
This Court held that it was a case where mere was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service pre- maturely.
This .Court was of the opinion that the entries recorded "at one go" for three years, namely, 1991-92, 1992-93 and 1993-94 could hardly have been taken into consideration.
The Court then referred to its earlier decision in Registrar, High Court of Madras v.
R.
Rajiah, JT(1988)2 SC 567 1988 Indlaw SC 809 Where this Court said that the.
High Court in its administrative jurisdiction has the power to recommend compulsory retirement of the member of the judicial service in accordance with the rules framed in that regard but it cannot act arbitrarily and there has to be material to come to a decision to compulsorily retire the officer.
In that case it was also pointed out that the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect judicial officers from being harassed or annoyed by trifling complaints relating to judicial orders so that the officers may discharge their duties honestly and independently unconcerned by the ill-conceived or motivated complaints, made by unscrupulous lawyers and litigants.
29.
Keeping in view the aforesaid principles we may examine the background under which the order Compulsorily retiring Jain came to be passed.
In December, 1995 judges comprising the Full Court were not the same as that in the year 1985 when probation of Jain was terminated.
There were hew appointments of judges and there were judges, who had come on transfer from other High Courts.
They could not be aware of the circumstances leading to termination of the probation of Jain and ACR given to him for the year 1984-985.
In the precis of the ACRs for the Full Court ACR given to Jain For the year 1984-85 was Shown as "C-Below Average." The inspecting judge for the year 1984-85 had graded the officer as "B+Good" but the Full Court modified me same to "C-Below Average."" This Court in earlier appeal filed by Jain against termination of his probation held that the modification of the entry by the High Court was without any material and was not sustainable in law.
It meant that the Supreme Court restored the grading of Jain in his ACR for the year 1984-85 as "B+Good." There is no indication of this in the precis prepared by the Registry which certainly would have misled many of the judges Of the Full Court.
There is no ACR recorded for the years 1992-93, 1993-94, 1994-95 and for nine months of 1995-96 when the Full Court met on December 12, 1995.
In its earlier meeting on September 22, 1995 it recorded ACR for the year 1991-92 grading Jain as "C-integrity doubtful." In coming to this conclusion Full Court relied on the inspection report prepared by the inspecting judge on February 22,1992 where he graded Jain as "integrity doubtful" and gave his note which we have quoted above.
There is no material forthcoming as to why the inspection report of February 1992 came to be considered by the Full Court in September, 1995 and why there could be no inspection from that year till holding of the Full Court meeting.
Inspection note by the inspecting judge gives an impression that he inspected the Court of Jain and visited the bar room before he gave his report.
26.
Fact, however, remains thai the inspecting judge inspected the Court of Jaih only in March, 1992.
Inspecting judge also noted that there were some complaints which formed the subject-matter of the disciplinary proceedings against him.
This also does not appear to be correct inasmuch as on the date of the inspection report no disciplinary proceedings were pending against Jain.
There were also no particulars of the complaints whether these were in writing or oral and if these related to the judicial work performed by the officer.

At least some of the cases in which Jain was found to have acted improperly could have been mentioned when there were many complaints from me members of the Bar, The inspection note is certainly flawed and could not have formed the basis by the Full Court to record that integrity of the officer was doubtful and to grade him "C".
Moreover we were told at the bar and it was not contradicted that the Inspecting Judge took charge of Jind district only on November 21; 1991 and within three months, i.e., on February 25, 1992 gave his inspection report.
This is certainly not satisfactory.
The ACR for the year 1991-92 is, therefore to be kept aside.
That being the position if we now refer to the precis of the ACRs of Jain there were only four ACRs and these are for the years 1983-84 (B-Average/satistactory), 1984-85 (B+Good), 1988-89 (B- Satisftctory) and 1989-90 (B+good)).
On the basis of these ACRs it is difficult to hold that the recommendation of the High Court could be justified u/cl.
(c) of third principle laid in Baikunth Nath Das case.
27 From the resolutions of the Full Court of December 12,1995 and January 11, 1996 it is apparent that Jain was retired while under suspension.
It appears that the High Court on its administrative side decided to keep disciplinary proceedings against Jain pending for the purpose of imposing the cut on his retiral benefits.
The conclusion is obvious that action of the High Court in retiring Jain was based on the allegation of misconduct, which was subject matter of the inquiry before a Judge of the High Court and which appears to us to be the basis for recording of adverse remarks by the High Court in the ACR of the officer for the year 1991 -92.
There is substance in the argument of Mr.
M.N.
Krishanamani, learned counsel for Jain, that the High Court found a short cut to remove Jain from service when the order of retirement was based on the charges of misconduct, subject matter of me inquiry.
We agree with Mr.
Krishnamani that the impugned order of compulsbrily retiring Jain though innocuously worded is in fact an order of his removal from service and cannot be sustained.
High Court on its judicial side was correct in setting aside the order compulsorily retiring Jain and allowing the writ petition of Jain to the extent mentioned in the impugned judgment.
In this view of the matter it is not necessary for us to consider other submissions made before us if Jain could at all have been compulsorily retired under Rule.
3.26 of the Punjab Civil Service Rules, Volume I, Part 1, being a member of the superior judicial service.
28 Though in Baikuntha Nath Das case [1992] 2 SCC2991992 Indlaw SC 1228 this Court has laid principles when there is challenge to compulsory retirement of an officer.
In that case the appellant was not a judicial officer.
In the case where Full Court of the High Court recommends compulsory retirement of an officer High Court On judicial side has to exercise great circumspection in setting aside that order.
Here it is complement of all the judges of the High Court, who go into the question.
It may hot be possible that in all cases evidence would be forthcoming about the doubtful integrity of a judicial officer and at times Full Court has to act on the collective wisdom of all the judges.
29 Since late this Court is watching the specter of either judicial officers or the High Courts coming to this Court when there is an order pe-maturely retiring a judicial officer.
U/art.
235 of the Constitution High Court exercises complete control over subordinate courts which include District Courts.
Inspection of the subordinate courts is one of the most important functions which High Court performs for control over the subordinate courts.
Object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capability, integrity and competency.
Since judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the Working of the subordinate court, remedied, inspection should act as a catalyst in inspiring subordinate judges to give best results.
They should feel a sense of achievement.

They need encouragement.
They work under great stress and man the courts while working under great discomfort and hardships.
A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass root level.
Remarks recorded by the inspecting judge are normally endorsed by the Full Court and become part of the Annual Confidential Reports and are foundations on which the career of judicial officer is made or marred.
Inspection of subordinate court is thus of vital importance.
It has to be both effective and productive.
It can be so only if it is well regulated and is workman like.
Inspection of subordinate courts is not a one day or an hour or few minutes affair.
It has to go on all the year round by monitoring the work of the Court by the inspecting judge.
The casual inspection can hardly be beneficial to a judicial system.
It does more harms than good.
As noticed in the case of R.
Rajiah, JT (1988) 2 SC 5671988 Indlaw SC 809 there could be ill conceived or motivated complaints.
Rumour mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts.
Time has come that a proper and uniform system of inspection of subordinate courts should be devised by the High Courts.
In fact the whole system of inspection need rationalization.
There should be some scope of self- assessment by the officer concerned.
We are informed that the First National Judicial Pay Commission is also looking into the matter.
This subject, however, can be well considered in a Chief Justices" Conference as High Court itself can devise an effective system of inspection of the subordinate courts.
Registrar General shall place a copy of this judgment before the Hon'ble Chief Justice of India for him to consider if method of inspection of subordinate courts could be matter of agenda for the Chief Justices' Conference.
30 With these observations these appeals are dismissed.
There shall be no order as to costs.
Appeal dismissed

Central Inland Water Transport Corporation Limited and Another v Brojo Nath Ganguly and Another
Supreme Court of India

6 April 1986
C.A.
No.
4412 and 4413 of 1985
The Judgment was delivered by : D.
P.
Madon, J.
1.
These Appeals by Special Leave granted by this Court raise two questions of considerable importance to Government companies and their employees including their officers.
These questions are:
1) Whether a Government company as defined in s.
617 of the Companies Act, 1956, is "the State" within the meaning of Art.
12 of the Constitution?
2) Whether an unconscionable term in a contract of employment is void u/s.
23 of the Indian Contract Act, 1872, as being opposed to public policy and, when such a term is contained in a contract of employment entered into with a Government company, is also void as infringing Art.
14 of the Constitution in case a Government company is "the State" under Art.
12 of the Constitution?
2.
Although the record of these Appeals is voluminous, the salient facts lie within a narrow compass.

The First Appellant in both these Appeals, namely, the Central Inland Water Transport Corporation Limited (hereinafter referred to in short as "the Corporation"), was incorporated on February 22, 1967.
The majority of the shares of the Corporation were at all times and still are held by the Union of India which is the Second Respondent in these Appeals, and the remaining shares were and are held by the State of West Bengal and the State of Assam.
S.
617 of the Companies Act, 1959 (Act No.I of 1956), provides as follows :
"617.
Definition of 'Government Company'.- For the purposes of this Act Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined."
3.
As all the shares of the Corporation are held by different Governments, namely, the Government of India and the Governments of West Bengal and Assam, the Corporation is not only a Government company as defined by the said s.
617 but is a company wholly owned by the Central Government and two State Governments.
Cl.
III(A) of the Memorandum of Association of the Corporation lists the main objects of the Corporation and cl.
III(B) of the Memorandum of Association lists the objects incidental or ancillary to the main objects.
It is unnecessary to reproduce all these objects for according to the Petitions filed by the Corporation for obtaining Special Leave in these Appeals, it is currently engaged in carrying out the following activities, namely,
(i) maintaining and running river service with ancillary function of maintenance and operation of river-site jetty and terminal;
(ii) constructing vessels of various sizes and descriptions;
(iii) repairing vessels of various sizes and descriptions; and
(iv) undertaking general engineering activities.
4.
Art.
4 of the Articles of Association of the Corporation provides that the Corporation is a private company within the meaning of cl.
(iii) of sub-s.
(1) of s.
3 of the Companies Act and that no invitation is to be issued to the public to subscribe for any shares in, or debentures or debenture stock of, the Corporation.
Art.
51 of the Articles of Association confers upon the President of India the power to issue from time to time such directions or instructions as he may consider necessary in regard to the affairs or the conduct of the business of the Corporation or of the Directors thereof.
The said Article also confers upon the President the power to issue such directions or instructions to the Corporation as to the exercise and performance of its functions in matters involving national security or public interest.
Under the said Article, the Directors of the Corporation are bound to comply with and give immediate effect to such directions and instructions.
Under Article 51A, the President has the power to call for such returns, accounts and other information with respect to properties and activities of the Corporation as might be required from time to time.
Under Article 40, subject to the provisions of the Companies Act and the directions and instructions issued from time to time by the President under Article 51, the business of the Corporation is to be managed by the Board of Directors.
U/art.
14(a), subject to the provisions of s.
252 of the Companies Act, the President is to determine in writing from time to time the number of Directors of the Corporation which, however is not to be less than two or more than twelve and u/art.

14(b), at every annual general meeting of the Corporation, every Director appointed by the President is to retire but is eligible for re-appointment.
U/art.
15(a), the President has the power at any time and from time to time to appoint any person as an Additional Director.
Under Article 16, the President has the power to remove any Director appointed by him from office at any time in his absolute discretion.
Under Article 17, the vacancy in the office of a Director appointed by the President caused by retirement, removal, resignation, death or otherwise, is to be filled by the President by fresh appointment.
Art.
18 provides that the Directors are not required to hold any share qualification.
Under Article 37, the President may from time to time appoint one of the Directors to the office of the Chairman of the Board of Directors or to the office of the Managing Director or to both these offices for such time and at such remuneration as the President may think fit and the President may also from time to time remove the person or persons so appointed from service and appoint another or others in his or their place or places.
Under Article 41, the Chairman of the Board has the power, on his own motion, and is bound, when requested by the Managing Director in writing, to reserve for the consideration of the President the matters relating to the working of the Corporation set out in the said Article.
Art.
42 lists the matters in respect of which prior approval of the President is required to be obtained.
Under Article 47, the auditor or auditors of the Corporation are to be appointed or re-appointed by the Central Government on the advice of the Comptroller and Auditor-General of India.
The said Article also confers power upon the Comptroller and Auditor-General of India to direct the manner in which the accounts of the corporation are to be audited and to give the auditors instructions in regard to any matter relating to the performance of their function.
Under the said Article, he has also the power to conduct a supplementary or test audit of the accounts of the Corporation by such person or persons as he may authorize in that behalf and for the purposes of such audit to require such information or additional information to be furnished to such person or persons on such matters by such person or persons as the Comptroller and Auditor-General may, by general or special order, direct.
5.
U/cl.
(V) of the Memorandum of Association, the authorized share capital was rupees four crores.
It was raised to rupees ten crores by a special resolution passed at the Annual General Meeting of the Corporation held on December 30, 1972, and further raised to rupees twenty crores by a special resolution passed at the Annual General Meeting held on November 5, 1979.
6.
The above facts and the provisions aforementioned of the Memorandum of Association and the Articles of Association clearly show that not only is the Corporation a Government company of which all the shares were and are owned by the Central Government and two State Governments but is a Government company which is under the complete control and management of the Central Government.
7.
A company called the "Rivers Steam Navigation Company Limited" was carrying on very much the same business including the maintenance and running of river service as the Corporation is doing.
A Scheme of Arrangement was entered into between the said company and the Corporation.
The Calcutta High Court by its order dated May 5, 1967, approved the said Scheme of Arrangement and order the closure of the said Company and further directed that upon payment to all the creditors of the said Company, the said Company would stand dissolved without winding up by an order to be obtained from the High Court and accordingly, upon payment to all the creditors, the said Company was ordered to be dissolved.
The said Scheme of Arrangement provided that the assets and certain liabilities of the said Company would be taken over by the Corporation.
The said Scheme of Arrangement as approved by the High Court also provided as follows :
"a) That the new Company shall take as many of the existing staff or labour as possible and as can be reasonably taken over by the said transferee Company subject to any valid objection to any individual employee or employees.

b) That as to exactly how many can be employed it is left to the said transferee Company's bona fide discretion.
c) That those employees who cannot be taken over shall be paid by the transferor Company all moneys due to them under the law and all legitimate and legal compensations payable to them either under Industrial Disputes Act or otherwise legally admissible and that such moneys shall be provided by the Government of India to the existing transferor Company who will pay these dues."
8.
The First Respondent in Civil Appeal No.
4412 of 1985, Brojo Nath Ganguly, was, at the date when the said Scheme of Arrangement became effective, working in the said Company and his services were taken over by the Corporation and he was appointed on September 8, 1967, as a Deputy Chief Accounts Officer.
The First Respondent in Civil Appeal No.
4413 of 1985, Tarun Kanti Sengupta, was also working in the said Company and his services were also taken over by the Corporation and he was appointed on September 8, 1967, as Chief Engineer on the ship "River Ganga".
It is unnecessary to refer at this stage to the terms and conditions of the letters of appointment issued to these two Respondents as they have been subsequently superseded by service rules framed by the Corporation except to state that under the said letters of appointment the age of superannuation was fifty-five years unless the Corporation agreed to retain them beyond this period.
The said letters of appointment also provided that these Respondents would be subject to the service rules and regulations including the conduct rules.
Service rules were framed by the Corporation for the first time in 1970 and were replaced by new rules in 1979.
9.
We are concerned in these Appeals with the "Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules" of 1979 framed by the Corporation.
These rules will hereinafter be referred to in short as "the said Rules".
The said Rules apply to all employees in the service of the Corporation in all units in West Bengal, Bihar, Assam or in other State or Union Territory except those employees who are covered by the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, or those employees in respect of whom the Board of Directors has issued separate orders.
Rule 9 of the said Rules deals with termination of employment for acts other than misdemeanour.
The relevant provisions of the said Rule 9 relating to permanent employees are as follows :
"9.
TERMINATION OF EMPLOYMENT FOR ACTS OTHER THAN MISDEMEANOUR.
-
(i) The employment of a permanent employee shall be subject to termination on three months' notice on either side.
The notice shall be in writing on either side.
The Company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.
(ii) The services of a permanent employee can be terminated on the grounds of "Services no longer 1 required in the interest of the Company" without assigning any reason.
A permanent employee whose services are terminated under this clause shall be paid 15 days' basic pay and dearness allowance for each completed year of continuous service in the Company as compensation.
In addition he will be entitled to encashment of leave at his credit."
Under Rule 10, an employee is to retire on completion of the age of fifty-eight years though in exceptional cases and in the interest of the Corporation, an extension may be granted with the prior approval of the Chairman-cum-Managing Director and the Board of Directors.
Rule 11 provides as follows :
"11.
RESIGNATION.
-
Employees who wish to leave the Company's services must give the Company the same notice as the Company is required to give them under Rule 9."

Rule 33 provides for suspension of an employee where a disciplinary proceeding against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation or trial.
Rule 34 provides for payment of subsistence allowance during the period of suspension.
Rule 36 sets out the different penalties which can be imposed on an employee for his misconduct. These penalties are divided into minor and major penalties.
Rule 37 is as follows :
"37.
ACTS OF MISCONDUCT.-
Without prejudice to the general meaning of the term 'misconduct' the Company shall have the right to terminate the services of any employee at any time without any notice if the employee is found guilty of any insubordination, intemperance or other misconduct or of any breach of any rules pertaining to service or conduct or non- performance of his duties."
Rule 38 prescribes the procedure for imposing a major penalty and sets out in detail how a disciplinary inquiry is to be held.
Rule 39 provides for action to be taken by the H disciplinary authority on the report made by the Inquiring Authority.
Rule 40 prescribes the procedure to be followed for imposing minor penalties.
Rule 43 provides for a special procedure to be followed in certain cases.
This special procedure consists of dispensing with a disciplinary inquiry altogether.
The said Rule 43 provides as follows :
"43.
SPECIAL PROCEDURE IN CERTAIN CASES.
-
Notwithstanding anything contained in Rule 38, 39 or 40, the disciplinary authority may impose any of the penalties specified in Rule 36 in any of the following circumstances :
i) The employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial; or
ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner Provided in these Rules; or
iii) where the Board is satisfied that in the interest of the security of the Corporation Company, it is not expedient to hold any inquiry in the manner provided in these rules."
Rule 45 provides for an appeal against an order imposing penalty to the appropriate authority specified in the Schedule to the said Rules and Rule 45-A provides for a review.
10.
We are concerned in these Appeals with the validity of cl.
(i) of Rule 9 only.
So far as Ganguly, the First Respondent in Civil Appeal No.
4412 of 1985, is concerned, he was promoted to the post of Manager (Finance) in October 1980 and also acted as General Manager (Finance) from November 1981 to March 1982.
On February 16, 1983, a confidential letter was sent to him by the General Manager (Finance), who is the Third Appellant in Civil Appeal No.
4412 of 1985, to reply within twenty- four hours to the allegation of negligence in the maintenance of Provident Fund Accounts.
Ganguli made a representation as also gave a detailed reply to the said show cause notice.
Thereafter by a letter dated February 26, 1983, signed by the Chairman-cum-Managing Director of the Corporation, a notice under cl.
(i) of Rule 9 of the said Rules was given to Ganguli terminating his service with the Corporation with immediate effect.
Along with the said letter a cheque for three months' basic pay and dearness allowance was enclosed.
11.
So far as Sengupta, the First Respondent in Civil Appeal No.
4413 of 1985, is concerned, he was promoted to the post of General Manager (River Services) with effect from January 1, 1980.
His name was enrolled by the Bureau of Public Enterprises and he was called for an interview for the post of Chairman-cum-Director of the Corporation by the Public Enterprises Selection Board.
According to Sengupta, he could not appear before the Selection Board as he received the letter calling him for the interview after the date fixed in D that behalf.

According to Sengupta, the new Chairman-cum-Managing Director who was selected at the said interview bore a grudge against him for having competed against him for the said post and on February 1, 1983, he issued a charge-sheet against Sengupta intimating to him that a disciplinary inquiry was proposed to be held against him under the said Rules and calling upon him to file his written statement of defence.
By his letter dated February 10, 1983, addressed to the Chairman-cum-Managing Director, Sengupta denied the charges made against him and asked for inspection of documents and copies of statements of witnesses mentioned in the said charge-sheet.
By a letter dated February 26, 1983, signed by the Chairman-cum-Managing Director notice was given to Sengupta under cl.
(i) of Rule 9 of the said Rule, terminating his service with the Corporation with immediate effect.
Along with the said letter a cheque for three months' basic pay and dearness allowance in lieu of notice was enclosed.
G
12.
Both Ganguly and Sengupta filed writ petitions in Calcutta High Court u/art.
226 of the Constitution challenging the termination of their service as also the validity of the said Rule 9(i).
In both these writ petitions rule nisi was issued and an ex parte interim order staying the operation of the said notice of termination was passed by a learned Single Judge of the High Court.
The Appellants before us went in Letters Patent Appeal before a Division Bench of the said High Court against the said ad interim orders, the appeal in the case of Ganguly being F.M.A.T.
No.
1604 of 1983 and in the case of Sengupta being F.M.A.T.
No.
649 of 1983.
On January 28, 1985, the Division Bench ordered in both these Appeals that the said writ petitions should stand transferred to and heard by it along with the said appeals.
The said appeals and writ petitions were thereupon heard together and by a common judgment delivered on August 9, 1985, the Division Bench held that the Corporation was a State within the meaning of Art.
12 of the Constitution and that the said Rule 9(i) was ultra vires Art.
14 of the Constitution.
Consequently the Division Bench struck down the said Rule 9(i) as being void.
It also quashed the impugned orders of termination dated February 26, 1983.
It is against the said judgment and orders of the Calcutta High Court that the present Appeals by Special Leave have been filed.
13.
The contentions raised on behalf of the Corporation at the hearing of these Appeals may be thus summarized :
(1) A Government company stands on a wholly different footing from a statutory corporation for while a statutory corporation is established by a statute, a Government company is incorporated like any other company by obtaining a certificate of incorporation under the Companies Act and, therefore, a Government company cannot come within the scope of the term "the State" as defined in Art.
12 of the Constitution.
(2) A statutory corporation is usually established in order to create a monopoly in the State in respect of a particular activity.
A Government company is, however, not established for this purpose.
(3) The Corporation does not have the monopoly of inland water transport but is only a trading company as is shown by the objects clause in its u Memorandum of Association.
305
(4) Assuming a Government company is "the State" within the meaning of Article 12, a contract of employment entered into by it is like any other contract entered into between two parties and a term in that contract cannot be struck down under Art.
14 of the Constitution on the ground that it is arbitrary or unreasonable or unconscionable or one-sided or unfair.
At the hearing of these Appeals the Union of India, which is the Second Respondent in these Appeals, joined in the contentions raised by the Corporation.

The arguments advanced on behalf of the contesting Respondents in broad outlines were as follows :
(1) The definition of the expression "the State" given in Art.
12 is wide enough to include within its scope and reach a Government company.
(2) A State is entitled to carry on any activity, even a trading activity, through any of its instrumentalities or agencies, whether such instrumentality or agency be one of the Departments of the Government, a statutory corporation, a statutory authority or a Government company incorporated under the Companies Act.
(3) Merely because a Government company carries on a trading activity or is authorized to carry on a trading activity does not mean that it is excluded from the definition of the expression "the State" contained in Art.
12.
(4) A Government company being "the State" within , the meaning of Art.
12 is bound to act fairly J and reasonably and if it does not do so, its action can be struck down under Art.
14 as being arbitrary.
(5) A contract of employment stands on a different footing from other contracts.
A term in a contract of employment entered into by a private employer H which is unfair, unreasonable and unconscionable is bad in law.
Such a term in a contract of employment entered into by the State is, therefore, also bad in law and can be struck down u/art.
14.
14.
During the course of the hearing of these Appeals the Central Inland Water Transport Corporation Officers' Association made an application for permission to intervene in these Appeals and permission to intervene was granted to it by this Court.
The said Association supported the stand taken by the contesting Respondents.
We will now examine the correctness of the rival submissions advanced at the Bar.
15.
The word "State" has different meanings depending upon the context in which it is used.
In the sense of being a polity, it is defined in the Shorter Oxford English Dictionary, Third Edition, Volume II, page 2005, as "a body of people occupying a defined territory and organized under a sovereign government".
The same dictionary defines the expression "the State" as "the body politic as organized for supreme civil rule and government; the political organization which is the basis of civil government; hence, the supreme civil power and government vested in a country or nation".
According to Black's Law Dictionary, Fifth Edition, page 1262, "In its largest sense, a 'state' is a body politic or a society of men".
According to Black, the term "State" may refer "either to the body politic of a nation (e.g.
United States) or to an individual governmental unit of such nation (e.g.
California)".
In modern international practice, whether a community is deemed a State or not depends upon the general recognition accorded to it by the existing group of other States.
A State must have a relatively permanent legal organization, determining its structure and the relative powers of its major governing bodies or organs.
This legal organizational permanence of a State is to be found in its Constitution.
With rare exceptions, such as the United Kingdom, most States now have a written Constitution.
the Constitutional structure of a State may be either unitary, as when it has a single system of government applicable to all its parts, or federal when it has one system of government operating in certain respects and in certain matters in all its parts and also separate governments operating in other respects in distinct parts of the whole.
In such a case the units or sub-divisions having separate governments are variously called 'states' as in India, U.S.A.
and Australia, 'provinces' as in Canada, 'cantons' as in Switzerland, or designated by other names.
B
16.
Our Constitution is federal in structure.
Cl.
(1) of Art.

1 of the Constitution provides that "India, that is Bharat, shall be a Union of States" and cl.
(2) of that Article provides that "The States and the territories thereof shall be as specified in the First Schedule".
me word "States" used in Art.
1 thus refers to the federating units, India itself being a State consisting of these units.
The term "States" is defined variously in some of the other Articles of the Constitution as the context of the particular Part of the Constitution in which it is used requires.
Part VI of the Constitution is headed " me States" and provides for the form of the three organs of a State, namely, the Executive, the Legislature and the Judiciary.
Article 152, which is the opening Article in Part VI of the Constitution, provides as follows :
"152.
Definition.
-
In this Part, unless the context otherwise requires, the expression 'State' does not include the State of Jammu and Kashmir."
17.
The State of Jammu and Kashmir is excluded because that State, though one of the States which constitute the Union of India, had, in pursuance of the provisions of Art.
370 of the Constitution read with the Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O.
48), set up a Constituent Assembly for the internal Constitution of the State and it had framed the Constitution of Jammu and Kashmir which was adopted and enacted by that Constituent Assembly on November 17, 1965.
Art.
152 also, therefore, uses the expression "State" as meaning the federating units which constitute the Union of India.
Part XIV of the Constitution deals with services under the Union and the States.
Art.
308 provides as follows :
"308.
Interpretation.
-
18.
This definition read with the other provisions of Part XIV shows that the word "State" applies to the federating units (other than the State of Jammu and Kashmir for the reason mentioned above) which together constitute the Union of India because in the other Articles of Part XIV wherever the Union of India is referred to, it is described as "the Union".
Art.
366 of the Constiution defines certain expressions used in the Constitution of India.
That Article, however, does not contain any definition of the term "State".
U/art.
367(1), unless the context otherwise requires, the General Clauses Act, 1897 (Act No.
X of 1897), subject to any adaptations and modifications that may be made therein by the President of India u/art.
372 to bring that Act into accord with the provisions of the Constitution, applies for the interpretation of the Constitution.
Cl.
(58) of s.
3 of the General Clauses Act defines the term "State" as follows :
"(58) 'State' -
(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part State or a Part State.
and
(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory."
This definition, therefore, also confines the term "State" to the federating units which together form the Union of India.
We are concerned in these Appeals with Art.
12.
Art.

12 forms part of Part III of the Constitution which deals with Fundamental Rights and provides as follows :
"12.
definition.
- In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India."
The same definition applies to the expression "the State" when used in Part IV of the Constitution which provides for the Directive Principles of State Policy, for the opening Article of Part IV, namely, Article 36, provides :
"36.
Definition.
-
In this Part, unless the context otherwise requires, 'the State' has the same meaning as in Part III."
The expression "local authority" is defined in cl.
(31) of s.
3 of the General Clauses Act as follows :
"(31) 'Local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."
19.
Thus, the expression "the State" when used in Parts III and IV of the Constitution is not confined to only the federating States or the Union of India or even to both.
By the express terms of Art.
12 the expression "the State" includes -
(1) the Government of India,
(2) Parliament of India
(3) the Government of each of the States which constitute the Union of India,
(4) the Legislature of each of the States which constitute the Union of India,
(5) all local authorities within the territory of India,
(6) all local authorities under the control of the Government of India,
(7) all other authorities within the territory of India, and
(8) all other authorities under the control of the Government of India.
There are three aspects of Art.
12 which require to be particularly noticed.
These aspects are
(i) the definition given in Art.
12 is not an explanatory and restrictive definition but an extensive definition,
(ii) it is the definition of the expression "the State" and not of the term "State" or "States", and
(iii) it is inserted in the Constitution for the purposes of Parts III and IV thereof.
20.
As pointed out in Craies on Statute Law, Seventh Edition, page 213, where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and facie restrictive; and whenever an interpretation clause defines a term to include something, the definition is extensive.
While an explanatory and restrictive definition confines the meaning of the word defined to what is stated in the interpretation clause, so that wherever the word defined is used in the particular statute in which that interpretation clause occurs, it will bear only that meaning unless where, as is usually provided, the subject or context otherwise requires, an extensive definition expands or extends the meaning of the word defined to include within it what would otherwise not have been comprehended in it when the word defined is used in its ordinary sense.
Art.
12 uses the word "includes".
It thus extends the meaning of the expression "the State" so as to include within it also what otherwise may not have been comprehended by that expression when used in its ordinary legal sense.
Art.
12 defines the expression "the State" while the other Articles of the Constitution referred to above, such as Art.

152 and Article 308, and cl.
(58) of s.
3 of the General Clauses Act defines the term "State".
The deliberate use of the expression "the State" in Art.
12 as also in Art.
36 would have normally shown that this expression was used to denote the State in its ordinary and Constitutional sense of an independent or sovereign State and the inclusive clause in Art.
12 would have extended this meaning to include within its scope whatever has been expressly set out in Art.
12.
The definition of the expression "the State" in Article 12, is however, for the purposes of Parts III and IV of the Constitution.
The contents of these two Parts clearly show that the expression "the State" in Art.
12 as also in Art.
36 is not confined to its ordinary and Constitutional sense as extended by the inclusive portion of Art.
12 but is used in the concept of the State in relation to the Fundamental Rights guaranteed by Part III of the Constitution and the Directive Principles of State Policy contained in Part IV of the Constitution which Principles are declared by Art.
37 to be fundamental to the governance of the country and enjoins upon the State to apply in making laws.
21.
What then does the expression "the State" in the context of Parts III and IV of the Constitution mean?
Men's concept of the State as a polity or a political unit or entity and what the functions of the State are or should be have changed over the years and particularly in the course of this century.
A man cannot obstinately cling to the same ideas and concepts all his life.
As Emerson said in his essay on "Self-Reliance", "A foolish consistency is the hobgoblin of little minds".
Man is by nature ever restless, ever discontent, ever seeking something new, ever dissatisfied with what he has.
m is inherent trait in the nature of man is reflected in the society in which he lives for a society is a conglomerate of men who live in it.
Just as man by nature is H dissatisfied, so is society.
Just as man seeks something new, ever hoping that a change will bring about something better, so does society.
Old values, old ideologies and old systems are thus replaced by new ideologies, a new set of values and a new system, they in their turn to be replaced by different ideologies, different values and a different system.
The ideas that seem revolutionary become outmoded with the passage of time and the heresies of today become the dogmas of tomorrow.
What proves to be adequate and suited to the needs of a society at a given time and in particular circumstances turns out to be wholly unsuited and inadequate in different times and under different circumstances.
22.
The story of mankind is punctuated by progress and retrogression.
Empires have risen and crashed into the dust of history.
Civilizations have flourished, reached their peak and passed away.
In the year 1625, Carew, C.J., while delivering The opinion of the House of Lords in Re the Earldom of Oxford, [1625] W.Jo.
96, 101.
s.c.
[1626] 82 E.R.
50, 53, in a dispute relating to the descent of that Earldom, said :
"And yet time hath his revolution, there must be a period and an end of all temporal things, finis rerum, an end of names and dignities, and whatsoever is terrene "
The cycle of change and experiment, rise and fall, growth and decay, and of progress and retrogression recurs endlessly in the history of man and the history of civilization.
T.S.
Eliot in the First Chorus from "The Rock" said :

"O Perpetual revolution of configured stars, O Perpetual recurrence of determined seasons, O world of spring and autumn, birth and dying! The endless cycle of idea and action, Endless invention, endless experiment".
23.
The law exists to serve the needs of the society which is governed by it.
If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society.
It must keep time with the heartbeats of the society and with the needs and aspirations Of the people.
As the society changes, the law cannot remain immutable.
The early nineteenth century essayist and wit, Sydney Smith, said, 'Then I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool." The law must, therefore, in a changing society march in tune with the changed ideas and ideologies.
Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities.
A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and time-consuming to meet the immediate needs.
This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society.
n
24.
A large number of authorities were cited before us to show how the courts have interpreted the expression, "the State" in Art.
12.
As these authorities are decisions of this Court, we must perforce go through the whole gamut of them though we may preface an examination of these authorities with the observation that they only serve to show how the concepts of this Court have changed both with respect to Art.
12 and Art.
14 to keep pace with changing ideas and altered circumstances.
Before embarking upon this task we would, however, like to quote the following passage (which has become a classic) from the opening paragraph of Justice Oliver Wendell Holmes's "The Common Law" which contains the lectures delivered by him while teaching law at Harvard and which book was published in 1881 just one year before he was appointed an Associate Justice of the Massachusetts Supreme Judicial Court:
" It is something to show that the consistency of a system requires a particular result, but it is not all.
me life of the law has not been logic: it has been experience.
The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.
The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.
In order to know what it is, we must know what it has been, and what it tends to become.
We must alternately consult history and existing theories of legislation.
But the most difficult labor will be to understand the combination of the two into new products at every stage.
The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past."
We will, therefore, briefly sketch the temper of the times in which our Constitution was enacted and the purposes for which Parts III and IV inserted in our Constitution.
25.
The bombs which had rained down upon the cities of Europe, Africa and Asia and the Islands in the Pacific had changed, and changed dramatically, not only the political but also the sociological, ideological and economic map of the world.
A world reeling from the horrors of the Second World War and seeking to recover from the trauma caused by its atrocities sought to band all nations into one Family of Man and for this purpose set

up the United Nations Organization in order to save succeeding generations from the scourge of war which had twice in this century brought untold sorrow to mankind and in order to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights, of man and woman and of nations large or small, and thus to give concrete shape to the dream of philosophers and poets that the war-drums would throb no longer and the battle-banners would be furled in the Parliament of Man and the Federation of the World.
But much had gone before.
There was the signing of the Inter-Allied Declaration of June 12, 1941, at St.
James's Palace in London by the representatives of the United Kingdom, the Commonwealth, General de Gaulle and the governments in exile of the European countries conquered by Nazi Germany; there was the Atlantic Charter of August 14, 1941; there was the Declaration of the United Nations signed on New Year's Day of 1942 at Washington, D.C., by twenty-six nations who were fighting the Axis; there was the Declaration made at the Moscow Conference in October 1943 and at the Teheran Conference on December 1, 1943; there was the Dumbarton Oaks Conference held in Washington, D.C., in August and September 1944; there was the Yalta Conference in February 1945; all these culminating in the adoption on June 25, 1945, of the Charter of the United Nations in the Opera House of San Francisco and the affixing of signatures thereon the next day in the auditorium of the Veterans' Memorial Hall.
Thereafter, in pursuance of Art.
68 of the Charter of the United States, the Economic and Social Council set up the Human Rights Commission in 1946.
This Commission began its work in January 1947 under the chairmanship of Mrs.
Eleanore Roosevelt, the widow of President Franklin D.
Roosevelt.
The Universal Declaration of Human Rights prepared by the Commission was adopted by the General Assembly on December 10, 1948, at its session held in the Palais de Chaillot in Paris.
Of the fifty-eight nations represented at that Session, none voted against it, two were absent, and eight abstained from voting.
26.
It was thus in an atmosphere surcharged with human suffering and yet a firm resolve not to succumb to it that the Constituent Assembly which was set up to frame the Constitution of India embarked upon its task on December 9, 1946, re-assembled after the midnight of August 14, 1947, as the sovereign Constituent Assembly for India.
After Partition and fresh elections in the new Provinces of West Bengal and East Punjab, it re-assembled on October 31, 1947, and thereafter on November 26, 1949 adopted and enacted the Constitution of India.
Before commencing its work, the Constituent Assembly adopted a Resolution laying down its objectives :
" 1.
This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution.
4.
Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people: and
5.
Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political : equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association, and action, subject to law and public morality; and
6.
Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
7.
Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations: and
8.
This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind".
27.
In its strict legal sense the written Constitution of a country is a document which defines the regular form or system of its government, containing the rules that directly or indirectly affect the

distribution or exercise of the sovereign power of the State and it is thus mainly concerned with the creation of the three organs of the State - the executive, the legislature and the judiciary, and the distribution of governmental power among them and the definition of their mutual relation
28.
The framers of our Constitution did not, however, want to frame for the Sovereign Democratic Republic which was to emerge from their labours a Constitution in the strict legal sense.
They were aware that there were other Constitutions which had given expression to certain ideals as the goal towards which the country should strive and which had defined the principles considered fundamental to the governance of the country.
They were aware of the events that had culminated in the Charter of the United Nations.
They were aware that the Universal Declaration of Human Rights had been adopted by the General Assembly of the United Nations, for India was a signatory to it.
They were aware that the Universal Declaration of Human Rights contained certain basic and fundamental rights appertaining to all men.
They were aware that these rights were born of the philosophical speculations of the Greek and Roman Stoics and nurtured by the jurists of ancient Rome.
They were aware that these rights had found expression in a limited form in the accords entered into between the rulers and their powerful nobles, as for instance, the accord of 1188 entered into between King Alfonso IX and the Cortes of Leon, the Magna Carta of 1215 wrested from King John of England by his barons on the Meadow of Runnymede and to which he was compelled to affix his Great Seal on a small island in the Thames in Buckinghamshire - still called Magna Carta Island, and the guarantees which King Andrew II of Hungary was forced to give by his Golden Bull of 1822.
They were aware of the international treaties of the midseventeenth century for safeguarding the right of religious freedom and the rights of aliens.
They were aware of the full blossoming of the concept of Human Rights in the writings of the "philosophes" such as Voltaire, Rousseau, Diderot, Rayal, d'Alembert and others, and of the concrete expression given to it in the various Declarations of Rights of the American Colonies (particularly Virginia) and in the American Declaration of Independence.
They were aware that in 1789, during the early years of the French Revolution, the French National Assembly had in "The Declaration of the Rights of Man and of the Citizen" proclaimed these rights in lofty words and that Revolutionary France had translated them into practice with bloody deeds.
They were aware of the treaties entered into between various States in the nineteenth century providing protection for religious and other minorities.
They were aware that these rights had at last found universal recognition in the Universal Declaration of Human Rights.
29.
They were aware that the first ten Amendments to the Constitution of the United States of America contained certain rights akin to Human Rights.
They knew that the Constitution of Eire contained a chapter headed "Fundamental Rights" and another headed "Directive Principles of State Policy".
They were aware that the Constitution of Japan also contained a chapter headed "Rights and Duties of the People".
They were aware that the major traditional functions of the State have been the defence of its territory and its inhabitants against external aggression, the maintenance of law and order; the administration of justice, the levying of taxes and the collection of revenue.
They were also aware that increasingly, and particularly in modern times, several States have assumed numerous and wide ranging functions, especially in the fields of education, health, social security, control and maintenance of natural resources and natural assets, transport and communication services and operation of certain industries considered basic to the economy and growth of the nation.
They were also aware that s.
8 of Art.
1 of the Constitution of the United States of America contained "a welfare clause" empowering the federal government to enact laws for the overall general welfare of the people.
They were aware that countries such as the United States, the United Kingdom and Germany had passed social welfare legislation.
30.
The framers of our Constitution were men of vision and ideals, and many of them had suffered in the cause of freedom.

They wanted an idealistic and philosphic base upon which to raise the administrative superstructure of the Constitution.
They, therefore, headed our Constitution with a preamble which declared India's goal and inserted Parts III and IV in the Constitution.
The Preamble to the Constitution, as amended by the A Constitution (Forty-second Amendment) Act, 1976, proudly proclaims:
"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this twentysixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE
TO OURSELVES THIS CONSTITUTION."
31.
Part III of the Constitution gives a Constitutional mandate for certain Human Rights - called Fundamental Rights in the Constitution -- adapted to the needs and requirement of a country only recently freed from foreign rule and desirous of forging a strong and powerful nation capable of taking an equal place among the nations of the world.
It also provides a Constitutional mode of enforcing them.
Amongst these Rights is the one contained in Art.
14 which provides : G
"14.
Equality before law .--
The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
Part IV of the Constitution prescribes the Directive Principles of State Policy.
These Directive Principles have not received the same Constitutional mandate for their enforcement as the Fundamental Rights have done.
In the context of the Welfare State which is the goal of our Constitution, Arts.
37 and 38(1) are important.
They are as follows :
"37.
Application of the Principles contained in this Part.
-
The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."
"38.
(1) State to secure A social order for the promotion of welfare of the people.
-
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."
U/cl.
(a) of Article 39, the State is, in particular, to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.
Art.
41 directs that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work.
32.
The difference between Part III and Part IV is that while Part III prohibits the State from doing certain things (namely, from infringing any of the Fundamental Rights), Part IV enjoins upon the State to do certain things.
This duty, however, is not enforceable in law but none the less the Court cannot ignore what has been enjoined upon the State by Part IV, and though the Court may not be able actively to enforce the Directive Principles of State Policy by compelling the State to apply them in the governance of the country or in the making of laws, the Court can, if the State commits a breach of its duty by acting contrary to these Directive Principles, prevent it from doing so.

33.
In the working of the Constitution it was found that some of the provisions of the Constitution were not adequate for the needs of the country or for ushering in a Welfare State and the constituent body empowered in that behalf amended the Constitution several times.
By the very first amendment made in the Constitution, namely, by the Constitution (First Amendment) Act, 1951, cl.
(6) of Art.
19 was amended with retrospective effect.
Under this amendment, sub-cl.
(g) of cl.
(1) of Art.
19 which guarantees to all citizens the right to carry on any occupation, trade or business, was not to prevent the State from making any law relating to the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.
This amendment also validated the operation of all existing laws in so far as they had made similar provisions.
Article 298, as originally enacted, provided that the executive power of the Union and of each State was to extend, subject to any law made by the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts; and it further provided that all property acquired for the purposes of the Union or of a State was to vest in the Union or in such State, as the case may be.
Art.
298 was substituted by the Constitution (Seventh Amendment) Act, 1956.
As substituted, it provides as follows :
"298.
Power to carry on trade, etc.
-
The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose :
Provided that -
(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and
(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to Legislation by Parliament."
34.
Article 298, as so substituted, therefore, expands the executive power of the Union of India and of each of the States which collectively constitute the Union to carry on any trade or business.
By extending the executive power of the Union and of each of the States to the carrying on of any trade or business, Art.
298 does not, however, convert either the Union of India or any of the States which collectively form the Union into a merchant buying and sell- ing goods or carrying on either trading or business activity, for the executive power of the Union and of the States, whether in the field of trade or business or in any other field, is always subject to Constitutional limitations and particularly the provisions relating to Fundamental Rights in Part III of the Constitution and is exerciseable in accordance with and for the furtherance of the Directive Principles of State Policy prescribed by Part IV of the Constitution.
35.
The State is an abstract entity and it can, therefore, only act through its agencies or instrumentalities, whether such agency or instrumentality be human or juristic.
me trading and business activities of the State constitute "public enterprise".
The structural forms in which the Government operates in the field of public enterprise are many and varied.
These may consist of Government departments, statutory bodies, statutory corporations, Government companies, etc.

In this context, we can do no better than cite the following passage from "Government Enterprise - A Comparative Study" by W.
Friedmann and J.F.
Garner,:
"The variety of forms in which the various States have, at different times, proceeded to establish public enterprises is almost infinite, but three main types emerge to which almost every public enterprise approximates: (1) departmental administration; (2) the joint stock company controlled completely or partly by public authority; and finally (3) the public corporation proper, as a distinct type of corporation different from the private law company.
Each of these three types will be briefly analysed in a comparative perspective.
As the tasks of Government multiplied, as a result of defence needs, post-war crises, economic depressions and new social demands, the framework of civil service administration became increasingly insufficient for the handling of the new tasks which were often of a specialised and highly technical character.
At the same time, 'bureaucracy' came under a cloud.
In Great Britain j the late Lord Hewart had written of 'the new l despotism,' and Dr.
C.K.
Allen of 'bureaucracy triumphant'.
36.
In France the Confederation Generale du Travail (CGT) had stated in its Programme in 1920 that 'We do not wish to increase the functions of the State itself nor strengthen a system which would subject the basic industry to a civil service regime, with all its lack of responsibility and its basic defects, a process which would subject the forces of production to a fiscal monopoly.
This distrust of government by civil service, justified or not, was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable.
In the common law countries, where the Government still enjoys considerable immunities and privileges in the fields of legal responsibility, taxation, or the binding force of statutes, other considerations played their part.
It seemed necessary to create bodies which, if they were to compete on fair terms in the economic field, had to be separated and distinct from the Government as regards immunities and privileges."
37.
The immunities and privileges possessed by bodies so set up by the Government in India cannot, however, be the same as those possessed by similar bodies established in the private sector because the setting up of such bodies is referable to the executive power of the Government under Art.
298 to carry on any trade or business.
As pointed out by Mathew, J., in Sukhdev Singh and others v.
Bhagatram Sardar Singh Raghuvanshi and another, 1975 Indlaw SC 107, "The governing power wherever located must be subject to the fundamental constitutional limitations".
The privileges and immunities of these bodies, therefore, are subject to Fundamental Rights and exercisable in accordance with and in furtherance of the Directive Principles of State Policy.
38.
It is in the context of what has been stated above that we will now review the authorities cited at the Bar.
When we consider these authorities, we will see how as Constitutional thinking developed and the conceptual horizen widened, new vistas, till then shrouded in the mist of conventional legal phraseology and traditional orthodoxy, opened out to the eye of judicial interpretation, and many different facets of several Articles of the Constitution, including Art.
12 and 14, thitherto unperceived, became visible.
There, however, still remain vistas yet to be opened up, veils beyond which we today cannot see to be lifted, and doors to which we still have found no key to be unlocked.
39.
In Rai Sahib Ram Jawaya Kapur and others v.
The State of Punjab, 1955 Indlaw SC 16, the State of Punjab, which used to select books published by private publishers for prescribing them as text-books and for this purpose used to invite offers from publishers and authors, altered that practice and amended the notification in that behalf so that thereafter only authors were asked to submit their books for approval as text-books.

The validity of this notification was challenged inter alia on the ground that the executive power of a State u/art.
162 extended only to executing the laws passed by the legislature or supervising the enforcement of such laws.
Under Article 162, subject to the provisions of the Constitution, the executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws, namely, the matters enumerated in the State List (List II) in the Seventh Schedule to the Constitution.
Under the proviso to that Article, in any matter with respect to which the Legislature of a State and Parliament have power to make laws, that is, the matters enumerated in the Concurrent List (List III) in the Seventh Schedule to the Constitution, the executive power of the State is to be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.
U/art.
154(1), the executive power of the State is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.
The corresponding provisions as regards the executive power of the Union of India are contained in Art.
73 and Art.
53(1).
Repelling the above contention, Mukherjea, C.J., who spoke for the Constitution Bench of the Court observed :
"A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community."
40.
The following passage from the judgment of the Court in that case with respect to the meaning of the expression "executive function" is instructive and requires to be reproduced :
"It may not be possible to frame an exhaustive definition of what executive function means and implies.
Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.
The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.
The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legis lature.
It can also, when so empowered, exercise judicial functions in a limited way.
The executive Government, however, can never go against the provisions of the Constitution or of any law.
This is clear from the provisions of art.
154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."
41.
In Rajasthan State Electricity Board, Jaipur v.
Mohan Lal and others, 1967 Indlaw SC 23 a Constitution Bench of this Court by a majority held that the Electricity Board of Rajasthan constituted under the Electricity (supply) Act, 1948 (Act No. 54 of 1948) was "the State" as defined in Art.
12 because it was "other authority" within the meaning of that Article.
The Court held that the expression "other authority" was wide enough to include within it every authority created by a statute, on which powers are conferred to carry out governmental or quasi-governmental functions and functioning within the territory of India or under the control of the Government of India and the fact that some of the powers conferred may be for the purpose of carrying on commercial activities is not at all material because u/arts.
19(1)(g) and 298 even the State is empowered to carry on any trade or business.
The Court further held that in interpreting the expression "other authority" the principle of ejusdem generis should not be applied, because, for the application of A that rule, there must be distinct

genus or category running through the bodies previously named; and the bodies specially named in Art.
12 being the executive Government of the Union and the States, the Legislatures of the Union and the States and local authorities, there is no common genus running through these named bodies, nor could these bodies be placed in one single category on any rational basis.
42.
Praga Tools Corporation v.
C.A.
Imanual and others,1969 Indlaw SC 404 was a case heavily relied upon by the Appellants.
Praga Tools Corporation was a company incorporated under the Companies Act, 1913, and therefore, a company within the meaning of the Companies Act, 1956.
At the material time the Union of India held fifty-six per cent of the shares of the company and the Government of Andhra Pradesh held thirty-two per cent of its shares, the balance of twelve per cent shares being held by private individuals.
As being the largest shareholder, the Union of India had the power to nominate the company's directors.
The company had entered into two settlements with its workmen's union.
These settlements were arrived at and recorded in the presence of the Commissioner of Labour.
Subsequently, the company entered into another agreement with the union, the effect of which was to enable the company, notwithstanding the earlier two settlements, to retrench ninety-two of its workmen.
Some of the affected workmen thereupon filed a writ petition u/art.
226 of the Constitution in the Andhra Pradesh High Court challenging the validity of the subsequent agreement.
43.
A learned Single Judge of the High Court dismissed the petition on merits.
In appeal, a Division Bench of that High Court held that the company being one registered under the Companies Act and not having any statutory duty or function to perform was not one against which a writ for mandamus or any other writ could lie.
The Division Bench, however, held that though the writ petition was not maintainable the High Court could grant a declaration in favour of the petitioners that the impugned agreement was illegal and void and granted the said declaration.
In appeal by the company, a two-Judge Bench of this Court held that the Company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus.
So far as declaration given by the Division Bench of the High Court was concerned, the Court held :
"In our view once the writ petition was held to be misconceived on the ground that it could not lie against a company which was neither a statutory company nor one having public duties or responsibilities imposed on it by a statute, no relief by way of a declaration as to invalidity of an impugned agreement between it and its employees could be granted.
The High Court in these circumstances ought to have left the workmen to resort to the remedy available to them under the Industrial Disputes Act by raising an industrial dispute thereunder."
44.
Though this case was strongly relied upon by the Appellants, we fail to see how it is relevant to the submissions advanced by the Appellants.
The subsequent agreement enabling the company to retrench some of its workmen was challenged on the ground that it was in breach of the earlier settlements entered into between the company and the workmen's union.
No question of violation of any of the Fundamental Rights was at all raised in that case.
The only question which fell for determination was whether a writ of mandamus can issue to compel the performance of the earlier settlements or to restrain the enforcement of the impugned subsequent agreement and the dispute, therefore, was one which fell within the scope of the Industrial Disputes Act, 1947 (Act No.
14 of 1947).
45.
In State of Bihar v.
Union of India and another, 1969 Indlaw SC 386 the State of Bihar filed nine suits u/art.

131 in connection with the delayed delivery of iron and steel materials for the construction work-of the Gandak project.
In all these suits the first defendant was the Union of India while the second defendant in six of these suits was the Hindustan Steel Ltd.
and in the remaining three, the Indian Iron and Steel Company Ltd.
This Court held that the specification of the parties in Art.
131 was not of an extensive kind and excluded the idea of a private citizen, a firm or a corporation figuring as a disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute u/art.
131.
The Court further held that the enlarged definition of the expression "the State" given in Parts III and IV of the Constitution did not apply to Art.
131 and, therefore, a body like the Hindustan Steel Ltd.
could not be considered as "a State" for the purpose of Art.
131.
We fail to see in what way this decision is at all relevant to the point.
The question before the Court in that case was whether the Hindustan Steel Ltd.
Or the Indian Iron and Steel Company Ltd.
was a State to enable a suit to be filed against it u/art.
131 and not whether either of these companies fell within the scope of the definition of the expression "the State" in Art.
12.
46.
Another authority relied upon by the Appellants was S.L.
Agarwal v.
General Manager, Hindustan Steel Ltd.1969 Indlaw SC 36.
The facts of that case and the contentions raised thereunder show that this authority is equally Irrelevant.
In that case an employee of the Hindustan Steel Ltd., whose services were terminated, filed a petition u/art.
226 claiming that such termination was wrongful as it was really by way of punishment as the provisions of Art.
311(2) of the Constitution had not been complied with.
This Court held that the protection of cl.
(2) of Art.
311 was available only to the categories of persons mentioned in that clause and that though the appellant held a civil post as opposed to a military post, it was not a civil post under the Union or a State and, therefore, he could not claim the protection of Art.
311(2).
The contention which was raised on behalf of the appellant was that as Hindustan Steel Ltd.
was entirely financed by the Government and its management was directly the responsibility of the Government, the post was virtually under the Government of India.
This contention was rejected by the Court holding that the company had its independent existence and by law relating to corporations it was distinct from its members and, therefore, it was not a department of the Government nor were its employees servants holding posts under the Union.
No question arose in that case whether the company was "the State" within the meaning of Art.
12 and all that was sought to be contended was that it was a department of the Government.
47.
In Sabhajit Tewary v.
Union of India and others, 1975 Indlaw SC 106 this Court held that the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act was not an authority within the meaning of Art.
12 and, therefore, certain letters written by it to the petitioner with respect to his remuneration could not be challenged as being discriminatory and violative of Art.
14.
The contention raised in that case was that the rules governing the said Council showed that it was really an agent of the Government.
This Court rejected the said contention in these words :
"This contention is unsound.

The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation.
It is a society incorporated in accordance with the provisions of the Societies Registration Act.
The fact that the t) Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner."
48.
We now come to a case of considerable importance, namely, Sukhdev Singh and others v. Bhagatram Sardar Singh Kaghuvanshi and another, 1975 Indlaw SC 107.
Two questions fell to be determined in this case, namely, (i) whether statutory corporations are comprehended within the expression "the State" as defined in Article 12, and (ii) whether the regulations framed by a statutory corporation in exercise of the power conferred by the statute creating the corporation have the force of law.
The majority of a Constitution Bench of this court answered both these A questions in the affirmative.
me statutory corporations before the Court in that case were the Oil and Natural Gas Commission established under the Oil and Natural Gas Commission Act, 1956, the Life Insurance Corporation established under the Life Insurance Corporation Act, 1956, and the Industrial Finance Corporation established under the Industrial Finance Corporation Act, 1948.
Ray, C.J., speaking for himself and Chandrachud and Gupta, JJ., pointed out that "The State undertakes commercial functions in combination with Governmental functions in a welfare State."
The majority held that "the State" as defined in Art.
12 comprehends bodies created for the purpose of promoting economic interests of the people and the circumstance that statutory bodies are required to carry on some activities of the nature of trade or commerce does not indicate that they must be excluded from the scope of the expression "the State", for a public authority is a body which has public or statutory duties to perform and which performs those duties and carries on its transactions for the benefit of the public and not for private profit and by that fact such an authority is not excluded from making a profit for the public benefit.
Mathew, J., in his concurring judgment held that a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action.
The learned Judge observed :
"Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed government agencies.
Activities which are too fundamental to the society are by definition too important not to be considered government function.
This demands the delineation of a theory which requires government to provide all persons with all fundamentals of life and the determinations of aspects which are fundamental.
The State today has an affirmative duty of seeing that all essentials of life are made available to all persons.
The task of the State today is to make possible the achievement of a Good life both by removing obstacles in the path of such achievements and in assisting individual in realizing his ideal of self-perfection.
Assuming that indispensable functions are government functions, the problem remains of defining the line between fundamentals and non-fundamentals.
The analogy of the doctrine of 'business affected with a public interest' immediately comes to mind."
49.
After referring to the relevant provisions of the Acts under which the above statutory bodies were established, Mathew, J., continued :
"The fact that these corporations have independent personalities in the eye of law does not mean that they are not subject to the control of government or that they are not instrumentalities of the government.

These corporations are instrumentalities or agencies of the state for carrying on businesses which otherwise would have been run by the state departmentally.
If the state had chosen to carry on these businesses through the medium of government departments, there would have been no question that actions of these departments would be 'state actions'.
Why then should actions of these corporations be not state actions? The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public.
In other words, the question is, for whose benefit was the corporation carrying on the business?
When it is seen from the provisions of that Act that on liquidation of the Corporation, its assets should be divided among the shareholders, namely, the Central and State governments and others, if any, the implication is clear that the benefit of the accumulated income would go to the Central and State Governments.
Nobody will deny that an agent has a legal personality different from that of the principal.
The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own.
Likewise, merely because a corporation has legal personality of its own, it does not follow that the corporation 1 cannot be an agent or instrumentality of the state, l if it is subject to control of government in all important matters of policy.
No doubt, there might be some distinction between the nature of control exercised by principal over agent and the control exercised by government over public corporation.
That, I think is only a distinction in degree.
The crux of the matter is that public corporation is a new type of institution which has sprung from the new social and economic functions of government and that it therefore does not neatly fit into old legal categories.
Instead of forcing it into them, the later should be adapted to the needs of changing time and conditions."
50.
Various aspects of the question which we have to decide were exhaustively considered by this Court in Ramana Dayaram Shetty v.
The International Airport Authority of India and others, 1979 Indlaw SC 16.
In that case the Court observed , "Today the Government, as a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc." The ques- tion in that case was whether the International Airport Authority constituted under the International Airports Authority Act, 1971, came within the meaning of the expression "The State" in Art.
12.
Under the said Act, the Authority was a body corporate having perpetual succession and a common seal and was to consist of a Chairman and certain other members appointed by the Central Government.
The Central Government had the power to terminate the appointment of or remove any member from the Board.
Although the authority had no share capital of its own, capital needed by it for carrying out its functions was to be provided only by the Central Government.
While considering the question whether such a body corporate was included within the expression "the State", this Court said :
"A corporation mar be created in one of two ways.
It may be either established by statute or incor- porated under a law such as the Companies Act 1956 or the Societies Registration Act 1860.
Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government.
But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters.
So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated.
When does such a corporation become an instrumentality or agency of Government?"
51.

After considering various factors and the case law on the subject, the Court thus summed up the position :
"It will thus be seen that there are several factor which may have to be considered in determining whether corporation is an agency or instrumentality of Government.
We have referred to some of these factors and they may be summarised as under : Whether there is any financial assistance given by the State, and if so what is the magnitude of such assistance whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or lt is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions.
This particularisation of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency.
Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case."
52.
In the course of its judgment, the Court distinguished the case of Praga Tools Corporation as also the decision in S.L.
Agarwal v.
General Manager, Hindustan Steel Ltd 1969 Indlaw SC 36.
in very much the same manner as we have done.
So far as the case of Sabhajit Tewary v.
Union of India and others 1975 Indlaw SC 106 is concerned, the Court said as follows :
"Lastly, we must refer to the decision in Sarabhajit Tewari v.
Union of India & Ors.
where the question was whether the Council of Scientific and Industrial Research was an 'authority' within the meaning of Art.
12.
The Court no doubt took the view on the basis of facts relevant to the Constitution and functioning of the Council that it was not an 'authority', but we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an 'authority' within the meaning of Art.
12.
This decision does not lay down any principle or test for the purpose of determining when a corporation can be said to be an 'authority'.
If at all any test can be gleaned from the decision, it is whether the Corporation is "really an agency of the Government".
The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an 'authority'."
53.
In Managing Director, Uttar Pradesh Warehousing Corpora tion and another v.
Vinay Narayan Vajpayee, 1980 Indlaw SC 217 an employee of the corporation successfully challenged his dismissal from service.
The appellant corporation was established under the Agricultural Produce (Development and Warehousing) Corporation Act, 1956, and was deemed to be a Warehousing Corporation for a State under the Warehousing Corporation Act, 1962.
In his concurring judgment, Chinnappa Reddy, J.,said :
"I find it very hard indeed to discover any distinction, on principle between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but wholly owned by the Government.
It is self evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers.

It is now the function of the State to secure 'social, economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship', and to ensure 'equality of status and of opportunity".
54.
In Ajay Hasia etc.
v.
Khalid Mujib Sehravardi and others etc.,1980 Indlaw SC 244 the Regional Engineering College which was established and administered and managed by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898, was held to be "the State" within the meaning of Art.
12.
In that case the Court said :
"It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure A of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government.
It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government.
Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity.
If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiorari that the Government acting through the instrumentality or agency of a corpora tion should equally be subject to the same limitations."
55.
After referring to various authorities, the court summarized the relevant tests which are to be gathered from the Inter- national Airport Authority of India's case as follows :
"(1) 'One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.' G
(2) 'Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.'
(3) 'It may also be a relevant factor.
.
.
whether the corporation enjoys monopoly status which is the State conferred or State protected.'
(4) 'Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.'
(5) 'If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government'."
56.
The right, title and interest of the Burmah Shell Oil Storage and Distributing Company of India Limited in relation to its undertakings in India were transferred to and vested in the Central Government under s.
3 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976.
Thereafter, u/s.
7 of the said Act, the right, title, interest and liabilities of the said company which had become vested in the Central Government, instead of continuing so to vest in it, were directed to be vested in a Government company, as defined by s.
617 of the Companies Act, 1956, namely, Bharat Petroleum.
In Som Prakash Rekhi v.
Union of India and another,1980 Indlaw SC 227 this Court held that Bharat Petroleum fell within the meaning of the expression "the State" used in Art.
12.

The following passage from the judgment in that case is instructive and requires to be reproduced :
"For purposes of the Companies Act, 1956, a government company has a distinct personality which cannot be confused with the State.
Likewise, a statutory corporation constituted to carry on a commercial or other activity is for many purposes a distinct juristic entity not drowned in the sea of State, although, in substance, its existence may be but a projection of the State.
What we wish to emphasise is that merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, we should not scan the real character of that entity; and if it is found to be a mere agent or surrogate of the State, in fact owned by the State, in truth controlled by the State and in effect an incarnation of the State, constitutional lawyers must not blink at these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Art.
12 that any authority controlled by the Government of India is itself State.
Law has many dimensions and fundamental facts must govern the applicability of fundamental rights in a given situation."
57.
At the first blush it may appear that the case of S.S.Dhanoa v.
Municipal Corporation, Delhi and others1981 Indlaw SC 248 runs counter to the trend set in the authorities cited above but on a closer scrutiny it turns out not to be so.
The facts in that case were that the Cooperative Store Limited, which was a society registered under the Bombay Cooperative Societies Act, 1925, had established and was managing Super Bazars at different places including at Connaught Place in New Delhi.
U/s.
23 of the said Act, the society was a body corporate by the name under which it was registered, with perpetual succession and a common seal.
The Super Bazars were not owned by the Central Government but were owned and managed by the said society, though pursuant to an agreement executed between the said society and the Union of India, the Central Government had advanced a loan of rupees forty lakhs to the said society for establishing and managing Super Bazars and it also held more than ninety-seven per cent of the shares of the said society.
58.
The appellant who was a member of the Indian Administrative Service was sent on deputation as the General Manager of the Super Bazar at Connaught Place.
He along with other officials of the Super Bazar were prosecuted under the Prevention of Food Adulteration Act, 1954.
He raised a preliminary objection before the Metropolitan Magistrate, Delhi, before whom he was summoned to appear that no cognizance of the alleged offence could be taken by him for want of sanction u/s.
197 of the Code of Criminal Procedure, 1973.
On his contention being rejected, he appealed to this Court.
Under the said section 197, when any person who is or was inter alia a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court is to take cognizance of such offence except with the previous sanction in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union or of the Central Government.
As stated in the opening paragraph of the judgment in the said case, the question before the Court was whether the appellant was a public servant within the meaning of Clause Twelfth of s.
21 of the Indian Penal Code for purposes of s.
197 of the Code of Criminal Procedure.
The relevant provisions of Clause Twelfth of s.
21 are as follows:
"21.
Public servant.
- The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely : -
Twelfth.

- Every person -
(a) in the service or pay of the Government or remunerated by fees or commission for the Performance of any public duty by the Government;
(b) in the service or pay of a local authority, a corporation established by or under a General, Provincial or State Act or a Government company as defined in s.
617 of the Companies Act, 1956."
59.
The Court pointed out that Clause Twelfth did not use the words "body corporate" and, therefore, the question was whether the expression "corporation" contained therein taken in collocation of the words "established by or under a Central or Provincial or State Act" would bring within its sweep a cooperative society.
The Court said :
"In our opinion, the expression 'corporation' must, in the context, mean a corporation created by the legislature and not a body or society brought into existence by an act of a group of individuals.
A cooperative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature."
60.
The Court then proceeded to point out that a corporation is an artificial being created by law, having a legal entity entirely separate and distinct from the individuals who compose it, with the capacity of continuous existence and succession.
The Court held that corporations established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act.
An association of persons constituting themselves into a company under the Companies Act or a society under the Societies Registration Act owes its existence not to the act of Legislature but to acts of parties, though it may owe its status as a body corporate to an Act of Legislature.
The observation of the Court in that case with respect to companies were not intended by it to apply to Government companies as defined in s.
617 of the Companies Act, 1956, for by the express terms of sub- cl.
(b) of Clause Twelfth of s.
21 of the Indian Penal Code every person in the service or pay of a Government company as defined in s.
617 of the Companies Act, 1956, is a public servant.
The second part of the question which the Court was called upon to decide in that case was whether the appellant can be said to be a person who was employed in connection with the affairs of the Union.
The Court held that the Super Bazar was not an instrumentality of the State and, therefore, it could not be said that the appellant was employed in connection with the affairs of the Union within the meaning of the s.
197 of the Code of Criminal Procedure.
This observation was again made with reference to the argument that the appellant was employed in connection with the affairs of the Union.
He undoubtedly was not employed in connection with the affairs of the Union just as a person employed in a corporation is not and cannot be said to be holding a civil post under the Union or a State as held by this Court in S.L.
Agarwal v.
General Manager, Hindustan Steel Ltd 1969 Indlaw SC 36.
In S.S.
Dhanoa's case the Court was not called upon to decide and did not decide whether a Government company was an instrumentality or agency of the State for the purposes of Parts III and IV of the Constitution and thus, "the State" within the meaning of that expression as used in Art.
12 of the Constitution.
61.
The Indian Statistical Institute is a society registered under the Societies Registration Act, 1860, and is governed by the Indian Statistical Institute Act, 1959, under which its control completely vests in the Union of India.
The society is also wholly financed by the Union of India.
In B.S.
Minhas v.

Indian Statistical Institute and others1983 Indlaw SC 42 this Court, following Ajay Hasia's case, held that the said society was an "authority" within the meaning of Art.
12 and hence a writ petition u/art.
32 filed against it was competent and maintainable.
In Manmohan Singh Jaitla v.
Commissioner, Union Territory of Chandigarh and others1984 Indlaw SC 251 this Court once again following Ajay Hasia's case held that an aided school which received a Government grant of ninety-five per cent was an "authority" within the meaning of Art.
12 and, therefore, amenable to the writ jurisdiction both of this Court and the High Court.
62.
In Workmen of Hindustan Steel Ltd.
and another v.
Hindustan Steel Ltd.
and others1984 Indlaw SC 249, 560 the Court held that the hindustan Steel Ltd.
was a public sector undertaking and, therefore, was "other authority" within the meaning of that expression in Art.
12.
63.
In P.K.
Ramachandra Iyer and others v.
Union of India and others, 1983 Indlaw SC 248 once again following Ajay Hasia's case, the Court held that the Indian Council of Agricultural Research which was a society registered under the Societies Registration Act was an instrumentality of the State falling under the expression 'other authority' within the meaning of Art.
12.
The said Council was wholly financed by the Government.
Its budget was voted upon as part of the expenses incurred in the Ministry of Agriculture.
The control of the Government of India permeated through all its activities.
Since its inception, it was set up to carry out the recommendations of the Royal Commission on Agriculture.
According to this Court, these facts were sufficient to make the said Council an instrumentality of the State.
64.
In A.L.
Kalra v.
Project and Equipment Corporation of India Ltd.,1984 INDLAW SC 289, 319, 325 the said corporation was held to be an instrumentality of the Central Government and hence falling within Art.
12.
The Project and Equipment Corporation of India Ltd.
was a wholly owned subsidiary company of the State Trading Corporation but was separated in 1976 and thereafter functioned as a Government of India undertaking.
The finding that it was an instrumentality of the Central Government was, however, based upon concession made by the said corporation.
In West Bengal State Electricity Board and others v.
Desh Banahu Ghosh and others1985 Indlaw SC 439 the West Bengal State Electricity Board was held to be an instrumentality of the State.
65.
As pointed out earlier, the Corporation which is the First Appellant in these Appeals is not only a Government company as defined in s.
617 of the Companies Act, 1956, but is wholly owned by three Governments jointly.
It is financed entirely by these three Governments and is completely under the control of the Central Government, and is managed by the Chairman and Board of Directors appointed by the Central Government and removable by it.
In every respect it is thus a veil behind which the Central Government operates through the instrumentality of a Government company.
The activities carried on by the Corporation are of vital national importance.
The Fifth Five Year Plan 1974-79 states that the "outlay of Rs.14.73 crores for the next two years includes development of Rajabagan Dockyard and operation of the Central Inland Water Transport Corporation and operation of river services on the Ganga." According to the Sixth Five Year Plan,

1980-85, inland water transport is recognized as the cheapest mode of transport for certain kinds of commodities provided the points of origin and destination are both located on the water front; that it is one of the most energy efficient modes of transport and has considerable potential in limited areas H which have a net-work of waterways.
This Plan further emphasises that in the North-Eastern Region where other transport infrastructure is severely lacking and more expensive, inland water transport has an additional importance as an instrument of development.
The said Plan goes on to state, "In the Central Sector, an outlay of Rs.45 crores has been made for IWT.
The most important programme relates to the investment proposal of Central Inland Water Transport Corporation (CIWTC)".
The Annual Plan 1984-85 of the Government of India Planning Commission states as follows in paragraph 10.33 :
"Inland Water Transport Against the approved outlay of Rs.12 crores in 1983-84, the revised expenditure in the Central Sector is estimated at Rs.10.40 crores.
Bulk of the allocation was for the scheme of Central Inland Water Transport Corporation (CIWTC) for acquisition of vessels, development of Rajabagan Dockyard, creation of infrastructural facilities etc."
66.
The Annual Report 1984-85 of the Government of India, Ministry of Shipping and Transport, states in paragraph 6.1.2.
as follows :
"The Inland Water Transport
Directorate is an attached office of this Ministry headed by a Chief Engineer-cum-Administrator.
It has a complement of technical officers who are charged with the responsibility for planning of techno-economic studies on waterways and conducting hydrographic surveys.
The Directorate has a Regional Office at Patna Two sub-offices of this Regional Office have also been sanctioned.
One of the sub-offices has been set up at Gauhati and arrangements are under way to set up the other at Varanasi.
The Ministry has also under its control a public sector under taking, namely, the Central Inland Water Transport Corporation which is the only major company in inland water transport in the country."
67.
As shown by the Statement of Objects and Reasons to the Legislative Bill, which when enacted became the National Waterway (Allahabad-Halda Stretch of the Ganga-Bhagirathi- Hooghly River) Act, 1982 (Act No.
49 of 1982), published in the Gazette of India Extraordinary, Part II, Section 2, dated May 6, 1982, the Central Government had set up various committees in view of the advantages in the mode of inland water transport such as its low cost of transport, energy efficiency, generation of employment among weaker sections of the community and less pollution.
These committees had recommended that the Central Government should declare certain waterways as national waterways and assume responsibility for their development.
A beginning in respect of this matter was thus made by the enactment of the said Act No.
49 of 1982.
Under the said Act, the said stretch was declared to be a national waterway and it was the responsibility of the Central Government to regulate and develop this national waterway and to secure its efficient utilization for shipping and navigation.
In the Demands for Grant of the Ministry of Shipping and Transport 1985-86 additional provision was made for an overall increase in Budget Estimates 1985-86 mainly for equity participation/ investment in the Corporation.
The activities carried on by the Corporation were thus described in the said Demands for Grant :
"Central Inland Water Transport Corporation - CIWTC runs river services between Calcutta and Assam and Calcutta and Bangladesh.
It undertakes movement of oil from Haldia to Budge- Budge/Paharpur for the Indian Oil Corporation.
It also undertakes lighterage, stevedoring operations, ship building, ship repairing and other engineering services.
To meet cash losses over riverine and engineering operations, construction of vessel and for purchase of machinery/equipment etc., budget estimates 1985-86 provide Rs.

13.50 crores for loan and Rs.
15.41 crores for equity investment in the Corporation."
68.
Last year Parliament passed the Inland Waterways Authority of India Act, 1985.
This Act received the assent of the President on December 30, 1985.
Under this act, an Authority called the Inland Waterways Authority of India is to be constituted and it is to be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of the said Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and to sue and be sued by the said name.
It is to consist of a Chairman, a Vice-Chairman and other persons not exceeding five.
The Chairman, Vice-Chairman and the other persons are to be appointed by the Central Government.
The term of office and other conditions of service of the members of the Authority are to be prescribed by the rules.
The Central Government has also the power to remove any member of the Authority or to suspend him pending inquiry against him.
Under the said act, the Authority is, in the discharge of its functions and duties, to be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.
It may be mentioned that neither the said Act nor Act No.49 of 1982 appears to have been yet brought into force.
69.
There can thus be no doubt that the Corporation is a Government undertaking in the public sector.
The Corporation itself has considered that it is a Government of India undertaking.
The complete heading of the said Rules is "Central Inland Water Transport Corporation Limited (A Government of India Undertaking) - Service, Discipline Appeal Rules, 1979".
70.
In the face of so much evidence it is ridiculous to describe the Corporation as a trading company as the Appellants have attempted to do.
What has been set out above is more than sufficient to show that the activities of the Corporation are of great importance to public interest, concern and welfare, and are activities of the nature carried on by a modern State and particularly a modern Welfare State.
71.
It was, however, submitted on behalf of the Appellants that even though the cases, out of those referred to above, upon which the Appellants had relied upon were either distinguishable or inapplicable for determining the question whether a Government company was "the State" or not, the case of A.
L.
Kalra v.
Project and Equipment Corporation of India Ltd.
1984 Indlaw SC 289 relied upon by the Respondents was based upon a concession and there was thus no direct authority on the point in issue.
It was further submitted that all the other cases in which various bodies were held to be "the State" under Art.
12 were those which concerned either a statutory authority or a corporation established by a statute.
72.
It is true that the decision in A.L.
Kalra v.
Project and Equipment Corporation of India Ltd.
was based upon a concession made by the respondent corporation but the case of Workmen of Hindustan Steel Ltd.
and another v.
Hindustan Steel Ltd.
and others 1984 Indlaw SC 249 was that of a Government company for Hindustan Steel Limited is a Government company as defined by s.
617 of the Companies Act as pointed out in Gurugobinda Basu v.
Sankari Prasad Ghosal and others, 1963 Indlaw SC 163.

The case of the Workmen of Hindustan Steel Ltd.
related to a question whether a disciplinary inquiry was validly dispensed with under Standing Order No.
32 of the Hindustan Steel Limited.
Under that Standing Order, where a workman had been convicted for a criminal offence in a court of law or where the General Manager was satisfied, for reasons to be recorded in writing, that it was inexpedient or against the interest of security to continue to employ the workman, the workman may be removed or dismissed from service without following the procedure for holding a disciplinary inquiry laid down in Standing Order No.
31.
The order of removal from service of the concerned workman did not set out any reason for the satisfaction arrived at by the disciplinary authority but merely stated that such authority was satisfied that it was no longer expedient to employ the particular workman any further and the order then proceeded to remove him from the service of the company.
In these circumstances, this Court held that the order of removal from service was bad in law.
In the course of its judgment, this Court observed as follows :
"It is time for such a public sector undertaking as Hindustan Steel Ltd.
to recast S.O.
32 and to bring it in tune with the philosophy of the Constitution failing which it being other authority and therefore a State under Art.
12 in an appropriate proceeding, the vires of S.O.
32 will have to be examined.
It is not necessary to do so in the present case because even on the terms of H S.O.
32 the order made by the General Manager is unsustainable."
73.
The only reason given by the Court for holding that Hindustan Steel Limited was "other authority" and, therefore, "the State" under Art.
12 was the fact that it was a public sector undertaking.
In the entire judgment, there is no other discussion on this point except what is stated in the passage quoted above.
Thus, to the extent that there is no authority of this Court in which the question, namely, whether a Government company is "the State" within the meaning of Art.
12 has been discussed and decided, the above submission is correct.
74.
Does this, therefore, make any difference? There is a basic fallacy vitiating the above submission.
That fallacy lies in the assumption which that submission makes that merely because a point has not fallen for decision by the Court, it should, therefore, not be decided at any time.
Were this assumption true, the law would have remained static and would have never advanced.
The whole process of judicial interpretation lies in extending or applying by analogy the ratio decidendi of an earlier case to a subsequent case which differs from it in certain essentials, so as to make the principle laid down in the earlier case fit in with the new set of circumstances.
The sequitur of the above assumption would be that the Court should tell the suitor that there is no precedent governing his case and, therefore, it cannot give him any relief.
This would be to do gross injustice.
Had this not been done, the law would have never advanced.
For instance, had Rylands v.
Fletcher not been decided in the way in which it was, an owner or occupier of land could with impunity have brought and kept on his land anything likely to do mischief if it escaped and would have himself escaped all liability for the damage caused by such escape if he had not been negligent.
Similarly, but for Donoghue v.
Stevention manufacturers would have been immune from liability to the ultimate consumers and users of their products.
75.
What is the position before us? Is it only one case decided on a concession and another based upon an assumption that a Government Company is "the State" under Article 12? That is the position in fact but not in substance.
As we have seen, authorities constituted under, and corporations established by, statutes have been held to be instrumentalities and agencies of the Government in a long catena of decisions of this Court.

The observations in several of these decisions, which have been emphasised by us in the passages extracted from the judgments in those cases, are general in their nature and take in their sweep all instrumentalities and agencies of the State, whatever be the form which such instrumentality or agency may have assumed.
Particularly relevant in this connection are the observations of Mathew, J., in Sukhdev Singh and others v.
Bhagatram Sardar Singh Raghuvanshi and another1975 Indlaw SC 107, of Bhagwati, J., in the International Airport Authority's case and Ajay Hasia's case and of Chinnappa Reddy, J., in Uttar Pradesh Warehousing Corporations case.
If there is an instrumentality or agency of the state which has assumed the garb of a Government company as defined in s.
617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State.
For the purposes of Art.
12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State.
The Corporation, which is the Appellant in these two Appeals before us, squarely falls within these observations and it also satisfies the various tests which have been laid down.
Merely because it has so far not the monopoly of inland water transportation is not sufficient to divest it of its character of an instrumentality or agency of the State.
It is nothing but the Government operating behind a corporate veil, carrying out a governmental activity and governmental functions of vital public importance.
mere can thus be no doubt that the Corporation is "the State" within the meaning of Art.
12 of the Constitution.
76.
We now turn to the second question which falls for determination in these Appeals, namely, whether an unconscionable term in a contract of employment entered into with the Corporation, which is "the State" within the meaning of the expression in Article 12, is void as being violative of Art.
14.
What is challenged under this head is cl.
(i) of Rule 9 of the said Rules.
This challenge levelled by the Respondent in each of these two Appeals succeeded in the High Court.
77.
The first point which falls for consideration on this part of the case is whether Rule 9(i) is unconscionable.
In order to ascertain this, we must first examine the facts leading to the making of the said Rules and then the setting in which Rule 9(i) occurs.
To recapitulate briefly, each of the contesting Respondents was in the service of the Rivers Steam Navigation Company Limited.
Their services were taken over by the Corporation after the Scheme of Arrangement was sanctioned by the Calcutta High Court.
Under the said Scheme of Arrangement if their services had not been taken over, they would have been entitled to compensation payable to them, either under the Industrial Disputes Act, 1947, or otherwise legally admissible, by the said company, and the Government of India was to provide to the said company the amount of such compensation.
Under the letters of appointment issued to these Respondents, the age of superannuation was fifty-five.
78.
Thereafter, Service Rules were framed by the Corporation in 1970 which were replaced in 1979 by new rules namely, the said Rules.
The said Rules did not apply to employees covered by the Industrial Employment (Standing Orders) Act, 1946, that is, to workmen, or to those in respect of whom the Board of Directors had issued separate orders.
At all relevant times, these Respondents were employed mainly in a managerial capacity.
No separate orders were issued by the Board of Directors in their case.
These Respondents were, therefore, admittedly governed by the said Rules.
Under Rule 10 of the said Rules, they were to retire from the service of the Corporation on completion of the age of fifty-eight years though in exceptional cases and in the interest of the

Corporation an extension might have been granted to them with the prior approval of the Chairman-cum-Managing Director and the Board of Directors of the Corporation.
me said Rules, however, provide four different modes in which the services of the Respondents could have been terminated earlier than the age of superannuation, namely, the completion of the age of fifty-eight years.
These modes are those provided in Rule 9(i), Rule 9(ii), sub-cl.
(iv) of cl.
(b) of Rule 36 read with Rule 38 and Rule 37.
Of these four modes, the first two apply to permanent employees and the other two apply to all employees.
Rule 6 classifies employees as either Permanent or Probationary or Temporary or Casual or Trainee.
Cl.
(i) of Rule 6 defines the expression "Permanent employee" as meaning "an employee whose services have been confirmed in writing according to the Recruitment and Promotion Rules".
Under Rule 9(i) which has been extracted above, the employment of a permanent employee is to be subject to termination on three months' notice in writing on either side.
If the Corporation gives such a notice of termination, it may pay to the employee the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice, and where a permanent employee terminates the employment without giving due notice, the Corporation may deduct a like amount from the amount due or payable to the employee.
Under Rule 11, an employee who wishes to leave the service of the Corporation by resigning therefrom, is to give to the Corporation the same notice as the Corporation is required to give to him under Rule 9, that is, a three months' notice in writing.
Under rule 9(ii), the services of a permanent employee can be terminated on the ground of "Services no longer required in the interest of the Company" (that is, the Corporation).
In such a case, a permanent employee whose service is terminated under this clause is to be paid fifteen days' basic pay and dearness allowance for each completed year of continuous service in the Corporation and he is also to be entitled to encashment of leave to his credit.
Rule 36 prescribes the penalties which can be imposed, "for good and sufficient reasons and as hereinafter provided" in the said Rules, on an employee for his misconduct.
Cl.
(a) of Rule 36 sets out the minor penalties and cl.
(b) of Rule 36 sets out the major penalties.
Under sub-cl.
(iv) of cl.
(b) of Rule 36, dismissal from service is a major penalty.
None of the major penalties including the penalty of dismissal is to be imposed except after holding an inquiry in accordance with the provisions of Rule 38 and until after the inquiring authority, where it is not itself the disciplinary authority, has forwarded to the disciplinary authority the records of the inquiry together with its report, and the disciplinary authority has taken its decision as provided in Rule 39.
Rule 40 prescribes the procedure to be followed in imposing minor penalties.
Under Rule 43, notwithstanding anything contained in Rules 38, 39 or 40, the disciplinary authority may dispense with the disciplinary inquiry in the three cases set out in Rule 43 and impose upon an employee either a major or minor penalty.
We have reproduced Rule 43 earlier.
Rule 45 provides for an appeal against an order imposing any of the penalties specified in Rule 36.
Under Rule 37, the Corporation has the right to terminate the service of any employee at any time without any notice if the employee is found guilty of any insubordination, intemperance or other misconduct or of any breach of any rules pertaining to service or conduct or non- performance of his duties.
The said Rules do not require that any disciplinary inquiry should be held before terminating an employee's service under rule 37.
79.
Each of the contesting Respondents in these Appeals was asked to submit his written explanation to the various allegations made against him.
Ganguly, the First Respondent in Civil Appeal No.
4412 of 1985, gave a detailed reply to the said show cause notice.

Sengupta, the First Respondent in Civil Appeal No.
4413 of 1985, denied the charges made against him and asked for inspection of the documents and copies of statements of witnesses mentioned in the charge- sheet served upon him to enable him to file his written statement.
Without holding any inquiry into the allegations made against them, the services of each of them were terminated by the said letter dated February 26, 1983, under Rule 9(i).
The action was not taken either under Rule 36 or Rule 37 nor was either of them dismissed after applying to his case Rule 43 and dispensing with he disciplinary inquiry.
80.
It was submitted on behalf of the Appellants that there was nothing unconscionable about Rule 9(i), that Rule 9(i) was not a nudum pactum for it was supported by mutuality inasmuch as it conferred an equal right upon both parties to terminate the contract of employment, that the grounds which render an agreement void and unenforceable are set out in the Indian Contract Act, 1872 (Act No.
IX of 1872), that unconscionability was not mentioned in the Indian Contract Act ,as one of the grounds which invalidates an agreement, that the power conferred by Rule 9(i) was necessary for the proper functioning of the administration of the Corporation, that in the case of the Respondents this power was exercised by the Chairman-cum-Managing Director of the Corporation, and that a person holding the highest office in the Corporation was not likely to abuse the power conferred by Rule 9(i).
81.
The submissions of the contesting Respondents, on the other hand, were that the parties did not stand on an equal S footing and did not enjoy the same bargaining power, that the contract contained in the service rules was one imposed upon A these Respondents, that the power conferred by rule 9(i) was arbitrary and uncanalized as it did not set out any guidelines for the exercise of that power and that even assuming it may not be void as a contract; in any event it offended Art.
14 as it conferred an absolute and arbitrary power upon the Corporation.
As the question before us is of the validity of cl.
(i) of Rule 9, we will refrain from expressing any opinion with respect to the validity of cl.
(ii) of Rule 9 or Rule 37 or 40 but will confine ourselves only to Rule 9(i).
82.
The said Rule constitute a part of the contract of employment between the Corporation and its employees to whom the said Rules apply, and they thus form a part of the contract of employment between the Corporation and each of the two contesting Respondents.
The validity of Rule 9(i) would, therefore, first fall to be tested by the principles of the law of contracts.
83.
U/s.
19 of the Indian Contract Act, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.
It is not the case of either of the contesting Respondents that there was any coercion brought to bear upon him or that any fraud or misrepresentation had been practised upon him.
Under section 19A, when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused and the court may set aside any such contract either absolutely or if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.
Sub-s.
(1) of s.
16 defines "Undue influence" as follows :
"16.
'Undue influence' defined.
(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."
The material provisions of sub-s.
(2) of s.
16 are as follows :

"(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another -
(a) where he holds a real or apparent authority over the other."
84.
We need not trouble ourselves with the other sections of the Indian Contract Act except ss. 23 and 24.
S.
23 states that the consideration or object of an agreement is lawful unless inter alia the Court regards it as opposed to public policy.
This section further provides that every agreement of which the object or consideration is unlawful is void.
Under section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.
The agreement is, however, not always void in its entirety for it is well settled that if several distinct promises are made for one and the same lawful consideration, and one or more of them be such as the law will not enforce, that will not of itself prevent the rest from being enforceable.
The general rule was stated by Willes, J., in Pickering v.
Ilfracombe Ry.
Co as follows :
"The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good".
85.
Under which head would an unconscionable bargain fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of being opposed to public policy, it would be void.
No case of the type before us appears to have fallen for decision under the law of contracts before any court in India nor has any case on all fours of a court in any other country been pointed out to us.
The word "unconscionable" is defined in the Shorter Oxford English Dictionary, Third Edition, Volume II, page 2288, when used with reference to actions etc.
as "showing no regard for conscience; irreconcilable with what is right or reasonable".
An unconscionable bargain would, therefore, be one which is irreconcilable with what is right or reasonable.
86.
Although certain types of contracts were illegal or void, as the case may be, at Common Law, for instance, those contrary to public policy or to commit a legal wrong such as a crime or a tort, the general rule was of freedom of contract.
This rule was given full play in the nineteenth century on the ground that the parties were the best judges of their own interests, and if they freely and voluntarily entered into a contract the only function of the court was to enforce it.
It was considered immaterial that one party was economically in a stronger bargaining position than the other; and if such a party introduced qualifications and exceptions to his liability in clauses which are today known as "exemption clauses" and the other party accepted them, then full effect would be given to what the parties agreed.
Equity, however, interfered in many cases of harsh or unconscionable bargains, such as, in the law relating to penalties, forfeitures and mortgages.
It also interfered to asset aside harsh or unconscionable contracts for salvage services rendered to a vessel in distress, or unconscionable contracts with expectant heirs in which a person, usually a money-lender, gave ready cash to the heir in return for the property which he expects to inherit and thus to get such property at a gross undervalue.
It also interfered with harsh or unconscionable contracts entered into with poor and ignorant persons who had not received independent advice
87.
Legislation has also interfered in many cases to prevent one party to a contract from taking undue or unfair advantage of the other.
Instances of this type of legislation are usury laws, debt relief laws and laws regulating the hours of work and conditions of service of workmen and their unfair discharge from service, and control orders directing a party to sell a particular essential commodity to another.
88.

In this connection, it is useful to note what Chitty has to say about the old ideas of freedom of contract in modern times.
The relevant passages are to be found in Chitty on Contracts, Twenty-fifth Edition, Volume I, in paragraph 4, and are as follows :
"These ideas have to a large extent lost their appeal today.
'Freedom of contract,' it has been said, 'is a reasonable social ideal only to the - extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large.' Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or services offered.
Many contracts entered into by public utility undertakings and others take the form of a set of terms fixed in advance by one party and not open to discussion by the other.
These are called 'contracts d'adhesion' by French lawyers.
Traders frequently contract, not on individually negotiated terms, but on those contained in a standard form of contract settled by a trade association.
And the terms of an employee's contract of employment may be determined by agreement between his trade union and his employer, or by a statutory scheme of '' employment.
Such transactions are nevertheless ? contracts notwithstanding that freedom of contract is to a great extent lacking.
Where freedom of contract is absent, the disadvantages to consumers or members of the public have to some extent been offset by administrative procedures for consultation, and by legislation.
Many statutes introduce terms into contracts which the parties are forbidden to exclude, or declare that certain provisions in a contract shall be void.
And the courts have developed a number of devices for refusing to implement exemption clauses imposed by the economically stronger party on the weaker, although they have not recognised in themselves any general power (except by statute) to declare broadly that an exemption clause will not be enforced unless it is reasonable.
Again, more recently, certain of the judges appear to have recognised the possibility of relief from contractual obligations on the ground of 'inequality of bargaining power."
What the French call "contracts d'adhesion', the American call A "adhesion contracts" or "contracts of adhesion." An "adhesion contract" is defined in Black's Law Dictionary, Fifth Edition, as follows :
"'Adhesion contract'.
Standardized contract form offered to consumers of goods and services on essentially 'take it or leave it' basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract.
Distinctive feature of adhesion contract is that weaker party has no realistic choice as to its terms.
Not every such contract is unconscionable."
89.
The position under the American Law is stated in "Reinstatement of the Law - Second" as adopted and promulgated by the American Law Institute, Volume II xx which deals with the law of contracts, in s.
208 as follows :
"$ 208.
Unconscionable Contract or Tern
If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result."
90.
In the Comments given under that section it is stated :
"Like the obligation of good faith and fair dealing (S 205), the policy against unconscionable contracts or terms applies to a wide variety of types of conduct.
The determination that a contract or term is or is not unconscionable is made in the light of its setting, purpose and effect.
Relevant factors include weaknesses in the contracting process like those involved in more specific rules as to contractual capacity, fraud and other invalidating causes; the policy also overlaps with rules which render particular bargains or terms unenforceable on grounds of public policy.

Policing against unconscionable contracts or terms has sometimes been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary to public policy or to the dominant purpose of the contract'.
Uniform Commercial Code $ 2-302 Comment 1.
.
.
.
A bargain is not unconscionable merely because the parties to it are unequal in bargaining position, nor even because the inequality results in an allocation of risks to the weaker party.
But gross inequality of bargaining power, together with terms unreasonably favourable to the stronger party, may confirm indications that the transaction involved elements of deception or compulsion, or may show that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms."
91.
There is a statute in the United States called the Universal Commercial Code which is applicable to contracts relating to sales of goods.
Though this statutes is inapplicable to contracts not involving sales of goods, it has proved very influential in, what are called in the United States, L "non-sales" cases.
It has many times been used either by analogy or because it was felt to embody a general accepted social attitude of fairness going beyond its statutory application to sales of goods.
In the Reporter's Note to the said section 208, it is stated :
"It is to be emphasized that a contract of adhesion is not unconscionable per se, and that all unconscionable contracts are not contracts of adhesion.
Nonetheless, the more standardized the agreement and the less a party may bargain meaningfully, the more susceptible the contract or a term will be to a claim of unconscionability."
The position has been thus summed up by John R.
Pedan in "The Law of Unjust Contracts" published by Butterworths in 1982, :
"Unconscionability represents the end of a A cycle commencing with the Aristotelian concept of justice and the Roman law iaesio enormis, which in turn formed the basis for the medieval church's concept of a just price and condemnation of usury.
These philosophies permeated the exercise, during the seventeenth and eighteenth centuries, of the Chancery court's discretionary powers under which it upset all kinds of unfair transactions.
Subse quently the movement towards economic individualism in the nineteenth century hardened the exercise of these powers by emphasizing the freedom of the parties to make their own contract.
While the principle of pacta sunt servanda held dominance, the consensual theory still recognized exceptions where one party was overborne by a fiduciary, or entered a contract under duress or as the result of fraud.
However, these exceptions were limited and had to be strictly proved.
It is suggested that the judicial and legislative trend during the last 30 years in both civil and common law jurisdictions has almost brought the wheel full circle.
Both courts and parliaments have provided greater protection for weaker parties from harsh contracts.
In several jurisdictions this included a general power to grant relief from unconscionable contracts, thereby providing a launching point from which the courts have the opportunity to develop a modern doctrine of unconscionability.
American decisions on art.
2.302 of the UCC have already gone some distance into this new arena
The expression "laesio enormis" used in the above passage refers to "laesio ultra dimidium vel enormis" which in Roman law meant the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject-matter, as for example, when a vendor had not received half the value of property sold, or the purchaser had paid more then double value.
The maxim "pacta sunt servanda" referred to in the above passage means "contracts are to be kept"
92.
It would appear from certain recent English cases that the courts in that country have also begun to recognize the possibility of an unconscionable bargain which could be brought about by

economic duress even between parties who may not in economic terms be situate differently Refer occidental worldwide Investment Corpn.
v.
Skibs A/S Avanti, North ocean Shipping Co.
Ltd.
v.
Hyundai Construction Co.
Ltd., Pao On v.
Lau Yin Long and Universe Tankships of Monrovia v.
International Transport Workers Federation, reversed and the commentary on these cases in Chitty on Contracts, Twenty-fifth Edition, Volume I, paragraph 486.
93.
Another jurisprudential concept of comparatively modern origin which has affected the law of contracts is the theory of "distributive justice".
According to this doctrine, distributive fairness and justice in the possession of wealth and property can be achieved not only by taxation but also by regulatory control of private and contractual transactions even though this might involve some sacrifice of individual liberty.
In Lingappa Pochanna Appelvar v.
State of Maharashtra & Anr.1984 Indlaw SC 301 this Court, while upholding the Constitutionality of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, said :
"The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it.
Legislators, Judges and administrators are now familiar with the concept of distributive justice.
Our Constitution permits and even directs the State to administer what may be termed 'distributive justice'.
The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society.
Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle : 'From each according to his capacity, to each according to his needs'.
Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct A regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others.
It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property.
All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."
94.
When our Constitution states that it is being enacted in order to give to all the citizens of India "JUSTICE, social, economic and political", when cl.
(1) of Art.
38 of the Constitution directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life, when cl.
(2) of Art.
38 directs the State, in particular, to minimize the inequalities in income, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, and when Art.
39 directs the State that it shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment and that there should be equal pay for equal work for both men and women, it is the doctrine of distributive justice which is speaking through these words of the Constitution.
95.

Yet another theory which has made its emergence in recent years in the sphere of the law of contracts is the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power.
Lord Denning, M.R., appears to have been the propounder, and perhaps the originator - at least in England, of this theory.
In Gillespie Brothers & Co.
Ltd.
v.
Roy Bowles Transport Ltd.
where the question was whether an indemnity clause in a contract, on its true construction, relieved the indemnifier from liability arising to the indemnified from his own negligence, Lord Denning said:
"The time may come when this process of 'construing' the contract can be pursued no further.
The words are too clear to permit of it.
Are the courts then powerless? Are they to permit the party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to be unconscionable? When it gets to this point, I would say, as I said many years ago :
'there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused' : John Lee & Son (Grantham) Ltd.
v.
Railway Executive.
It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so."
96.
In the above case the Court of Appeal negatived the defence of the indemnifier that the indemnity clause did not cover the negligence of the indemnified.
It was in Lloyds Bank Ltd.
v.
Bundy that Lord Denning first clearly enunciated his theory of "inequality of bargaining power".
He began his discussion on this part of the case by stating :
"There are cases in our books in which the courts will set aside a contract.
Or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall.
Hitherto those exceptional cases have been treated each as a separate category in itself.
But I think the time has come when we should seek to find a principle to unite them.
I put on one side contracts or transactions which are voidable for fraud or misrepresentation or mistake.
All those are governed by settled principles.
I go only to those where there has been inequality of bargaining power such as to merit and intervention of the court."
97.
He then referred to various categories of cases and ultimately deduced therefrom a general principle in these words :
"Gathering all together, I would suggest that through all these instances there runs a single thread.
They rest on 'inequality of bargaining power'.
By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other.
When I use the word 'undue' I do not mean to suggest that the principle depends on proof of any wrongdoing.
The one who stipulates for an unfair advantage may be moved solely by his own self-interest, unconsciou6 of the distre66 he is bringing to the other.
I have also avoided any reference to the will of the one being 'dominated' or 'overcome' by the other.
One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds hlmself.
Again, I do not mean to suggest that every transaction is saved by independent advice.

But the absence of it may be fatal.
With these explanations, I hope this principle will be found to reconcile the cases."
98.
Though the House of Lords does not yet appear to have unanimously accepted this theory, the observations of Lord Diplock in A.
Schroeder Nusic Publishing Co.
Ltd.
v.
Macaulay (Formerely Instone) are a clear pointer towards this direction.
In that case a song writer had entered into an agreement with a music publisher in the standard form whereby the publishers engaged the song writer's exclusive services during the term of the agreement, which was five H years.
Under the said agreement, the song writer assigned to the publisher the full copyright for the whole world in his musical compositions during the said term.
By another term of the said agreement, if the total royalties during the term of the agreement exceeded Rs.
5,000 the agreement was to stand automatically extended by a further period of five years.
Under the said agreement, the publisher could determine the agreement at any time by one month's written notice but no corresponding right was given to the song writer.
Further, while the publisher had the right to assign the agreement, the song writer agreed not to assign his rights without the publisher's prior written consent.
The song writer brought an action claiming, inter alia, a declaration that the agreement was contrary to public policy and void.
Plowman, J., who heard the action granted the declaration which was sought and the Court of Appeal affirmed his judgment.
An appeal filed by the publishers against the judgment of the Court of Appeal was dismissed by the House of Lords.
The Law Lords held that the said agreement was void as it was in restraint of trade and thus contrary to public policy.
In his speech Lord Diplock however, outlined the theory of reasonableness or fairness of a bargain.
The following observations of his on this part of the case require to be reproduced in extenso :
"My Lords, the contract under consideration in this appeal is one whereby the respondent accepted restrictions upon the way in which he would exploit his earning power as a song writer for the next ten years.
Because this can be classified as a contract in restraint of trade the restrictions that the respondent accepted fell within one of those limited categories of contractual promises in respect of which the courts still retain the power to relieve the promisor of his legal duty to fulfil them.
In order to determine whether this case is one in which that power ought to be exercised, what your Lordships have in fact been doing has been to assess the relative bargaining power of the publisher and the song writer at the time the contract was made and to decide whether the publisher had used his superior bargaining power to exact from the song writer promises that were unfairly onerous to him.
Your Lordships have not A been concerned to inquire whether the public have in fact been deprived of the fruit of the song writer's talents by reason of the restrictions, nor to assess the likelihood that they would be so deprived in the future if the contract were permitted to run its full course.
It is, in my view, salutary to acknowledge that in refusing to enforce provisions of a contract whereby one party agrees for the benefit of the other party to exploit or to refrain from exploiting his own earning power, the public policy which the court is implementing is not some 19th century economic theory about the benefit to the general public of freedom of trade, but the protection of those whose bargaining power is weak against being forced by those whose bargaining power is stronger to enter into bargains that are unconscionable.
Under the influence of Bentham and of laissez-faire the courts in the 19th century abandoned the practice of applying the public policy against unconscionable bargains to contracts generally, as they had formerely done to any contract considered to be usurious; but the policy survived in its application to penalty clauses and to relief against forfeiture and also to the special category of contracts in restraint of trade.
If one looks at the reasoning of 19th century judges in cases about contracts in restraint of trade one finds lip service paid to current economic theories, but if one looks at what they said in the

light of what they did, one finds that they struck down a bargain if they thought it was unconscionable as between the parties to it and upheld it if they thought that it was not.
So I would hold that the question to be answered as respects a contract in restraint of trade of the kind with which this appeal is concerned is : "Was the bargain fair?" The test of fairness is, no doubt, whether the restrictions are both reasonably necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promisor under the contract.
For the purpose of this test all the provisions of the contract must be taken into consideration."
99.
Lord Diplock then proceeded to point out that there are two kinds of standard forms of contracts. The first is of contracts which contain standard clauses which "have been settled over the years by negotiation by representatives of the commercial interests involved and have been widely adopted because experience has shown that they facilitate the conduct of trade".
He then proceeded to state, "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable." Referring to the other kind of standard form of contract Lord Diplock said :
"The same presumption, however, does not apply to the other kind of standard form of contract. This is of comparatively modern origin.
It is the result of the concentration of particular kinds of business in relatively few hands.
The ticket cases in the 19th century provide what are probably the first examples.
The terms of this kind of standard form of contract have not been the subject of negotiation between the parties to it, or approved by any organisation representing the interests of the weaker party.
They have been dictated by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say: 'If you want these goods or services at all, these are the only terms on which they are obtainable.
Take it or leave it'.
To be in a position to adopt this attitude towards a party desirous of entering into a contract to obtain goods of services provides a classic instance of superior bargaining power."
The observations of Lord Denning, M.R., in Levison and another v.
Patent Steam Carpet Co.
Ltd.
are also useful and require to be quoted.
These observations are as follows :
" In such circumstances as here the Law Commission in 1975 recommended that a term which exempts the stronger party from his ordinary common law liability should not be given effect except when it is reasonable: see The Law Commission and the Scottish Law Commission Report, Exemption Clauses, Second Report (1975) (August 5, 1975), Law Com.
No.
69 (H.
C.
605), pp.
62, 174; and there is a bill now before Parliament which gives effect to the test of reasonableness. This is a gratifying piece of law reform: but I do not think we need wait for that bill to be passed into law.
You never know what may happen to a bill.
meanwhile the common law has its own principles ready to hand.
In Gillespie Bros.
& Co.
Ltd.
v.
Roy Bowles Transport Ltd., 416, I suggested that an exemption or limitation clause should not be given effect if it was unreasonable, or if it would be unreasonable to s apply it in the circumstances of the case.
I see no reason why this should not be applied today, at any rate in contracts in standard forms where there is inequality of bargaining power."
100.
The Bill referred to by Lord Denning in the above passage, when enacted, became the Unfair Contract Terms Act, 1977.

This statute does not apply to all contracts but only to certain classes of them.
It also does not apply to contracts entered into before the date on which it came into force, namely, February 1, 1978; but subject to this it applies to liability for any loss or damage which is suffered on or after that date.
It strikes at clauses excluding or restricting liability in certain classes of contracts and torts and introduces in respect of clauses of this type the test of reasonableness and prescribes the guidelines for determining their reasonableness.
The detailed provisions of this statute do not concern us but they are worth a study.
101.
In photo Production Ltd.
v.
Securicor Transport Ltd.
a case before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions.
The decision appears to proceed on the ground that the parties were businessmen and did not possess unequal bargaining power.
The House of Lords did not in that case reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position.
On the contrary, the speeches of Lord Wilberforce, Lord Diplock and Lord Scarman would seem to show that the house of Lords in a fit case would accept that test.
Lord Wilberforce in his speech, after referring to the Unfair Contract Terms Act, 1977, said :
"This Act applies to consumer contracts and those based on standard terms and enables exception clauses to be applied with regard to what is just and reasonable.
It is significant that Parliament refrained from legislating over the whole field of contract.
After this Act, in commercial matters generally, when the parties are not of unequal bargaining power, and when risks are normally borne by insurance, not only is the case for judicial intervention undemonstrated, but there is everything to be said, and this seems to have been Parliament's intention, for leaving the parties free to apportion the risks as they think fit and for respecting their decisions."
Lord Diplock said :
"Since the obligations implied by law in a commercial contract are those which, by judicial consensus over the years or by Parliament in passing a statute, have been regarded as obligations which a reasonable business an would realise that he was accepting when he entered into a contract of a particular kind, the court's view of the reasonableness of any departure from the implied obligations which would be involved in construing the express words of an exclusion clause in one sense that they are capable of bearing rather than another, is a relevant consideration in deciding what meaning the words were intended by the parties to bear."
102.
Lord Scarman, while agreeing with Lord Wilberforce, described the action out of which the appeal before the I House had arisen as "a commercial dispute between parties well able to look after themselves" and then added, "In such a situation what the parties agreed (expressly or impliedly) is what matters; and the duty of the courts is to construe their contract according to its tenor."
103.
As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognized, at 1 least in certain areas of the law of contracts, that there can i be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation.
Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances.
For example, i s.
138(2) of the German Civil Code provides that a , transaction is void "when a person" exploits "the distressed q situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages .
.
.
which are obviously disproportionate to the performance given in return." The position according to the French law is very much the same.
104.

Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country.
Our judges are bound by their oath to "uphold the Constitution and the laws".
the Constitution was enacted to secure to all the citizens of this country social and economic justice.
Art.
14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws.
The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art.
14.
This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power.
It is difficult to give an exhaustive list of all bargains of this type.
No court can visualize the different situations which can arise in the affairs of men.
One can only attempt to give some illustrations.
For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties.
It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not.
It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.
105.
It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.
This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal.
This principle may not apply where both parties are businessmen and the contract is a commercial transaction.
In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power.
These cases can neither be enumerated nor fully illustrated.
The court must judge each case on its own facts and circumstances.
106.
It is not as if our civil courts have no power under the existing law.
U/s.
31(1) of the Specific Relief Act, 1963 (Act No.
47 of 1963), any person against whom an instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may in its discretion, so adjudge it and order it to be delivered up and cancelled.
B
107.
Is a contract of the type mentioned above to be adjudged voidable or void? If it was induced by undue influence, then under section 19A of the Indian Contract Act, it would be voidable.
It is, however, rarely that contracts of the types to which the principle formulated by us above applies are induced by undue influence as defined by s.

16(1) of the Indian Contract Act, even though at times they are between parties one of whom holds a real or apparent authority over the other.
In the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power.
Such contracts will not fall within the four corners of the definition of "undue influence" given in s.
16(1).
Further, the majority of such contracts are in a standard or prescribed form or consist of a set of rules.
They are not contracts between individuals containing terms meant for those individuals alone, Contracts in prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all.
Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest.
To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable.
This would only result in multiplicity of litigation which no court should encourage and would also not be in the public interest.
Such a contract or such a clause in a contract ought, therefore, to be adjudged void.
While the law of contracts in England is mostly judge-made, the law of contracts in India is enacted in a statute, namely, the Indian Contract Act, 1872.
In order that such a contract should be void, it must fall under one of the relevant sections of the Indian Contract Act.
The only relevant provision in the Indian Contract Act which can apply is s.
23 when it states that "The consideration or object of an agreement is lawful, unless .
.
.
the court regards it as .
.
.
Opposed to public policy."
108.
The Indian Contract Act does not define the expression "public policy" or "opposed to public policy".
From the very nature of things, the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definition.
Public policy, however, is not the policy of a particular government.
It connotes some matter which concerns the public good and the public interest.
The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time.
As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy.
109.
There are two schools of thought - "the narrow view" school and "the broad view" school.
According to the former, courts can not create new heads of public policy whereas the latter countenances judicial law-making in this area.
The adherents of "the narrow view" school would not invalidate a contract on the ground of public policy unless that particular ground had been well-established by authorities.
Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in Janson v.
Uriefontein Consolidated Mines Limited , 500 "Public policy is always an unsafe and treacherous ground for legal decision." That was in the year 1902.
Seventy-eight years earlier, & Burros, J., in Richardson v.
Mellish , 266, described public policy as "a very unruly horse, and when once you get astride it you never know where it will carry you." The Master of the Rolls, Lord Denning, however, was not a-man to shy away from unmanageable horses and in words which conjure up before our eyes the

picture of the young Alexander the Great taming Bucephalus, he said in Enderby Town Football Club Ltd.
v.
Football Association Ltd.,
"With a good man in the saddle, the unruly horse can be kept in control.
It can jump over obstacles." Had the timorous always held the field, not only the doctrine of public policy but even the Common Law or the principles of Equity would never have evolved.
Sir William Holdsworth in his "History of English Law", Volume III, has said :
"In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to supress practices which, under ever new disguises, seek to weaken or negative them."
110.
It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification.
Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience.
If there is no head of public policy which D covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy.
Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution.
Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution.
111.
The normal rule of Common Law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited.
The case of A.
Schroeder Music Publishing Co.
Ltd.
v.
Macaulay , however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void.
The case may be different where the purpose of the contract is illegal or immoral.
In Kedar Nath Motani and others v.
Prahlad Rai and others,1959 Indlaw SC 220 reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said :
"The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered.
If the illegality be trivial or venial, as stated by Willistone and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position.
A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by restoring to some subterfuge or by mis-stating the facts.
If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail."
112.
The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court.
They are opposed to public policy and require to be adjudged void.
113.
We will now test the validity of Rule 9(i) by applying to it the principle formulated above.

Each of the contesting Respondents was in the service of the Rivers Steam Navigation Company Limited and on the said Scheme of arrangement being sanctioned by the Calcutta High Court, he was offered employment in the Corporation which he had accepted.
Even had these Respondents not liked to work for the Corporation, they had not much of a choice because all that they would have got wag "all legitimate and legal compensation payable to them either under the Industrial Disputes Act or otherwise legally admissible".
These Respondents were not covered by the Industrial Disputes Act for they were not workmen but were officers of the said company.
It is, therefore, difficult to visualize what compensation they would have been entitled to get unless their contract of employment with their previous employers contained any provision in that behalf.
So far as the original terms of employment with the Corporation are concerned, they are contained in the letters of appointment issued to the contesting Respondents.
These letters of appointment are in a stereotype form.
Under these letters of appointment, the Corporation could without any previous notice terminate their service, if the Corporation was satisfied on medical evidence that the employee was unfit and was likely for a considerable time to continue to be unfit for the discharge of his duties.
The Corporation could also without any previous notice dismiss either of them, if he was guilty of any insubordination, intemperance or other misconduct, or of any breach of any rules pertaining to his service or conduct or non-performance of his duties.
The above terms are followed by asset of terms under the heading "Other Conditions".
One of these terms stated that "You shall be subject to the service rules and regulations including the conduct rules".
Undoubtedly, the contesting Respondents accepted appointment with the Corporation upon these terms.
They had, however, no real choice before them.
Had they not accepted the appointments, they would have at the highest received some compensation which would have been probably meagre and would certainly have exposed themselves to the hazard of finding another job.
114.
It was argued before us on behalf of the contesting Respondents that the term that these Respondents would be subject to the service rules and regulations including the conduct rules, since it came under the heading "Other Conditions" which followed the clauses which related to the termination of service, referred only to service rules and regulations other than those providing for termination of service and, therefore, Rule 9(i) did not apply to them.
It is unnecessary to decide this question in the view which we are inclined to take with respect to the validity of Rule 9(i).
The said Rules as also the earlier rules of 1970 were accepted by the contesting Respondents without demur.
Here again they had no real choice before them.
They had risen higher in the hierarchy of the Corporation.
If they had refused to accept the said Rules, it would have resulted in termination of their service and the consequent anxiety, harassment and uncertainty of finding alternative employment.
Rule 9(i) confers upon the Corporation the power to terminate the service of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him the equivalent of three months' basic pay and dearness allowance.
A similar regulation framed by the West Bengal State Electricity Board was described by this Court in West Bengal State Electricity Board and others v.
Desh Bandhu Ghosh and others 1985 Indlaw SC 439 as ".
a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching.
Its only parallel is to be found in the Henry VIII clause so familiar to administrative lawyers."
115.
As all lawyers may not be familiar with administrative law, we may as well explain that "the Henry VIII clause" is a provision occasionally found in legislation conferring delegated legislative power, giving the delegate the power to amend the delegating Act in order to bring that Act into full operation or otherwise by Order to remove any difficulty, and at times giving power to modify the provisions of other Acts also.
The Committee on Ministers' Powers in its report submitted in 1932 (Cmd.

4060) pointed out that such a provision had been nicknamed "the Henry VIII clause" because "that King is regarded popularly as the impersonation of executive autocracy".
m e Committee's Report criticised these clauses as a temptation to slipshod work in the preparation of bills and recommended that such provisions should be used only where they were justified before Parliament on compelling grounds.
Legislation enacted by Parliament in the United Kingdom after 1932 does not show that this recommendation had any particular effect.
116.
No apter description of Rule 9(i) can be given than to call it "the Henry VIII Clause".
It confers absolute and arbitrary power upon the Corporation.
It does not even state who on behalf of the Corporation is to exercise that power.
It was submitted on behalf of the Appellants that it would be the Board of Directors.
me impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i).
m ere are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(i) is to be exercised by the Corporation.
No opportunity whatever of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power.
It was urged that the Board of Directors would not exercise this power arbitrarily or capriciously as it consists of responsible and highly placed persons.
This submission ignores the fact that however highly placed a person may be, he must necessarily possess human frailties.
It also overlooks the well-known saying of Lord Acton, which has now almost become a maxim, in the Appendix to his "Historical Essays and Studies", that "Power tends to corrupt, and absolute power corrupts absolutely." As we have pointed out earlier, the said Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his attaining the age of superannuation, namely, Rule 9(i), Rule 9(ii), sub- cl.
(iv) of cl.
(b) of Rule 36 read with Rule 38 and Rule 37.
Under Rule 9(ii) the termination of service is to be on the ground of "Services no longer required in the interest of the Company." Sub-cl.
(iv) of cl.
(b) of Rule 36 read with Rule 38 provides for dismissal on the ground of misconduct.
Rule 37 provides for termination of service at any time without any notice if the employee is found guilty of any of the acts mentioned in that Rule.
Rule 9(i) is the only Rule which does not state in what circumstances the power conferred by that Rule is to be exercised.
117.
Thus even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to Rule 9(i) in order to avoid the hassle of an inquiry.
Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation.
It violates one of the two great rules of natural justice - the audi alteram partem rule.
It is not only in cases to which Art.
14 applies that the rules of natural justice come into play.
As pointed out in Union of India etc.
v.
Tulsiram Patel etc..1985 Indlaw SC 401, "The principles of natural justice are not the creation of Art.
14.
Art.
14 is not their begetter but their constitutional guardian." That case has traced in some detail the origin and development of the concept of principles of natural justice and of the audi alteram partem rule.
They apply in diverse situations and not only to cases of State action.
As pointed out by 0.
Chinnappa Reddy, H J., in Swadeshi Cotton Mills v.
Union of India1981 Indlaw SC 349, 591 they are implicit in every decision-making function, whether judicial or quasi-judicial or administrative.

Undoubtedly, in certain circumstances the principles of natural justice can be modified and, in exceptional cases, can even be excluded as pointed out in Tulsiram Patel's case.
Rule 9(i), however, is not covered by any of the situations which would justify the total exclusion of the audi alteram partem rule.
118.
The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee.
It can pick up one employee and apply to him cl.
(i) of Rule 9.
It can pick up another employee and apply to him cl.
(ii) of Rule 9.
It can pick up yet another employee and apply to him sub-cl.
(iv) of cl.
(b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37.
All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee.
Both the contesting Respondents had, in fact, been asked to submit their explanation to the charges made against them.
Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case.
The charges made against both the Respondents were such that a disciplinary inquiry could easily have been held.
It was, however, not held but instead resort was had to Rule 9(i).
119.
The Corporation is a large organization.
It has offices in various parts of West Bengal, Bihar and Assam, as shown by the said Rules, and possibly in other States also.
me said Rules form part of the contract of employment between the Corporation and its employees who are not workmen.
These employees had no powerful workmen's Union to support them.
They had no voice in the framing of the said rules they had no choice but to accept the said Rules as part of their contract of employment.
m ere is gross disparity between the Corporation and its employees, whether they be workmen or officers.
m e Corporation can afford to dispense with the services of an officer.
It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him.
A clause such as cl.
(i) of Rule 9 is against right and reason.
It is wholly unconscionable.
It has been A entered into between parties between whom there is gross inequality of bargaining power.
Rule 9(i) is term of the contract between the Corporation and all its officers.
It affects a large number of persons and it squarely falls within the principle formulated by us above.
Several statutory authorities have a clause similar to Rule 9(i) in their contracts of employment.
As appears from the decided cases, the West Bengal State Electricity Board and Air India International have it.
Several Government companies apart from the Corporation (which is the First Appellant before us) must be having it.
There are 970 Government companies with paid-up capital of Rs.16,414.9 crores as stated in the written arguments submitted on behalf of the Union of India.
120.
The Government and its agencies and instrumentalities constitute the largest employer in the country.
A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good.
Such a clause, therefore, is opposed to public policy and being opposed to public policy, it-is void u/s.

23 of the Indian Contract Act.
121.
It was, however, submitted on behalf of the Appellants that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the Court, therefore, ought not to interfere with it.
It is not possible for us to equate employees with goods which can be bought and sold.
It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.
122.
It was also submitted on behalf of the Appellants that Rule 9(i) was supported by mutuality inasmuch as it conferred an equal right upon both the parties, for under it just as the employer could terminate the employee's service by giving him three months' notice or by paying him three months' basic pay and dearness allowance in lieu thereof, the employee could leave the service by giving three months' notice and when he failed to give such notice, the Corporation could deduct an equivalent amount from whatever may be payable to him.
It is true that there is mutuality in cl.
9(i) - the same mutuality as in a contract between the lion and the lamb that both will be free to roam about in the jungle and each will be at liberty to devour the other.
When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laughable.
123.
The contesting Respondents could, therefore, have filed a civil suit for a declaration that the termination of their service was contrary to law on the ground that the said Rule 9(i) was void.
In such a suit, however, they would have got a declaration and possibly damages for wrongful termination of service but the civil court could not have ordered reinstatement as it would have amounted to granting specific performance of a contract of personal service.
As the Corporation is "the State", they, therefore, adopted the far more efficacious remedy of filing a writ petition u/art.
226 of the Constitution.
124.
As the Corporation is "the State" within the meaning of Article 12, it was amenable to the writ jurisdiction of the High Court u/art.
226.
It is now well-established that an instrumentality or agency of the State being "the State" under Art.
12 of the Constitution is subject to the Constitutional limitations, and its actions are State actions and must be judged in the light of the Fundamental Rights guaranteed by Part III of the Constitution
The actions of an instrumentality or agency of the State must, therefore, be in conformity with Art.
14 of the Constitution.
The progression of the judicial concept of Art.
14 from a prohibition against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary State action has been traced in Tulsiram Patel's Case .
The principles of natural justice have now come to be recognized as being a part of the Constitutional guarantee contained in Art.
14.
In Tulsiram Patel's Case this Court said :
"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Art.
14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article.
Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Art.
14.
Article 14, however, is not the sole repository of the principles of natural justice.
What it does is to guarantee that any law or State action violating them will be struck down.

The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Article 12, is charged with the duty of deciding a matter."
As pointed out above, Rule 9(i) is both arbitrary and unreasonable and it also wholly ignores and sets aside the audi alteram partem rule it, therefore, violates Art.
14 of the Constitution.
125.
On behalf of the Appellants reliance was placed upon the case of Radhakrishna Agarwal and others v.
State of Bihar and others, 1977 Indlaw SC 282.
The facts in that case were that a contract, called a "lease", to collect and exploit Sal seeds from a forest area was entered into between the State of Bihar and the appellants in that case.
Under one of the clauses of the said contract, the rate of royalty could be revised at the expiry of every three years in consultation with the lessee and was to be binding on the lessee.
The State unilaterally revised the rate of royalty payable by the appellants and thereafter cancelled the lease.
The Patna High Court dismissed the writ petition filed by the appellants and the appellants' appeal to this Court was also dismissed.
In that case it was held that when a State acts purely in its executive capacity, it is bound by the obligations which dealings of the State with individual citizens import into every transaction entered into in exercise of its constitutional powers, but this is only at the time of entry into the field of consideration of persons with whom the Government could contract, and after the State or its agents have entered into the field of ordinary contract the relations are no longer governed by the Constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se.
The court then added :
"No question arises of violation of Art.
14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act.
In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract."
126.
We fail to see what relevance that decision has to the case before us.
Employees of a large organization form a separate and distinct class and we are unable to equate a contract of employment in a stereotype form entered into by "The State" with each of such employees with the "lease" executed in Radhakrishna Agarwal's Case.
Further, the contract or the lease between the parties in that case was a legally valid contract.
In that case what the appellants were doing was to complain of a breach of contract committed by the State of Bihar acting through its officers.
The contesting Respondents are not complaining of any breach of contract but their contention is that Rule 9(i) which is a term of their contract of employment is void.
They are not complaining that the action of termination of their service is in breach of Rule 9(i).
Their complaint is not merely with respect to the State action taken under Rule 9(i) but also with respect to the action of the State in entering into a contract of employment with them which contains such a clause or rather forcing upon them a contract of employment containing such a clause.
As we have held earlier, Rule 9(i) is void even under the ordinary law of contracts.
127.
We must now turn to two decisions of the Bombay High Court as each party has relied strongly upon one of them, namely, S.S.
Muley v.
J.R.D.
Tata and others and Manohar P.
Kharkhar and another v.
Raghuraj and another 1981 Indlaw MUM 4036 commonly known as the "Makalu" Case as it related to certain cables which were damaged in an aircraft named 'Makalu' belonging to Air India International.
The decision in Muley's Case was relied upon by the Respondents while the decision in Makalu's Case was relied upon by the Appellants.

Both the cases related to Regulation 48 of the Air India Employees' Service Regulations framed by Air India International.
Air India International is a corporation established under the Air Corporations Act, 1953 (Act No.27 of 1953) and it is indisputably "The State" within the meaning of Art.
12 of the Constitution.
Under Cl.
(a) of the said Regulation 48, the services of a permanent employee can be terminated "without assigning any reason" by giving him thirty days' notice in writing or pay in lieu of notice.
In both these cases, the services of the concerned employees were terminated under Regulation 48(a).
The said Regulations also provided for dismissal of an employee who was found guilty of misconduct in a disciplinary inquiry held according to the procedure prescribed in the said Regulations.
128.
In Muley's Case a learned Single Judge of the Bombay High Court, Sawant, J., held the said Regulation 48(a) to be void as infringing Art.
14 of the Constitution.
In West Bengal State Electricity Board's Case this Court stated , "The learned Judge struck down Regulation 48(a) and we agree with his reasoning and conclusion." The reasoning upon which Sawant, J., reached his conclusion was that there was no guidance given anywhere in the impugned Regulation for the exercise of the power conferred by it, that it placed untrammelled power in the hands of the authorities, that it was an arbitrary power which was conferred and it did not make any difference that it was to be exercised by high ranking officials.
In the Makalu Case a contrary view was taken by a Division Bench of the Bombay High Court.
The Division Bench rightly held that the employees of a statutory corporation did not enjoy the protection conferred by Art.
311(2).
It, however, further held that the phrase "without assigning any reason" used in the said Regulation 48 only meant a disclosure of the reasons to the employee concerned.
After going into the facts which had been pleaded by Air India International to justify the termination of the service of the petitioners in that case, the Division Bench held that the impugned orders were justified.
129.
It further held that Regulation 48 was not a one-sided regulation since under Regulation 49 the employee was also permitted to resign without assigning any reason by giving the notice prescribed therein.
The Division Bench applied to the said Regulation 48 the analogy of the ordinary law of master and servant under which no servant can claim any security of tenure.
It also brought in it the analogy of the right to compulsorily retire an employee where a provision in that behalf is made in the Service Rules.
The Division Bench further held that it was difficult to conceive of any authority, which was "the State" under Art.
12 of the Constitution and bound by the Constitutional guarantees contained in Part III of the Constitution, terminating the services of its employees without reason or arbitrarily.
It further held that the existence of relevant reasons was a sine qua non for exercising the power under Regulation 48.
It went on to state that because of the complexity of modern administration and the unpredictable exigencies which may arise in the course thereof, it was necessary for an employer to be vested with powers such as those conferred by Regulation 48.
The Division Bench took great pains to discern in some of the sections of the Air Corporations Act guidelines for the exercise of the power conferred by Regulation 48.
According to the Division Bench, the choice of Air India International to proceed under Regulation 48 would have to be dictated for the purpose of the needs and exigencies of its administration and if that power was exercised arbitrarily, the court would strike down the action taken under Regulation 48.
130.
We were invited by Learned Counsel for the Appellants to peruse the judgment in that case and we did so with increasing astonishment.
Though the said judgment bears the date September 18, 1981, we were unable to make out whether it was a judgment given in the year 1981 or in the year 1881 or even earlier.

We find ourselves wholly unable to agree with the view taken by the Division Bench.
Apart from the factual aspects of the case, as to which we say nothing, we find every single conclusion reached by the Division Bench and the reasons given in support thereof to be wholly erroneous.
The Division Bench overlooked that it was not dealing with a case of a non-speaking order but with the validity of a regulation.
The meaning given by it to the expression "without assigning any reason" was wrong and untenable.
Starting with this wrong premise, it has gone from one wrong premise to another.
In the light of what we have said earlier about the principles of public policy evolved, and tested by the principle which we have formulated, the said Regulation 48(a) could never have been sustained.
In West Bengal State Electricity Board's Case, a three-Judge Bench of this Court said as follows :
"The learned counsel for the appellant relied upon Manohar P.
Kharkhar v.
Raghuraj 1981 Indlaw MUM 4036 to contend that Regulation 48 of the Air India Employees' Service Regulations was valid.
It is difficult to agree with the reasoning of the Delhi High Court that because of the complexities of modern administration and the unpredictable exigencies arising in the course of such administration it is necessary for an employer to be vested with such powers as those under Regulation 48.
We prefer the reasoning of Sawant, J.
of the Bombay High Court and that of the Calcutta High Court in the judgment under appeal to the reasoning of the Delhi High Court."
131.
The mention of the Delhi High Court in the above passage is a slip of the pen, for it was the Bombay High Court which decided the case.
We are in respectful agreement with what has been stated in the above passage.
The Makalu Case was wrongly decided and requires to be overruled.
We are, however, informed that an appeal against that judgment is pending in this Court and rather than overrule it here, we leave it to the Bench which hears that appeal to reverse it.
132.
We would like to observe here that as the definition of "the State" in Art.
12 is for the purposes of both Part III and Part IV of the Constitution, State actions, including actions of the instrumentalities and agencies of the State, must not only be in conformity with the Fundamental Rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy prescribed by Part IV.
Cl.
(a) of Art.
39 provides that the State shall, in particular, direct its policy towards "securing that the citizens, men and women, equally have the right to adequate means of livelihood." Art.
41 requires the State, within the limits of its economic capacity and development, to "make effective provision for securing the right to work".
An adequate means of livelihood cannot be secured to the citizens by taking away without any reason the means of livelihood.
The mode of making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment.
The action of an instrumentality or agency of the State, if it frames a service rule such as cl.
(a) of Rule 9 or a rule analogous thereto would, therefore, not only be violative of Art.
14 but would also be contrary to the Directive Principles of State Policy contained in cl.
(a) of Art.
39 and in Art.
41.
133.
The Calcutta High Court was, therefore, right in quashing the impugned orders dated February 26, 1983, terminating the services of the contesting Respondents and directing the Corporation to reinstate them and to pay them all arrears of salary.
The High Court was, however, not right in declaring cl.
(i) of Rule 9 in its entirety as ultra vires Art.
14 of the Constitution and in striking down as being void the whole of that clause.

What the Calcutta High Court overlooked was that Rule 9 also confers upon a permanent employee the right to resign from the service of the Corporation.
By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee can not be deprived of his right to resign.
A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective.
It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary.
An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee.
In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry.
There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee.
The Corporation ought to make suitable provisions in that behalf in the said Rules.
Therefore, while the judgment of the High Court requires to be confirmed, the declaration given by it requires to be suitably modified.
134.
In the result, both these Appeals fail and are dismissed but the order passed by the Calcutta High Court is modified by substituting for the declaration given by it a declaration that cl.
(i) of Rule 9 of the "Service, Discipline & Appeal Rules - 1979" of the Central Inland Water Transport Corporation Limited is void u/s.
23 of the Indian Contract Act, 1872, as being opposed to public policy and is also ultra vires Art.
14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice.
135.
By interim orders passed in the Petitions for Special Leave to Appeal filed by the Corporation, we had granted pending the disposal of those Petitions a stay of the order of the Calcutta High Court in so far as it directed the reinstatement of the contesting Respondents.
At that stage the Corporation had undertaken to pay to the said Respondents all arrears of salary and had also undertaken to pay thereafter their salary from month to month before the tenth day of each succeeding month until the disposal of the said Petitions.
We hereby vacate the stay order of reinstatement passed by us and direct the Corporation forthwith to reinstate the First Respondent in each of these Appeals and to pay to him within six weeks from today all arrears of salary and allowances payable to him, if any still unpaid.
136.
The First Appellant in both these Appeals, namely, the Central Inland Water Transport Corporation Limited, will pay to the First Respondent in each of these Appeals the costs of the respective Appeals.
The other parties to these Appeals and the Intervener will bear and pay their own costs of the Appeals.
Appeal dismissed.

High Court of Judicature at Bombay through Registrar and another v Brij Mohan Gupta (Dead) through LRs.
and another
Supreme Court of India

23 January 2003
Appeal (Civil) 137 of 1999
The Order of the Court was as follows :
1 The respondent herein Brij Mohan Gupta was born on 2nd July, 1939.
He was directly appointed from the Bar as a Judge of City Civil and Sessions Court, Bombay (Maharashtra Higher Judicial Service).
He assumed charge on 4th November, 1988.
In normal course, the respondent would have completed 10 years of service on 4th November, 1998.

He would have attained the age of 58 years on 2nd July, 1997 and the age of 60 years on 2nd July.
1999.
2 The High Court of Bombay, in view of the decision of this Court in All India Judges' Association and Ors.
v.
Union of India and Others, [1993] 4 SCC 288 1993 Indlaw SC 1712 (hereinafter referred to as "Judges Case-II"), appointed a Committee to review the case of the respondent for giving him the benefit of continuity in service till the age of 60 years.
The Committee made an adverse report against the respondent and recommended that he may be made to retire on attaining the age of 58 years.
The High Court, in view of the recommendation of the Committee, issued an order on 30th July, 1997, retiring the respondent from service w.e.f.
31st July, 1997.
Aggrieved, the respondent filed a petition u/art.
226 of the Constitution before the Bombay High Court.
3 The case of the respondent before the High Court was that under Rule 10(3) (c) of the Maharashtra Civil Services (Pension) Rules, 1982, he was entitled to continue till completion of 10 years' qualifying service which was necessary to entitle him to get the benefit of Rule 53 of the Rules.
The High Court accepted the said argument and held that the respondent would be entitled to continue in service until 4th November, 1998 on which date he would have completed 10 years in service and as a result the respondent would be liable to retire from service when he actually would complete 59 years, 4 months and 2 days.
In that view of the matter, the writ petition was allowed and the impugned order stood modified.
4 It is against the said judgment of the High Court; the appellants are before us in appeal.Mr.
U.
U.
Lalit, learned counsel appearing for the appellants contends that in terms of Judges Case-I [1992] 1 SCC 119 and Judges Case-II [1993] 4 SCC 288.
Rule 10(3)(c) stood subrogated therein and the High Court was justified in taking a decision on completion of the age of 58 years of the respondent to find out whether he would be allowed to continue till the age of 58 years.
We find merit in his contention.
5 In Judges Case-I, a direction was issued by this Court to all the States and the Union Territories, including the State of Maharashtra, to fix the age of retirement at 60 years w.e.f.
31st December, 1992 in respect of members of the Judicial Service.
In Judges Case-II again this Court held that where there is no Rule providing for the age of superannuation at the age of 60 years, a Committee of the High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in respective Service Rules applicable to Judicial Officers; that those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 years by following the said procedure for compulsory retirement; and that the exercise should be undertaken before the attainment of the age of 58 years even in case where earlier the age of superannuation was less than 58 years.
6 In terms of these directions, the Chief Justices of the respective High Courts were required to set up appropriate Committees of five Hon'ble Judges to look into the service records of the concerned Judicial Officer, so as to consider as to whether he should be allowed to continue up to the age of 60 years.
The said procedure was followed in the instant case.
7 The five-Judges Committee looked into the records of the respondent and opined:
"The Committee has considered the annual Confidential Reports of Shri Gupta for the last 5 years i.e.
since 1992.
He lacks integrity.
He does not enjoy good reputation.
His behavior with the members of Bar and public is unsatisfactory.
He is rated as a poor Judge.
The S.I.D.

record shows that in File No.
SID/BY/34/93, the Disciplinary Committee has, on 29th March issued a warning informing him that he should be more careful while passing order in future.Considering the material placed before the Committee and the overall performance of Shri Gupta, the Committee is of the opinion that he is not suitable to be continued, his performance is not up to the mark and therefore, he does not deserve grant of benefit of increase of retirement age of 60 years."
8 In view of the said report, the respondent was made to retire on attaining the age of 58 years i.e. 30.7.1997.Rule 10(3)(c) of the Maharashtra Civil Service (Pension) Rule, 1982 is applicable only to the direct appointees from the Bar.
By reason thereof, the benefit of pension has been extended to them so as to enable them to complete the minimum qualifying service of ten years subject to the outer limit of 60 years of age. The normal age of superannuation of such an officer would either be completion of ten years of service or 55 years whichever is earlier.
9.
In that view of the matter, the respondent would have reached the age of superannuation on attaining the age of 55 years.
He, however, in view of the benefit conferred in terms of the Judges' Case, as referred to hereinbefore, was to retire at the age of 60 years but such benefit was subject to the conditions laid down therein.
Only in the event the age of superannuation of the judicial officers is 60 years under the Service Rules, the question of review of his performance on attaining the age of 58 years would not arise; but when under the Service Rules applicable to the judicial officers the age of superannuation is 58 years or below, he would be entitled to the benefit of the judgment, in which event the limitations of applicability thereof would also squarely apply.
10 In our view, the exercise of setting up a Committee by the Chief Justice, the recommendation made by the Committee and also finally the administrative order passed by the High Court, were strictly in terms of the Judges Case-I and Judges Case-II.
In fact, by virtue of Judges Case-I and Judges Case-II, Rule 10(3) (c) stood subrogated.
We are, therefore, of the view that the judgment under challenge is not in conformity with the aforesaid decisions and is liable to be set aside.
11 However, in the peculiar facts and circumstances of the case and particularly in view of the fact that the original respondent has expired on 17.3.2001, we direct that he may be held to have retired on completion of 10 years of service and in that view of the matter, all retrial benefits would be payable in accordance with law.
We have taken this view as in the event, the respondent was allowed to complete ten years of his service, he would have retired at the age of 58 years six months only.
in that view of the matter, we are not inclined to interfere in the matter.
The appeal is disposed of with the aforementioned observations and directions.
C.A.No.
138/1999 Learned counsel appearing for the appellant states that the appeal is rendered in fructuous.
It is dismissed as such.
Appeal disposed of.

Earabhadrappa Alias Krishnappa v State of Karnataka
Supreme Court of India

11 March 1983
Criminal Appeal No.
669 of 1982.
Appeal by Special leave from the judgment and order dated the 29th October, 1981 of the Karnataka High Court in Crl.
Appeal No.
241 of 1981
The Judgment was delivered by : A.
P.
Sen, J.
1.
Appellant Earabhadrappa @ Krishnappa is under sentence of death and this appeal by special leave is directed against the judgment of the High Court of Karnataka dated October 29, 1981.

The Sessions Judge, Kolar by his judgment dated March 21, 1981 convicted the appellant under s.
302 of the Indian Penal Code for having committed the murder of one Smt.
Bachamma, wife of P.W.
3 Makrappa and sentenced him to death.
On reference, the High Court has upheld the conviction of the appellant under s.
302 of the Indian Penal Code and confirmed the death sentence passed on him.
The appellant has also been convicted by the learned Sessions Judge under s.
302 of the Indian Penal Code for having robbed the deceased of her gold ornaments and clothes and sentenced him to undergo rigorous imprisonment for a term of 10 years.
2.
Upon the evidence presented at the trial it transpired that on the night between March 21 and 22, 1979 the deceased Smt.
Bachamma was throttled to death at her house in village Mallur and relieved of her gold ornaments.
On the night in question, the deceased Smt.
Bachamma as usual served dinner to the family members.
After taking his meals, P.W.3 went upstairs to his bed-room, her mother-in-law P.W.2 Smt.
Bayamma went to the 'Kana' to keep a vigil while the deceased slept in the hall adjoining the kitchen and her son P.W.4 G.M.
Parkash slept in the courtyard of the house.
The appellant who had recently been employed as a servant by P.W.
3 slept in a room on the ground floor where the silk cocoons used to be reared and kept.
On the 22nd morning at about 6 a.m when P.W.4 went to wake up his mother he found that she was lying dead and he therefore went upstairs and called his father P.W.3.
They saw that the deceased had been strangulated to death and relieved of her ornament.
Her gold mangalsutra and gold-rope chain were missing so also the gold nose-ring and gold ear-rings.
On the right side of the bed was lying the screw of the missing gold nose-ring.
There was also lying a towel (M.O.
1) which had been given by P.W.
3 to the appellant for his use, and apparently the deceased has been strangulated with the towel.
The iron safe and almirah kept in the hall were found open and bunch of keys which the deceased carried with her was found missing.
All the jewellery and cash of Rs.
1700/- kept in the iron safe and six silk sarees kept in the almirah were also found missing.
There was a search made for the appellant but he was not to be found either in the house or in the village and he had therefore absconded with the jewellery and valuables.
3.
Intelligence report received by P.W.
26 Abdul Mazeed, Circle Inspector of Police who had taken over the investigation from P.W.
25 Sreenivasa Rao, Station officer Shidalaghatta on 28 March 1980 revealed that the appellant was seen moving in Hosakote and Anekal Taluks and accordingly P.W.
26 along with his staff searched for the appellant in both the taluks but he could not be found, and therefore he encamped at Anekal on that day.
On March 29, 1980 he got definite information that the appellant was seen in village Hosahally in Hosakote Taluk and was able to apprehend him at that village at about 2 p,m.
On being taken into custody, the appellant made a statement Ex.
P-35 leading to the discovery of the ornaments and clothes belonging to the deceased from several places.
He first led P.W.
26 to the house of his sister P.W.
8 Smt.
Yallamma in village Gudisagarapelly leading to the recovery of four silk sarees (M.
Os.
11 to 14) which were seized under seizure memo Ex.
P-4.
From that place, he took him to village Mattakur, from where he hails, to the house of one Dasappa leading to the recovery of the screw of the missing gold nose-ring (M.O.
5) which was seized under seizure memo Ex.

P-7.
Thereafter, he took P.W.
26 to the house of P.W.
12 Guruvareddy leading to the recovery of a silk saree (M.O.15) which was seized under seizure memo Ex.
P-5 and then to the house of P.W.
13 Narayanareddy leading to the recovery of the gold chain (M.O.
6) and a pair of gold bangles (M.OS.
7 & 8) which were seized under seizure memo Ex.
P-6.
The very day he took P.W.
26 to the house of P.W.
15 Chinnamma in Village Sollepura leading to the recovery of a silk saree (M.O.10) which was seized under seizure memo Ex.
P-8.
On the next day i.e.
on the 30th the appellant took P.W.
26 to the house of P.W.
21 Ramachari in village Hosur who led them to the shop of P.W.
22 Palaniyachar leading to the recovery of a pair of gold earrings (M.Os.
3 & 4) and a gold ingot (M.O.
9) which were seized under seizure memo Ex.
P-15.
The seized articles have all been identified by P.W.
3 Makrappa and his mother P.W.
2 Smt.
Bayamma and son P.W.
4.
G.M.
Prakash as belonging to the deceased.
4.
The appellant abjured his guilt and denied the commission of the alleged offence stating that he had been falsely implicated.
He also denied that he ever made the statement Ex.
P-35 or that the stolen articles were recovered as a direct consequence to such statement.
5.
In cases in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and the fact and circumstances should not only be consistent with the guilt of the accused but they must be in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence.
The chain of circumstances brought out by the prosecution are these:
The appellant who hails from village Mattakur was a stranger to village Mallur ostensibly in search of employment.
He falsely stated his name to be Krishnappa and gave a wrong address stating that he belonged to a nearby village.
The securing of employment by giving out false name and wrong address shows that he had some oblique motive in his mind.
He obtained employment with p.w.
3 and gained his confidence and was allowed to sleep in a room on the ground floor where the silk cocoons were kept.
He thus became familiar with the places where the inmates of the house used to sleep and where the jewellery, cash and other valuable belongings used to be kept i.e.
in the iron safe and almirah kept in the hall adjoining the kitchen.
It appears that the appellant had pre-planned the commission of robbery.
Earlier in the evening he went to P.W.
6 Narayanappa and borrowed Rs.
2 and thereafter went to the toddy shop of P.W.
7 Smt.
Anasuyamma and took liquor.

On the night in question he reached the 'kana' at about 9 p.m.
and was reprimanded by P.W.
2 for being late.
Upon reaching the house he went upstairs in an inebriated state and told P.W.
3 that he no longer wanted to serve and he should settle his accounts.
P.W.
3 told him to come in the morning and take his wages.
It therefore appears that the appellant had made up his mind to leave the village.
On the next morning i.e.
on the 22nd at about 6 a.m.
it was discovered that the deceased Smt.
Bachamma had been strangulated to death.
The gold ornaments on her person and in the iron safe had been stolen.
There was a search made for the appellant but he was not to be found anywhere.
Near the dead body of the deceased was lying the blood-stained towel (M.O.
1) given by P.W.
3 to the appellant for his use with which the deceased had apparently been strangulated.
The appellant had therefore absconded from the scene of occurrence after committing the murder and robbery.
After the appellant had suddenly disappeared from the house of P.W.
3 with the gold ornaments and other valuables, there was a frantic search made by P.W.
25, Sreenivasa Rao and P.W.
26 Abdul Mazeed at various places and he was absconding till March 29, 1980 until he was apprehended by P.W.
26 at village Hosahally in Hosakote taluk at about 2 p.m.
On being arrested after a year of the incident on March 29, 1980, the appellant made the statement Ex.
P-35 leading to the recovery of some of the stolen gold ornaments of the deceased and her six silk sarees from different places and they have all been identified by P.Ws.
2, 3 and 4 as belonging to the deceased.
The appellant falsely denied the recoveries and could offer no explanation for his possession of the stolen articles.
It appears from the prosecution evidence that after the commission of the murder and robbery, the appellant had with him the incriminating articles and taken them to his native place Mattakur where he disposed them of to several persons.
The testimony of P.W.
26 reveals that in consequence of the information given by the appellant he recovered the missing screw of the gold nose ring (M.O.5) from one Dasappa in village Mattakur, that of P.W,12 Guruvareddy that appellant had sold to him the silk saree (M.O.15) for Rs.
150/-, and that of P.W.13 Narayanareddy discloses that the appellant had sold to him a gold rope chain (M.O.6) and a pair of gold bangles (M.Os.
7&8) for Rs.
2000/-, The testimony of P.W.8, Smt, Yallamma, sister of the appellant, hailing from village Gudisagarapally show that the appellant had given her four silk sarees (M.Os.11 to 14), and that of P.W.15 Smt.
Chinnamma of village Sollepura, who was known to the appellant from before, shows that the appellant gave her the silk saree for Re.
1/- when she refused to take his gratis.
The testimony of P.W.
21 Ramachari of village Hosur shows that appellant brought with him a pair of gold ear- rings and a gold ingot and wanted to sell them saying that he was hard-pressed.
This witness took him to P.W.
22 Palaniyachar and the appellant sold the gold ingot (M.O.9) for Rs.
330/-and a pair of gold ear-rings (M.Os.
3&4) for Rs.
500/-.
6.
From this evidence it is apparent that the appellant while he was absconding moved from place to place trying to dispose of the stolen property to various persons.
7.

The learned Sessions Judge as well as the High Court have come to the conclusion that the circumstances alleged have been fully proved and they are consistent only with the hypothesis of the guilt of the accused.
We are inclined to agree both with their conclusion and the reasoning.
The chain of circumstances set out above establishes the guilt of the appellant beyond all reasonable doubt
8.
There is no controversy that the statement made by the appellant Ex.
P-35 is admissible under s.
27 of the Evidence Act.
Under s.
27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible.
The word 'fact' means some concrete or material fact to which the information directly relates.
As explained by Sir John Beaumont in Pulukuri Kottaya v.
Emperor:
"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced: the fact discovered embraces the place from which the object is produced, and the knowledge of the accused as to this, and the information given must relate distinctly to this fact".
9.
For the applicability of s.
27 therefore two conditions are prerequisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must 'relate distinctly' to the fact discovered.
In the present case, there was a suggestion during the trial that P.W.
26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that statement Ex.
P-35 was prepared after the recoveries had been made and therefore there was no 'fact discovered' within the meaning of s.
27 of the Evidence Act.
We need not dilate on the question because there was no suggestion made to P.W.
26 during his cross- examination that he had known the places where the incriminating articles were kept.
That being so, the statement made by the appellant Ex.
P-35 is clearly admissible in evidence.
10.
In Jaffer Hussein Dastgir v.
State of Maharasetra, the portion of the statement with reference to which this question arose read as follows:
"I will point out one Gaddi alias Ramsingh of Delhi at Bombay Central Railway Station at III Class Waiting Hall to whom I have given a Packet containing diamonds of different sizes more than 200 in number."
11.
The only question for decision in that case before the Court was whether the aforesaid statement made by the accused was admissible in evidence by virtue of s.
27 of the Evidence Act, the diamonds having been found with the person named.
In the facts of that case the Court came to the conclusion that the police had already known that the diamonds were with the person named by the accused with the result that there was no fact discovered by the police as a result of the statement made by the accused.
However, it was held clearly that, but for such knowledge of the police, the aforesaid statement of the accused would have been admissible in evidence.
12.
In the present case, some of the material portions in the statement Ex.
P-35 which distinctly relate to the fact discovered read:
"If I am taken to Gudisagarapally, I shall get the four silk sarees."
13.
At village Gudisagarapally the appellant took P.W.
26 to the house of his sister P.W.
8 Smt.
Yallamma who produced four silk sarees (M.Os.
11 to 14) which were seized under seizure memo Ex.

P-4.
P.W.
8 Smt.
Yallamma states that she is the sister of the appellant and that he had given to her the four silk sarees.
It was suggested that the police had not only planted P.W.
8 as a sister of the appellant but also the four silk sarees in question, but there is no basis for this assertion.
Then the statement Ex.
P-35 recites:
"If I am taken to native place Mattakur, I shall get one gold nose ring without screw ..
one silk saree.....
one gold rope chain and one pair of gold ear rings."
14.
At village Mattakur from where he hails, the appellant took P.W.
26 to the house of one Dasappa leading to the recovery of the screw of the missing gold nose ring (M.O.
5) which was seized under seizure memo Ex.
P-7.
Thereafter, he took P.W.
26 to the house of P.W.
12 Guruvareddy leading to the recovery of a silk saree (M.O.
15) which was seized under seizure memo Ex.
P-5.
He then took P.W.
26 to the house of P.W.
13 Narayanareddy leading to the recovery of a gold rope chain (M.O.
6) and a pair of gold bangles (MOs.
7&8) which were seized under seizure memo Ex.
P-6.
The prosecution could not examine Dasappa because he was dead during the trial.
P.W.
12 stated that the appellant had sold him a silk saree for Rs.
150 while P.W.
13 stated that he had sold him a gold rope chain and a pair of gold bangles for Rs.
2000/-.
The statement Ex.
P-35 contains similar recitals leading to the recovery of the other incriminating articles, viz (1) A silk saree (M.O.10) given by the appellant to P.W.
15 Smt.
Chinnamma of village Sollepura whom he knew from before, for a token price of Re.
1/ -; (2) A pair of gold ear rings (M.Os.
3&4) and a gold ingot (M.O.9) from P.W.
22 Palaniyachar which he had purchased from the appellant for Rs.
830.
15.
Apart from the question of sentence, two other contentions are raised, namely:
(1) There is no proper identification that the seized ornaments belonged to the deceased Smt. Bachamma; and
(2) the presumption arising under illustration (a) to s.
114 of the Evidence Act, looking to the long lapse of time between the commission of murder and robbery and the discovery of the stolen articles, should be that the appellant was merely a receiver of the stolen articles and therefore guilty of an offence punishable under s.
411 of the Indian Penal Code and not that he was guilty of culpable homicide amounting to murder punishable under s.
302 as well.
We are afraid, none of these contentions can prevail.
16.
Our attention was drawn to the testimony of P.W.

13 Narayanareddy who, during his cross-examination, stated that ornaments similar to the gold rope chain and the pair of gold bangles were available everywhere and that other ornaments were also in his house.
From this it is sought to be argued that the seized ornaments cannot be treated to be stolen property as they are ordinary ornaments in common use.
Nothing really turns on this because P.W.
2 Smt.
Bayamma, mother-in-law of the deceased, her husband P.W.
13 Makarappa and son P.W.
4 G.M.
Prakash have categorically stated that the seized ornaments belonged to the deceased Smt.
Bachamma.
There is no reason why the testimony of these witnesses should not be relied upon particularly when P.W.
2 Smt.
Baymma was not cross-examined at all as regards her identification of the seized ornaments and clothes as belonging to the deceased.
Even if the seized ornaments could be treated to be ornaments in common use, this witness could never make a mistake in identifying the seized six silk sarees (M.Os.
10 to 15).
It is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family.
That apart, the description of the silk sarees in question shows that they were expensive sarees with distinctive designs.
There is no merit in the contention that the testimony of these witnesses as regards the identity of the seized articles to be stolen property cannot be relied upon for want of prior test identification.
There is no such legal requirement.
17.
This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under illustration (a) to s.
114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction.
The prosecution has led sufficient evidence to connect the appellant with the commission of the crime.
The sudden disappearance of the appellant from the house of P.W.3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangulated to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by P.W.
26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex.
P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments.
The appellant had no satisfactory explanation to offer for his possession of the stolen property.
On the contrary, he denied that the stolen property was recovered from him.
The false denial by itself is an incriminating circumstance.
The nature of presumption under illustration (a) to s.
114 must depend upon the nature of the evidence adduced.
No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts.
The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand.
If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particulary when the appellant had been absconding during that period.
There was no lapse of time between the date of his arrest and the recovery of the stolen property.
18.
Finally, there remains the question of sentence, it was cruel hand of destiny that the deceased Smt.

Bachamma met a violent end by being strangulated to death by the appellant who betrayed the trust of his master p.w.
3 and committed her pre-planned cold-blooded murder for greed in achieving his object of committing robbery of the gold ornaments on her person and in ransacking the iron safe and the almirah kept in her bedroom on the fateful night.
The appellant was guilty of a heinous crime and deserves the extreme penalty.
But we are bound by the rule laid down in Bachan Singh v.
State of Punjab where the Court moved by compassionate sentiments of human feelings has ruled that sentence of death should not be passed except in the 'rarest of the rare' cases.
The result now is that capital punishment is seldom employed even though it may be a crime against the society and the brutality of the crime shocks the judicial conscience.
A sentence or pattern of sentence with fails to take due account of the gravity of the offence can seriously undermine respect for law.
It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders.
Failure to impose a death sentence in such grave cases where it is a crime against the society particularly in cases of murders committed with extreme brutality-will bring to naught the sentence of death provided by s.
302 of the Indian Penal Code.
The test laid down in Bachan Singh's case (supra) is unfortunately not fulfilled in the instant case.
Left with no other alternative, we are constrained to commute the sentence of death passed on the appellant into one for imprisonment for life.
19.
Subject to this modification in the sentence, the appeal fails and is dismissed.

Inder Parkash Gupta v State Of Jammu & Kashmir & Ors.
Supreme Court of India

20 April 2004
Appeal (civil) 3734 of 2002 With CA Nos.3735/2002, 3736/2002, 3737/2002, 3738/2002 and 3739/2002
The Judgment was delivered by : S.
B.
Sinha, J.
INTRODUCTION:
1 These six appeals involving common questions of law and fact were taken up for hearing and are being disposed of by this common judgment.
BACKGROUND FACTS:
2.
Under the Health Ministry of the State of Jammu and Kashmir there are two different departments, medical health and medical education.
The employees working in those departments are borne on separate cadres.
The Respondents 3 to 10 before the High Court were appointed as ad hoc lecturers in medicine in the medical education department by the State of Jammu and Kashmir.
No recommendation of the Jammu and Kashmir Public Service Commission was obtained therefor.
The said ad hoc appointments were set aside by this court in Jammu and Kashmir Public Service Commission Vs.
Dr.Narender Mohan & Ors.
reported in 1994 (2) SCC 630 1991 Indlaw SC 160 wherein the State was directed to refer the vacancies to the Commission and make appointments in terms of the recommendations made by it in that behalf.
Pursuant thereto and in furtherance thereof, an advertisement was issued by the Commission for some posts of Lecturers on or about 8.3.1994 in the Health and Medical education department.
The educational qualification prescribed therefor was "M.D.(Medical/general medical) MCRF, FRCP.
Speciality Board of Internal Medical (USA) or an equivalent qualification in the subject with experience as Registrar/Tutor/Demonstrator/Tutor or Senior Resident for a period of two years in

the discipline of Medicine, in a teaching medical institution recognised by the Medical Council of India.
The notification issued by the Public Service Commission further stipulated that the candidates who possessed any experience in the line, any distinction in sports/games, NCC activities should furnish certificate, along with the application, to that effect.
3 It is not in dispute that the appointment in the posts of Lecturers was governed by a statutory rule called Jammu & Kashmir Medical (Gazetted) Service Recruitment Rules, 1979 (for short, 1979 Rules; Rule 8 whereof reads thus:
"8.
Method of recruitment: While making selections.-
(1) to the posts in the teaching wing of the service, the Commission/ Department Promotion Committee shall have regard to the following, namely,-
(a) Academic qualifications of the candidates;
(b) Teaching experience;
(c) Research experience; and
(d) Previous record of work, if any."
4 The Public Service Commission, however, framed a rule in the year 1980, known as Jammu & Kashmir Public Service Commission (Business & Procedure) Rules, 1980 (for short, 1980 Rules) although there did not exist any provision therefor.
Rule 51 of 1980 Rules is as under:
"Rule 51.
The assessment at an interview shall be based on the following principles:-
A.
Performance of the candidate in the viva voce test ...100 Marks
B.
Academic Merit-
(i) Percentage of marks obtained in the basic (i.e., minimum qualification prescribed for the post ...25 Marks
(ii) Higher qualification than the basic (minimum) prescribed for the post such as Diploma or Degree in the concerned Speciality/Superspeciality/ Subject/Discipline-
(a) Diploma - 2 Marks) subject to
(b) Degree - 5 Marks) a maximum of) 5 marks
C.
Experience acquired by the candidate in the concerned Speciality/ Superspeciality/Subject/ Discipline
(i) exceeding 1 year but not 2 years ...2 marks
(ii)for excess 2 years - for every full year 1 mark subject to a total of 5 marks including those under (i)
D.
Sports/Game : Distinction in sports/games (i.e., representing a University, State or Region in any Sports/Games.
...3 Marks
E.
Distinction in NCC activities (i.e., having held the rank of Junior Under Officer or Senior under officer or having passed the top grade certificate examination of NCC).
...2 Marks
Total A to E...140 Marks"
5.
The Commission interviewed the candidates in terms of Rule 51 aforementioned.
6 Upon taking the vice voce test and considering the materials on records, the public Service Commission made recommendations pursuant to or in furtherance whereof, the Respondent Nos.3 to 10 were appointed by the State.
Writ Petitions before the High Court:
7.
Questioning the validity of the Rule 51 of 1980 and consequently the selection and appointment of the Respondents No.3 to 10, a writ petition was filed by Shri Inder Parkash Gupta, inter alia, contending therein that the Respondents No.3, 6 & 9 were not eligible to be considered for appointment to the said posts as they did not possess requisite experience of two years as Registrar/Tutor.
It was further alleged that the Respondent No.10 at that time was overage.

Further contention of the writ petitioner was that his research work, experience and publications had not been taken into consideration by the Commission.
In particular, his higher qualification of D.M.
had not been given due weightage.
8 It was also urged that keeping in view the decision of this Court in J & K Public Service Commission V.
Dr.
Narender Mohan [1994 (2) SCC 630 1991 Indlaw SC 160] wherein the appointments of Respondent Nos.
3 and 10 as ad hoc Lecturers have been quashed, the purported experience gained by them in the said capacity could not have been taken into consideration by the Commission.
The selection made by the Commission was said to be arbitrary and illegal as the criteria laid down in Rule 51 of 1980 Rules had been applied to assess the merit and suitability of the candidates ignoring Rule 8 of 1979 Rules whereby and wherein eligibility criterion and method of recruitment were laid down.
9 A further contention was raised by the said writ petitioner to the effect that 100 marks earmarked for viva voce test in Rule 51 is unreasonable and excessive.
10 The State of Jammu & Kashmir did not file any counter affidavit but Public Service Commission did.
The private respondents also filed their counter affidavits.
11 The writ petition having regard to the importance of the questions involved was referred to a Full Bench for its decision.
The Full Bench by its judgment dated 30.7.1999 passed in SWP No.211 of 1994, for all intent and purport accepted the major contentions raised on behalf of the writ petitioner/appellant holding:-
"1.
The Commission has the competence and jurisdiction to frame rules for conducting its business such as Rules 1980;
2.
Rule 51 of Rules 1980 should be re-framed by the Commission in accordance with the observations made in the course of this judgment.
3.
The selection of selected candidates made by the Commission is not disturbed subject to the relief granted to the petitioner;
4.
The petitioner shall be treated to have been selected and placed in the select panel above respondents 3 and 9 who in turn shall be the selected candidates in the select panel after respondent no.4 and the petitioner.
The petitioner shall further be entitled to all consequential service benefits."
12 The writ petitioner, Inder Parkash Gupta has filed an appeal thereagainst which has been marked as C.A.No.3734/2002 and the State has filed an appeal which has been marked as 3736/2002.
13 One Dr.
Vinay Rampal who was not a party in the writ petition has filed an appeal which has been marked as C.A.No.3735 of 2002 against the judgment.
14 An order of Jammu & Kashmir High Court passed by a learned single Judge dated 5.5.1997 in a batch of writ petitions which were disposed of following the Full Bench decision of this Court is the subject matter of other three appeals.
A further contention was raised in the said writ petitions to the effect that even assuming Rule 51 of 1980 Rules to be valid, as it prescribed certain marks to be allotted, the same should be allotted to the superspeciality post which the concerned person had been holding and not his experience in any other capacity.
The said appeals are marked as Civil Appeal Nos.3737/2002, 3738/2002 and 3739/2002.
15 It is not in dispute that the Public Service Commission proposed a select list of 16 candidates for appointment.
Dr.
Inder Parkash Gupta's name appeared at Sl.No.13 therein.
The private respondents whose names appeared at Sl.No.3 to 10 of the select list were appointed.
Two posts were kept in abeyance as the matter regarding reservation was pending before the State Government.

16 It, however, stands admitted that during the pendency these appeals the proceedings the State of Jammu & Kashmir issued a notification dated 22.5.2002 whereby and whereunder the appellant herein Inder Parkash Gupta was given promotion in terms of the judgment of the High Court but the same had been applied prospectively and without giving any monetary and seniority benefits to Shri Gupta.
High Court Judgment:
17.
The High Court having regard to the pleadings of the parties and submissions made before it formulated the following questions:-
"1.
Whether the Commission has the competence and jurisdiction to frame the Jammu and Kashmir Public Service Commission (Conduct of business and Procedure) Rules, 1980?
2.
Whether the selection made applying criteria prescribed under Rule 51 of the Rules (supra), has the effect of ignoring Rule 8 of the Jammu & Kashmir Medical (Gazetted) Service Recruitment Rules, 1979, which prescribes the statutory method of recruitment to the posts in teaching wing?
3.
Whether the experience as ad hoc lecturer can be counted as experience gained as Registrar/ Tutor, Demonstrator/Tutor or Senior Resident/Tutor to meet the requirement of statutory eligibility condition to seek consideration for selection and appointment as lecturer?
4.
Whether 100 marks earmarked for viva voce test and 40 marks for record as per the criteria contained in rule 51 (supra), are excessive and capable of turning the merit into demerit in view of the judgments of the Supreme Court and thus Rule 51 needs re-consideration?
5.
Whether the selection of respondents 6 to 10 and particularly of respondents 3,6,9 & 10 is bad being not in accordance with the statutory method of selection and is also the result of arbitrary selection?"
18 As regard question No.1, it was answered in the negative stating that although no such power is expressly conferred upon the Commission but proceeded to hold that the Commission had the competence and jurisdiction to frame such regulatory procedural rules for conduct of its own business and this power is impliedly granted by the enactment.
As regard question No.2, the High Court was of the opinion that Rule 8 of 1979 Rules prevailed over Rule 51 of 1980 Rules holding that no additional qualification can be attached or added to the prescribed eligibility qualification or method of selection by the Commission holding:-
"Thus, the Commission has not properly followed and applied the method of selection relating to the service, while making selection, prescribed under rule 8 of Rules 1979."
19 As regard the eligibility of the Respondents 3, 6 & 9, the High Court noticed that the said respondents did not possess requisite experience observing that the Commission did not specifically explain as to how these Respondents were said to have possessed two years experience as Registrar, Demonstrator or a Senior Resident.
It was held:-
"Respondent No.3 Dr.
Jaipal Singh, is having experience as Registrar only of 22 months whereas Respondent No.9 Dr. Jatinder Singh is having experience of 20 months 27 days which is less than two years."
20 As regard the question No.4, the High Court answered the same in the affirmative relying on various decisions of this Court.
It was held that in Engineering Service there is no such rule providing statutory method of selection as is found in Rule 8 of 1979 Rules holding:-
"Rule 51 providing 100 marks for viva voce against 40 for record, makes a departure and is apparently contrary to the law laid down by the Supreme Court and necessitates re-consideration of Rule 51 for the added reason that there is no consensus of judicial opinion rendered in Abdul Wahid Zargar's case vis-vis the judgments of the Supreme Court that marks for viva voce test could exceed the marks assigned for record/academic merit, where the selection is made on the basis of interview alone.
There is another reason also that Rule 51 has not taken care of Rule 8 of Service Rules 1979, consequence whereof is that the statutory method of selection has not been comprehensively followed and adopted in the rule.
For these reasons Rule 51 is required to be recast."

21 While answering question No.5, the High Court noticed that no marks had been assigned for the research experience, publications or previous record of work, which could not be ignored as there was a statutory obligation upon the Commission to make selection according to the statutory rules governing the service and further noticing that the Respondent Nos.4, 5 & 7 (namely, Masood Tanvir Bhat, Samia Rashid and Parvez Ahmed Shah) could not secure any mark out of the 15 marks as they did not possess the requisite research experience etc.
and were not found entitled thereto but despite the same had been selected as higher marks were allotted to them in the viva voce test.
It was held:-
"It is established from the record that the selection has been based upon 15 marks for record (as 25 marks could not be utilised) and 100 marks for interview.
The claim of the respondent-Commission that 40 marks have been taken into consideration for record while applying Rule 51, is not forthcoming from the record maintained by the Commission.
The Petitioner is admittedly possessed of the higher qualification and record of research experience, publications etc.
in comparison to the other selected candidates.
Respondents 3 and 9 are not having any such record.
The petitioner has been assigned minimum marks in the viva voce which has down-graded him in the merit list of the candidates supplied to the court even though he is D.M.
The Commission has turned the merit of the petitioner into de-merit by giving minimum marks..."
22 Despite such findings, the High Court refused to set aside the entire selection on the premise that the same had been made long ago and one of the respondents had been promoted and proceeded to dispose of the writ petition with the directions as noticed hereinbefore.
Submissions:
23.
Mr.
Ranjit Kumar, learned counsel appearing on behalf of the appellant would submit that Rule 51 of 1980 Rules framed by the Public Service Commission is not statutory in nature.
He would urge that keeping in view the advertisement issued, the Commission was bound to scrupulously comply with the requirements as regard qualification etc.
and should have strictly applied Rule 8 of 1979 Rules which is admittedly statutory in nature.
The Learned Counsel would further contend that as the Commission had no jurisdiction to frame such rules, the same should have been declared ultra vires by the High Court.
Mr.
Ranjit Kumar would urge that Section 133 of the Jammu and Kashmir Constitution which is in pari materia with Article 320 of Constitution of India clearly provides that only in certain situations the Governor can frame regulations as a result whereof the necessity to consult the Commission may be done away with.
The Rules framed by the Public Service Commission does not also satisfy the test laid down in the proviso appended to Section 133 of the State Constitution or for that matter Article 320 of the Constitution of India and in any event the same having not been laid before the Legislature as is mandatorily required under sub-section (4) thereof, the selection held pursuant to or in furtherance of Rule 51 of 1980 Rules must be held to be wholly illegal and without jurisdiction.
24 The Learned Counsel Kumar would argue that having regard to the findings arrived at by the High Court, the writ petition could not have been disposed of in the manner as was sought to be done inasmuch as some of the private respondents admittedly did not have the requisite qualification or experience to be appointed.
Merit of the appellant, it was contended, having admittedly been turned into demerit as was found by the High Court, relief by way of solace given to the appellant by placing him respondent No.6 & 9 must be held to be insufficient and he, in any event, deserved to be placed above some other respondents in view of the fact that he had not been assigned 5 marks for higher qualification.
In any view of the matter, awarding of 100 marks in viva voce examination out of the total 115 marks (as no marks have been awarded for academic merit) was bad in law.
25 The learned counsel would further submit that as some of the respondents did not have two years' experience and as admittedly Respondents No.3 to 5 did not have any higher qualification, there was no reason as to why the entire selection was not set aside.
Lapse of time in selection of the candidates may not itself be sufficient ground to uphold his selection, the learned counsel would urge, having regard to the seniority of the petitioner and further having regard to the fact that all the private parties being in the service of the State, they could only be reverted back to their parent departments and would not be out of job.

26 Mr.
Anis Suhrawardy, learned counsel appearing on behalf of the State of Jammu and Kashmir, on the other hand, would submit that keeping in view the fact that appellant Inder Parkash Gupta had already been promoted and furthermore in view of the subsequent event this Court should not interfere in the matter.
27 No submission was made on behalf of any other parties to the appeals.
Analysis:
28.
Section 133 of the Jammu & Kashmir Medical (Gazetted) Service Recruitment Rules, 1979 admittedly were issued under Section 124 of the Jammu and Kashmir Constitution which is in pari materia with Article 309 of the Constitution of India.
The said rules are statutory in nature.
Public Service Commission is a body created under the Constitution.
Each State constitutes its own Public Service Commission to meet the Constitutional requirement for the purpose of discharging its duties under the Constitution.
Appointment to service in a State must be in consonance with the Constitutional provisions and in conformity with the autonomy and freedom of executive action.
Section 133 of the Constitution imposes duty upon the State to conduct examination for appointment to the services of the State.
The Public Service Commission is also required to be consulted on the matters enumerated under Section 133.
While going through the selection process the Commission, however, must scrupulously follow the statutory rules operating in the field.
It may be that for certain purposes, for example, for the purpose of short-listing, it can lay down its own procedure.
The Commission, however, must lay down the procedure strictly in consonance with the statutory rules.
It cannot take any action which perse would be violative of the statutory rules or makes the same inoperative for all intent and purport.
Even for the purpose of short-listing, the Commission cannot fix any kind of cut off marks.
[See State of Punjab & Ors.
vs.
Manjit Singh and Ors.
[2003 (11) SCC 559 2003 Indlaw SC 766].
29 Rule 8 mandates that while selecting the teaching wing of the service, the Commission must have regard to the academic qualification of the candidate, teaching experience, research experience and previous record of work, if any.
30 Rule 8 does not speak of any viva voce test.
It, however, appears that so far as academic qualification is concerned, the same had been laid in the advertisement and the requirement of M.D.
(Medical/General Medical), MCRF, FRCP, Speciality Board of Internal Medicine (USA) or an equivalent qualification of the subject.
So far as the teaching experience is concerned, two years experience as Registrar/Tutor/ Demonstrator/Tutor or a Senior Resident in the discipline of medicine in a recognised teaching medical institution recognised by the Medical Council of India was specified.
31 So far as the teaching experience is concerned, the Commission awarded marks to those who had even less than two years experience.
One mark was to be awarded for every full year of experience subject to a total of 5 marks.
Sports/Games distinction in NCC activities had also been taken into consideration which were not the criterion prescribed under the 1979 Rules.
There is nothing to show that any mark was awarded in relation to the previous record of work, if any.
32 In its judgment, the High Court did notice that in awarding marks for minimum qualification prescribed for the post, the Commission did not award any mark at all to some respondents.
It, therefore, for all intent and purport had considered the candidatures of the candidates only on the basis of 110 marks.
If the marks awarded for sports/games and NCC activities are excluded as they are beyond the purview of Rule 8; and as it fixed 100 marks for viva voce test, a clear case of breach of the Statutory Rules had been made out.

While the appellant had been given minimum marks in the viva voce test, the other respondents who even did not fulfill the requisite criterion were awarded higher marks.
33 The High Court, in our opinion, was correct in holding that Rule 51 providing for 100 marks for viva voce test against 4o for other criteria is contrary to law laid down by this Court.
[See Union of India and Anr.
Vs.
N.Chandrasekharan & Ors.
[AIR 1998 SCC 795 1998 Indlaw SC 1942], Indian Airlines Corporation Vs.
Capt.
K.C.
Shukla & Ors.
[1993 (1) SCC 17 1992 Indlaw SC 636], Anzar Ahmad Vs.
State of Bihar and Ors.
[1994 (1) SCC 150 1993 Indlaw SC 1366] and Satpal and Ors.
Vs.
State of Haryana and Ors.]
34 It is true that for allocation of marks for viva voce test, no hard and fast rule of universal application which would meet the requirements of all cases can be laid down.
However, when allocation of such mark is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India.
[See Jasvinder Singh & Ors.
Vs.
State of J & K and Ors.[2003 (2) SCC 132 2002 Indlaw SC 1527], Vijay Syal and Anr.
Vs.
State of Punjab and Ors.
[2003 (9) SCC 4012003 Indlaw SC 484].
35 It is also trite that when there is requirement of consultation, in absence of any statutory procedure, the competent authority may follow its own procedure subject to the conditions that the same is not hit by Article 14 of the Constitution of India.
[See Chairman & MD, BPL Ltd.
Vs.
S.P.Gururaja and Ors.
[2003 (8) SCC 567 2003 Indlaw SC 860]
36 We would proceed on the assumption that the Commission was entitled to not only ask the candidates to appear before it for the purpose of verification of records, certificates of the candidates and other documents as regards qualification, experience etc.
but could also take viva voce test.
But marks allotted therefor should indisputably be within a reasonable limit.
Having regard to Rule 8 of 1979 Rules higher marks for viva voce test could not have been allotted as has rightly been observed by the High Court.
The Rules must, therefore, be suitably recast.
37 The High Court assigned sufficient and cogent reasons in support of its conclusions which have been noticed by us hereinbefore.
We agree with the said reasonings.
38 The only question which survives for consideration is what would be the meaning of the 'post' contained in Rule 51 (b)?
39.
In our opinion, a higher qualification than the basic (minimum) prescribed for the post would evidently mean the department of superspeciality for which the appointment was made and not any other superspeciality.
Conclusions:
40 Having held so, the question which remains to be determined is as to what relief should be granted to appellant herein.
41 While issuing the Notification dated 22.5.2002 the State evidently did not fully comply with the judgment of the High Court.
The appellant in view of the judgment of the High Court was not only entitled to be placed in the select panel above Respondent Nos.3 and 9 but also should have been given all consequential service benefits which would include monetary benefits, seniority etc.

42 In ordinary course we would have allowed the appeal but we cannot lose sight of the fact that the selections had been made in the year 1994.
A valuable period of 10 years has elapsed.
The private respondents have been working in their posts for the last 10 years.
It is trite that with a view to do complete justice between the parties, this Court in a given case may not exercise its jurisdiction under Article 136 of the Constitution of India.
[See Chandra Singh and Ors.
Vs.
State of Rajasthan and Anr.
[2003 (6) SCC 545 2003 Indlaw SC 541], M.P.Vidyut Karamchari Sangh Vs.
M.P.
Electricity Board [JT 2004 (3) SC 423 2004 Indlaw SC 198] and State of Punjab & Ors.
Vs.
Savinderjit Kaur
43 We are, therefore, of the opinion that the interest of justice would be subserved if the State is directed to fully comply with the directions of the High Court by giving all benefits to the appellant herein including monetary benefits and seniority by placing him in the select list above Respondents 3 and 9.
We further direct that if any respondent has been promoted to the higher post in the meantime the same would be subject to our aforementioned direction.
Necessary order in this behalf must be passed by the State.
44 These appeals are disposed of accordingly.
The cost of the appellant herein shall be borne by the State of Jammu and Kashmir quantified at 10,000; we hope and trust that the State of Jammu and Kashmir as also Jammu and Kashmir Public Service Commission shall make all endeavours to see confidence in the Statutory Bodies restored, and they would henceforth comply with legal requirements strictly and scrupulously.
Appeals disposed of

Anil Sharma & Ors.
v State Of Jharkhand
Supreme Court of India

30 April 2004
Appeal (crl.) 622-624 of 2003 With Crl.A.
No.
798 of 2003
The Judgment was delivered by : Arijit Pasayat, J.
1 Six persons faced trial for alleged commission of offences punishable under Sections 147, 148, 149, 326, 307 read with Section 34, 452 read with Section 34 and 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC').
Appellant-Anil Sharma was sentenced to death.
The others were sentenced to undergo imprisonment for life under Section 302 read with Section 34 IPC.
Each was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- each with default stipulation for the offence punishable under Section 307 read with Section 34 IPC.
The prosecution version in a nutshell is as follows:
2 Hare Ram Singh @ Manoj Singh (PW-6) who was the cousin of Sudhir Singh @ Bhoma (hereinafter referred to as the 'deceased') lodged fardbayan.
He claimed to be an injured in the occurrence in question which took place on 22.1.1999.
The occurrence is said to have taken place at 6.45 A.M.
on that day in Ward No.
2 of Jail Hospital in Birsa Munda Central Jail, Ranchi and on the basis of fardbayan, Lower Bazar P.S.
Case No.
12/99 was registered at 11.00 A.M.
on that day and formal F.I.R.
(Ext.
8/1) was drawn up.
The said Fardbayan (Ext.8) along with the formal F.I.R.

(Ext.8/1) was received in the court of C.J.M., Ranchi on 23.01.1999.
3 Recital in the fardbayan was that PW-6 had gone to Ward No.
2 of the Jail Hospital at 6.45 A.M.
on 22.01.1999 as usual to his cousin deceased Sudhir Singh @ Bhoma from his Ward No.
6 of the Jail and he used to sit with Sudhir for the whole day and he also used to keep his clothes etc.
there.
Soon thereafter, when he was talking with deceased Sudhir Singh, accused- appellants Anil Sharma, Sushil Srivastava, Niranjan Kumar Singh, Md.
Hasim @ Madhu Mian all armed with Chhura, Bablu Srivastava and Gopal Das armed with belt and iron rod respectively along with 10 or 12 other persons came near deceased Sudhir Singh and appellant Anil Sharma caught hold of his collar and at this stage deceased asked as to "what has happened, brother" and in the meantime appellant Anil Sharma assaulted him by Chhura and appellant Sushil Srivastava, Niranjan Kumar Singh and Md.
Hasim @ Madhu Mian made assault on him by Chhura with which they were armed and appellant Bablu Srivastava and Gopal Das also assaulted him by belt and iron rod respectively, besides 10 or 12 other persons aforesaid who had surrounded and assaulted him.
The informant (PW-6) requested appellant Anil Sharma to let off and leave deceased Sudhir Singh and also enquired as to what is the matter, but no avail and the deceased fell on the ground as a result of injuries sustained.
Appellant Anil Sharma thereafter mounted attack on the informant and inflicted a blow on his neck by Chhura and appellant Sushil Srivastava and Niranjan Kumar Singh assaulted him by Chhura causing bleeding injury on his head and left hand respectively.
The informant (PW-6) also fell down being injured and other persons aforesaid also assaulted him by kicks and fists.
There was then the ringing of alarm bell.
After few minutes the Jail constables came there blowing whistles and during that period there was a great stampede and deceased Sudhir Singh in an unconscious state along with the injured informant was shifted to R.M.C.H.
Ranchi for treatment where the informant was undergoing treatment.
But Sudhir Singh died on his way to the Hospital.
4 The trial Court found the accused persons guilty on consideration of the evidence led by the prosecution by examining 18 witnesses.
Twelve witnesses were examined on behalf of the accused persons who pleaded innocence and false implication.
They took a specific stand that they were in their wards inside the jail and, therefore, the question of committing any murder was totally improbable.
There was no report made by Hare Ram Singh (PW-6) as claimed.
The Trial Court recorded conviction and awarded sentences as afore-noted.
For its conclusions Trial Court primarily relied on evidence of PWs 5 and 6, who claimed to be eye witnesses.
5 In view of the death sentence imposed on accused Anil Sharma a reference was made to the Jharkhand High Court under Section 366 of the Code of Criminal Procedure, 1973(in short the 'Code').
The High Court upheld the conviction as recorded by the trial Court but altered the sentence of death imposed on the accused appellant-Anil Sharma to one of life imprisonment.
In substance, except the modification of sentence so far as accused appellant Anil Sharma is concerned, the appeal was dismissed.
Evidence of witnesses was analysed in view of the stand that the so-called eye witnesses version is clearly not capable of acceptance.
6 In support of the appeals, it has been submitted that there was delay in recording the FIR.
There was non-examination of many vital witnesses.
Evidence of the defence witnesses was not carefully analysed.
PW-6 later on made a statement under Section 164 of the Code that his evidence was recorded under pressure.
There were exaggerations in respect of what had been indicated in the Fardbayan as recorded.
Non production of the hospital register and non examination of the Warden and Head Warden, cast serious doubts on the veracity of the prosecution version and the Courts below should not have brushed aside those infirmities lightly.

The production of the register and the examination of the warden and head warden would have established that place of occurrence as indicated is highly improbable.
The citus has not been proved.
No blood stains have been found or seized.
PW-6 is not a resident of the jail.
He claimed to be an inmate of Ward No.6 and though he stated that he was inside the camp of the jail, nothing material in that regard has been established.
As soon as PW-6 came out of the jail in May 2001, he filed an affidavit stating as to how the statements made by him during trial were wrong.
It has been erroneously held that no prejudice was caused by not getting him re-examined.
Different yardsticks have been adopted for the prosecution and the defence witnesses.
PW-5's presence at the spot of occurrence as claimed is highly doubtful.
The canteen manager himself has improbabilised the presence of the witnesses.
Even if it is accepted that PW-5 was present his evidence does not guarantee truthfulness.
There was no corroborative material.
After having discarded the evidence of PWs 1, 2 and 4 there was no justification to act on the evidence of PWs 5 and 6.
The FIR has been despatched after considerable delay and there has been delayed examination of PW-5.
So far as PW-5 is concerned, he was examined under Section 164 of the Code.
He has not named Sushil Srivastava in the statement recorded before the Magistrate though in the cross examination he accepted that what was stated before the Magistrate was correct.
The assault part as indicated by PW-6 in the so-called FIR was given a go by in Court.
Though in the FIR it was stated that the assault was made by respective weapons the Court has come to a presumptive conclusion that no physical assault was made but by holding the head the killing by accused Anil Sharma was facilitated.
7 Section 34 IPC has been wrongly applied.
There was no specific role attributed to any of the accused persons except the accused Anil Sharma.
The inconsistency between the evidence of PWs 5 and 6 probabilises the defence version.
Even if it is accepted that the accused persons except accused Anil Sharma were present if there was no participation the conviction as made is not maintainable.
8 In response, learned counsel for the State submitted that in addition to the evidence of the aforesaid witnesses, the evidence of other PWs more particularly, PW-12 shows that the occurrence took place inside the jail.
The concurrent views of the trial Court and the High Court should not be interfered with.
The evidence of PWs 5 and 6 shows that they are reliable and believable.
Merely because some documents have not been produced that does not in any way dilute the prosecution version or render the evidence of the eye-witnesses doubtful.
No prejudice has been caused to the accused in any manner by not accepting the prevaricating stand of PW-6.
9 The evidence of PWs 5 and 6 has been attacked by the accused-appellants on the ground that their presence at the alleged spot of occurrence is not believable.
Non-production of certain documents and non-examination of some of the official witnesses were pressed into service.
It is true that PW-6 made an application for getting examined afresh and the same was turned down.
Again the defence filed a similar application.
The Court considered the same and found it to be without substance.
PW-6 was examined in Court on 22.1.2000, 25.1.2000 and 27.1.2000.
He made an application before Trial Court on 17.7.2001 about alleged pressure on him to depose falsely.
A bare reading of the same shows that the same is extremely vague and bereft of substance.
Though it was stated pressure was put on him and he was subjected to third degree treatment, he has not specifically named anybody and made vague mention about "some police officials".
10 Further, the accused at different stages prayed to recall PWs 5 and 6 which the Trial Court rejected.
The orders had attained finality.
The petition of PW-6 was considered in detail by the Trial Court and was rejected by order dated 8.8.2001.

It appears that accused persons had filed an application on 3.7.2001 with a prayer to examine PW-6.
Same was also rejected by order dated 5.9.2001.
Both the orders dated 8.8.2001 and 5.9.2001 attained finality and also do not suffer from any infirmity.
11 So far as one of the points which was highlighted was that no cogent reasons have been given to discard the prayer made by PW-6 for his fresh examination.
This aspect was specifically urged before the High Court and has been considered.
It was held that the plea appeared to be after thought and there was no cogent reason for accepting the prayer.
It is true that in a given case the accused can make an application for adducing additional evidence to substantiate his claim of innocence.
Whenever any such application is filed before the Court, acceptability of the prayer in question is to be objectively considered.
The High Court has elaborately dealt with this issue and concluded as to how the prayer was rightly held to be not tenable.
12 It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance.
If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it.
It is not that the power is to be exercised in a routine or cavalier manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice.
The Court ultimately can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.
13 Non-production of documents which the appellants claim would have strengthened the claim of absence of PW-5 cannot in any way dilute the evidentiary value of the oral testimony.
Even though the witnesses have been cross-examined at length, no material inconsistency has been elicited to discard the evidence of PWs 5 and 6.
One of the pleas which was pressed into service is alleged relationship of PWs 5 and 6 with deceased and their criminal antecedents.
As rightly noticed by the High Court on the aforesaid basis the evidence which is found truthful and credible otherwise should not be discarded.
The Courts have to keep in view that in such matters deep scrutiny is necessary.
After having kept these principles in view the Trial Court and the High Court have found that the evidence when carefully analysed on the whole was credible.
After deep scrutiny the Courts below have found that there is ring of truth in the evidence of PWs 5 and 6.
14 So far as the delay in despatch of the FIR is concerned, it was noted by the High Court that the informant's Fardbayan was recorded at 10.00 a.m.
on 22.1.1999.
The inquest report was prepared on 22.1.1999 at 1925 hours.
The inquest report was prepared by Executive Magistrate and the case number is also mentioned.
That being so, plea that the Fardbayan being ante timed has not been established.
Post mortem was conducted on 22.1.1999 at 2200 hours.
Above being the position, there can be no grain of doubt that the Fardbayan was recorded on the date of occurrence and filed at the indicated time and the case has been instituted on the basis of the said Fardbayan.
Finding recorded by the High Court that Fardbayan was not ante timed is amply supported by evidence on record and no adverse view as claimed by the accused-appellants can be taken.
15 So far as the question as to whether equal treatment being given to the evidence of prosecution and defence witnesses is concerned, there can be no quarrel with the proposition in law.

In the present case it is not that the Courts below glossed over the evidence of defence witnesses.
In fact detailed analysis has been made to conclude as to why no importance can be attached to their evidence.
After carefully analysing the prosecution evidence and that tendered by the accused, the trial Court recorded the conviction.
The High Court in appeal made further detailed analysis of the evidence and came to hold that there was no infirmity in the conclusions of the trial Court.
The conclusions are not shown to suffer from any infirmity whatsoever to warrant interference.
16 Another point stressed by learned counsel for appellant relates to applicability of Section 34 IPC.
17 Section 34 has been enacted on the principle of joint liability in the doing of a criminal act.
The Section is only a rule of evidence and does not create a substantive offence.
The distinctive feature of the Section is the element of participation in action.
The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime.
Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.
In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime.
The true contents of the Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.
As observed in Ashok Kumar v.
State of Punjab (AIR 1977 SC 109), 1976 Indlaw SC 468 the existence of a common intention amongst the participants in a crime is the essential element for application of this Section.
It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar.
The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.
18 As it originally stood the Section 34 was in the following terms :
"When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone."
19 In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of Section 34 clear.
This position was noted in Mahbub Shah v.
Emperor (AIR 1945 Privy Council 118).
1945 Indlaw PC 14
20 The Section does not say "the common intention of all", nor does it say "and intention common to all".
Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention.
As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone.
The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them.
As was observed in Ch.
Pulla Reddy and Ors.
v.
State of Andhra Pradesh (AIR 1993 SC 1899), 1993 Indlaw SC 1030 Section 34 is applicable even if no injury has been caused by the particular accused himself.
For applying Section 34 it is not necessary to show some overt act on the part of the accused.

21 The legality of conviction by applying Section 34 IPC in the absence of such charge was examined in several cases.
In Willie (William) Slaney v.
State of Madhya Pradesh (AIR 1956 SC 116) 1955 Indlaw SC 80 it was held as follows :
"Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.
In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out.
In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant".
22 The above position was re-iterated in Dhanna etc.
v.
State of Madhya Pradesh (AIR 1996 SC 2478).
1996 Indlaw SC 2240
23 Section 34 IPC has clear application to the facts of the case on all fours, and seems to have been rightly and properly applied also.
24 Looked at from any angle, judgment of the High Court does not suffer from any infirmity to warrant interference.
The appeals fail and are dismissed.
Appeal dismissed

State Government of Nct of Delhi v Sunil and Another
Supreme Court of India

29 November 2000
Appeal (Crl.) 1119-1120 of 1998
The Judgment was delivered by : K.
T.
Thomas, J.
1 Two sex maniacs libidinously ravaged a tiny female tot like wild beasts and finished her off.
Police after investigation found that the two respondents herein are those two fiends.
A Sessions Court upheld the said police version as correct.
He sentenced one of them to death penalty and the other to life imprisonment, but a Division Bench of the High Court of Delhi declined to believe the police version as true and consequently the two respondents were acquitted.
This appeal by the State is by special leave.
2 The little girl was Anuradha and she was aged only four.
She was fondly taken away from her mothers house on the forenoon of 5.9.1992.
Her dead body was taken up by her mother on the same night from the house of first accused Sunil.
3.
When the doctor conducted autopsy on the dead body he described the dimensions of the imprints left in the infantile body reflecting a horrible sexual molestation inflicted on the child.
Next day the police arrested the two accused (A1-Sunil and A2-Ramesh) and after completing the investigation charge-sheeted both of them for offences under Sections 364, 376, 377 and 302 read with Section 34 of the Indian Penal Code.
After the trial the sessions court convicted both of them under all the aforesaid counts and sentenced A2 Ramesh to death and A1 Sunil to imprisonment for life on the charge of murder and awarded lesser sentences for the remaining counts.
4 Details of the prosecution case are the following: Anuradhas mother Sharda (PW10) was known to A1 Sunil and his mother (Giano Devi).
Sharda had stayed in the house of Giano Devi for a few days and their acquaintance became closer.
Sharda was working in a tube-light manufacturing factory during those days.
5.

As she needed a place to live in Giano Devi arranged a small hutment (Jhuggi) with the help of another lady (PW8 Tara) who was residing close-by.
On the occurrence day Sharda went to the factory for work leaving her child Anuradha in the custody of PW8-Tara.
At about 11 A.M.
Sunil visited them and expressed to PW8-Tara that he would take the child and her clothes as well as some domestic utensils to PW10.
Though PW8 suggested that this should be done only if Sharda permits, A1-Sunil took the child and her clothes and the utensils from his house during a short time when PW8-Tara had gone out to fetch milk.
When she came home in the night she learnt from PW8-Tara that her child was taken away by Sunil.
So she went to Sunils house.
6.
It was about 9.00 P.M.
then.
To her dismay she found her little child lying completely nude next to A2-Ramesh, on the second floor of the house, who was then deep in his sleep.
Then Sunil, who was found in an inebriated mood, hurled a remark that I have dispatched Anuradha to heaven.
She felt concerned as to what would have happened to the child.
It was then she realised that her child was breathless.
PW10- Sharda then took the child to the hospital, but the doctor who examined her pronounced her dead.
7 PW1 - Dr.
Basant Lal conducted the autopsy on the dead body of the child at 12.00 noon on 7.9.1992.
In his opinion the child would have died about 36 to 48 hours prior to the autopsy.
He gave full details in his post-mortem report about the features noticed by him on the dead body.
The corpse was full of abrasions and contusions.
The prominent among them were counted by the doctor as 25 in number and he described the situs and dimensions of all of them.
Among them, oval fashioned multiple abrasions on the left cheek appeared to him as marks of biting.
Both the upper and lower lips of the child were bruised violently.
Marks of violent handling of both the thighs, lower abdomen and pubic region are also described by the doctor.
8.
The vaginal orifice is described by the doctor in his report as follows:
9.
Labia majora and minora swollen and reddish blue in colour.
Vaginal orifice dilated and blood is coming out of it.
Right labia minora showing tears 1.6 x 0.1 cm.
and on left side labia minora showing tear in an area of 1.5 x 0.2 cm in vertical plane.
Labia majora showing contusion on both sides in an area of 3 x 2 cm each.
About hymen the doctor described thus:
10.
Hymen showing tear at 5 and 6 Oclock position which was going upto the vaginal wall and triangular in shape in an area of 1.5 x 1 x 1 cm.
There were tears on the sides and back of urethra opening upto hymen in an area of 1.4 x 1.2 cm. in triangular fashion.
About the anus the doctor described as follows:
11.
Dilated and blood was coming out of it.
The diameter was 1.5 cm.
The area around the orifice was showing swelling with reddish contusion in an area of 2 cm.
12 DR.
Basant Lal (PW-1) further noted that the vaginal orifice was so badly mutilated that one middle finger could be easily admitted into it.
Even the tongue was not spared in that violence as the doctor found its position like this:

13.
The tongue was showing abrasion 0.5 x 0.5 cm.
on its front right outer aspect with contusion around.
Reddish bluish in colour Bite mark.
14 During examination of the head of the body PW1 noticed thick layered bluish-reddish effusion of blood on the right temporal parietal region.
Though there was no fracture of the skull the duramater on the left side looked bluish, and there was thick subdural haemotoma in an area of 20x10x0.8 cm.
and one fist full clotted blood, and patchy subarachnoid haemorrage all over the brain which were also noticed by the doctor.
15 From the woeful and eerie features described by the doctor no court could possibly escape from the conclusion that the little child was violently molested, ravished, raped and sodomised besides penile penetration having been made into her mouth.
The remnants of extensive mangling of the tender body of the child would reflect the possibility of more than one rapist subjecting the child to such beasty ravishment.
16 Though the Sessions Court acted on the above medical report as reliable it is unfortunate that the Division Bench of the High Court expressed misgivings about it.
The only basis for entertaining doubt about the correctness of the findings recorded by PW1 Dr.
Basant Lal was that when the deceased was first examined by one Dr.
Gajrat Singh at 11.40 P.M.
on 5.9.1992 he noted only multiple bruises all over the body in Ext.PW11/1 MLC (Medico Legal Certificate).
17.
It was the said doctor who pronounced the girl dead.
He made the above entry in the MLC.
It must be noted that Dr.
Gajrat Singh was not examined as a witness in the court.
Apparently that doctor was not disposed to conduct a detailed examination on the dead body either because he was pretty sure that the body would be subjected to a detailed autopsy or because the doctor himself was in a great hurry.
Whatever be the reason, no court could afford to ignore the report of the doctor who conducted the autopsy with meticulous precision about all the features noticed, merely on the strength of what another doctor had scribbled in the MLC at the initial stage.
18 Learned Judges of the High Court should have noticed that the evidence of PW1 Dr.
Basant Lal was not even controverted by the defence as no question was put to him in cross-examination by the defence counsel.
His testimony ought to have been given due probative value particularly when nothing was shown to doubt the evidence of that medical practitioner.
Learned counsel for the respondents was not able to pick out even a single answer from his evidence which could at least throw a modicum of doubt about the correctness of his evidence.
Hence we have to proceed on the premise that whatever PW1 Dr.
Basant Lal found on the dead body were the actual position noticed by him during autopsy.
The Sessions Judge has rightly accepted that evidence and no exception can be taken thereto.
Thus, it is beyond doubt that the little girl was raped and sodomised and that death was due to the injuries sustained in that exercise.
19 When the above premise is so certain the task of the court is narrowed down to the limited area i.e., were the two respondents the rapists or is there any reasonable scope to think that somebody else would have done those acts.
20 The trial court came to the conclusion that the culprits are the two respondents and none else.
The Sessions Judge found that prosecution has established the following circumstances:
(1) Sunil (1st accused) had taken the child from the house of PW8 Tara by about noon on 5.9.1992.
(2) The child was recovered from the house of A1 Sunil and she was then found breathless.
(3) That child was lying naked by the side of A2 Ramesh who was in deep sleep when the mother of the child lifted her up.
(4) A1 Sunil, who was then in inebriated condition, blurted out that Anuradha was sent to heaven.
(5) The blood-stained nicker of Anuradha was later recovered from the house of A2 Ramesh on the basis of a statement given to the police.

21 The trial court concluded on the strength of those circumstances that both the respondents are liable to be convicted for murder, rape and unnatural offence, while A1 Sunil is additionally liable for kidnapping the child for murder.
Accordingly the trial court convicted both the respondents and sentenced them as aforesaid.
22 Regarding the first circumstance that it was A1 Sunil who took the child from the care of PW8 Tara, prosecution has examined PW8 Tara and her neighbour PW12 - Dariba besides the evidence of PW10 Sharda.
PW8 Tara said that she knew both the accused since they used to stay in the house of Sharda for some days earlier.
According to PW8 Tara, the child and her mother had stayed in her Jhuggi for a few days and on the date of occurrence A1 Sunil visited the Jhuggi at 11 A.M.
and requested her to let the child Anuradha be taken with him along with some utensils and clothes.
23 The suggestion was that he had to take the child to the factory where Sharda was working.
It appears that PW8 Tara was reluctant to allow him to take the child presumably because she did not know whether Sharda herself wanted the child then.
But during the short interval when she went out of the house for purchasing milk A1 Sunil had taken away the child.
As she did not know where Sharda was working and as the child was taken away by A1 Sunil who was familiar to Sharda no immediate step was taken by PW8 Tara and she chose to wait till Sharda returned.
24 The above evidence of PW8 Tara is to be appreciated in the light of what PW10 Sharda herself had said.
PW10 deposed that she was quite familiar with A1 Sunil and she and the child had stayed at Sunils house for a few days sometime back.
PW10 has stated that on the date of occurrence when she returned to Taras house she was told that Sunil had taken the child away by saying that PW10 would take the child back in the evening.
She further deposed that she went to A1s house at 9.30 P.M.
along with PW8 Tara and PW12 Dariba and collected the child from that house and the child was then lying next to A2 Ramesh who too was then sleeping.
As the child was found breathless and in view of the comment blurted out by A1 Sunil, she rushed the child to the hospital.
25 The Division Bench of the High Court expressed difficulty to believe the said version of the prosecution i.e.
A1 Sunil had taken away the child from the Jhuggi of PW8 Tara.
The reasons of the High Court for it are:
(1) There was no need for A1 Sunil to take the clothes and utensils even if he wanted to take the child to its mother Sharda.
(2) There is nothing to indicate that PW10 Sharda made any enquiry about the clothes and utensils.
(3) PW8 Tara could not explain as to what she understood when A1 Sunil wanted to take away the child with him.
(4) Nobody from the neighbourhood of Tara was examined to corroborate her evidence.
(5) The testimony of PW8 Tara was contradictory with the evidence of PW10 Sharda.
26 We perused the evidence of PW8-Tara, PW10-Sharda and their neighbour PW12-Dariba.
True, there are discrepancies between the evidence of those three witnesses, but we have not come across any discrepancy worth quoting for consideration as they are immaterial.
Such discrepancies are common features in the testimony of any two witnesses.
27.
It was too much of a strain for the judicial mind to ferret out some minor discrepancies as between the testimony of those three witnesses.
Even the other reasons advanced by the Division Bench of the High Court are ex facie puerile and evidence given on oath by the bereaved mother PW10-Sharda and her other associate PW8-Tara, cannot be jettisoned on such insignificant reasons.
In our view the High Court ought not to have sidelined the evidence of those three witnesses.
28 The circumstance relating to the recovery of the bloodstained nicker is a formidable one.
But the Division Bench did not attach any importance to it solely on the ground that the seizure memo was not attested by any independent witness.
Here the circumstance is that when A2- Ramesh was interrogated by PW17-Investigating Officer he said: Her underwear is in my house and I can point out the place where it is.

Pursuant to the said information the police recovered the nicker from the house of A2-Ramesh.
29.
It was identified by PW10-Sharda as her childs nicker.
When the nicker was subjected to chemical test it was revealed that the under-cloth of the child was stained with blood of O group (same is the blood group of Anuradha).
The said statement of A2-Ramesh would fall within the purview of Section 27 of the Evidence Act as the fact discovered was that the nicker of the deceased was in the house of A2- Ramesh.
The presumption which can be drawn therefrom is that it was A2 who removed the nicker and kept it in his house.
A2 had no explanation to be offered about that circumstance.
30 Recovery of the nicker is evidenced by the seizure memo Ext.PW-10/G.
It was signed by PW10-Sharda besides its author PW17-Investigating Officer.
The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo but it was signed only by highly interested persons.
The observation of the Division Bench in that regard is extracted below:
31 It need hardly be said that in order to lend assurance that the investigation has been proceeding in fair and honest manner, it would be necessary for the Investigating Officer to take independent witnesses to the discovery under Section 27 of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery, at least, not free from doubt.
32 In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written.
The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code.
Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses.
33 It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept.
He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling.
It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter.
34 The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto.
But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.
35 This Court has indicated the difference between the two processes in the Transport Commissioner, Andhra Pradesh, Hyderabad & anr.
vs.
S.
Sardar Ali & ors.
(1983 SC 1225 1983 Indlaw SC 130).
Following observations of Chinnappa Reddy, J.
can be used to support the said legal proposition: Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures.
In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-section (4) and (5) of section 100 of the Criminal Procedure Code.
In the case of a seizure [under the Motor Vehicles Act], there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself.
36 Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses.

Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery.
37.
But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable.
The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.
38 We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.
We are aware that such a notion was lavishly entertained during British period and policemen also knew about it.
Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police.
39.
At any rate, the court cannot start with the presumption that the police records are untrustworthy.
As a proposition of law the presumption should be the other way around.
That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature.
Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable.
40.
It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case.
If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery.
But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.
41 In this case, the mere absence of independent witness when PW17 recorded the statement of A2-Ramesh and the nicker was recovered pursuant to the said statement, is not a sufficient ground to discard the evidence under Section 27 of the Evidence Act.
42 Thus on consideration of the entire evidence in this case we have no doubt that the trial court had come to the correct conclusion that the two respondents were the rapists who subjected Anuradha to such savagery ravishment.
The Division Bench of the High Court has grossly erred in interfering with such a correct conclusion made by the trial court as the reasons adopted by the High Court for such interference are very tenuous.
Nonetheless it is difficult to enter upon a finding that the respondents are equally guilty of murder of Anuradha.
43.
In the opinion of PW1 doctor the child died due to intracranial damage consequent upon surface force impact to the head.
The said opinion was made with reference to the subdural haemotoma which resulted in subarachnoid haemorrage.
Such a consequence happened during the course of the violent ravishment committed by either both or by one of the rapists without possibly having any intention or even knowledge that their action would produce any such injury.
Even so, the rapists cannot disclaim knowledge that the acts done by them on a little infant of such a tender age were likely to cause its death.
Hence they cannot escape conviction from the offence of culpable homicide not amounting to murder.
44 In the result, we set aside the impugned judgment of the High Court.
We restore the conviction passed by the trial court under Section 376 and 377 read with Section 34 of the IPC.
The trial court awarded the maximum sentence to the respondents under the said counts i.e.

imprisonment for life.
The fact situation in this case does not justify any reduction of that sentence.
We also convict the respondents under Section 304 Part II, read with Section 34 of the IPC though it is unnecessary to award any sentence thereunder in view of the sentence of imprisonment for life awarded to the respondents under the other two counts.
This appeal is disposed of accordingly.
Appeal Disposed of

Padala Veera Reddy v State of Andhra Pradesh and Others
Supreme Court of India

26 October 1989
Cr.A.
No.
420 of 1989
The Judgment was delivered by: RATNAVEL PANDIAN, J.
1 This criminal appeal is directed against the judgment of the High Court to Andhra Pradesh, rendered in Criminal Appeal No.
544 of 1987 partly allowing the appeal by setting aside the convictions of respondents 2 to 4 (accused Nos.
1 to 3) u/s.
302 read with S.
34 of I.P.C.
and Section 498-A, I.P.C.
and the sentence of imprisonment for life and the sentence of one year rigorous imprisonment respectively but retaining the conviction of the respondents 2 to 4 u/s.
201 read with S.
34 of I.P.C.
and the sentence of three years rigorous imprisonment as against respondents 2 and 3 (accused 1 and 2) but reducing the sentence of imprisonment inflicted on respondent No.
4 (A-3) to the period already undergone and in lieu of the unserved portion of the sentence, imposing a fine of Rs.1000/- in default to suffer rigorous imprisonment for three moths.
2 The relevant facts of the case giving rise to this appeal are necessary to be recapitulated for the disposal of this appeal.
3 Before the trial Court, there were four accused namely respondents 2 to 4 and one Mallidi Pada Kapu alias Venkata Reddy (accused 4) who stood convicted under Section 201, I.P.C.
and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a further period of 3 months and who is not a respondent in this appeal.
For the sake of convenience, we shall refer respondents 2 to 4 in this judgment as accused Nos.
1 to 3 as arrayed before the trial Court.
4 The second and third accused are the father and mother of the first accused.
The first accused married the deceased, Vijaya, daughter of P.W.
8 (the appellant herein) on 10-5-79 at Tirumala hills.
P.W.
9 is the brother of the deceased.
All the accused are residents of Komaripalem.
The appellant is the resident of Rayavaram.
At the time of the marriage, the appellant gave sufficient cash and gold to the deceased.
As the deceased was aged about 12 years at the time of her marriage she stayed with her parents till she attained her puberty and thereafter was sent to her marital home.
The case of the prosecution is that the deceased used to complain to her father and that her husband and in-laws were pressing hard to get some landed property towards her dowry.
When the appellant made enquiries about her daughter's complaints, the accused abused and tried to beat him.
5.
In 1985 during the second crop season, the accused 1, 2 and 4 along with the deceased forcibly harvested the crop standing in the land of the appellant.
It is stated that the deceased even went to the extent of filing a suit against her father, the appellant (P.W.

8) and brother (P.W.
9) claiming that the land in dispute was in her possession.
Her brother P.W.
9 in turn filed a suit against the deceased and P.W.
8.
The appellant filed a criminal complaint against the deceased and the accused persons.
Thus, there were civil and criminal proceedings between the parties.
6 On the intervening night of 6/7th September, 1985 the accused 1 to 3 are said to have attended the marriage celebrated in the house of P.W.
1 and remained in the marriage house till morning of 7th September and when they came back to their house they, to their shock and surprise, found number of people gathered in front of their house and the body of the deceased lying in an easy chair.
The fourth accused who is not a respondent in this appeal went to the police station and gave the report Ex.
14 to the Head Constable.
Some nail marks and swelling over the neck, lips, chin and nose were noticed on the dead body.
A tin covered with a cap and pasted with a label inscribed 'Democran' (i.e.
pesticide) was found by the side of the dead body.
The fourth accused stated in Ex.
P-14 that the deceased had committed suicide.
P.W.
10 registered the report.
Thereafter, P.Ws.
10 and 11 reached the scene and took up investigation.
7 In the meanwhile, the appellant and P.W.
9 on receipt of the jarring information about the death of the deceased came to the scene village.
During the investigation, the first accused handed over three letters Exs.
P-6 to P-8 said to have been written by the deceased to her father.
These letters were seized under Ex.
P-5.
P.W.
10 held the inquest and during the course of which he examined P.Ws.
8 and 9 and others.
As suspicion was entertained over the death of the deceased, the dead body was sent for post-mortem examination.
P.Ws.
5 and 6, the Medical Officers conducted autopsy and found some external injuries.
The medical officers sent the viscera and some of the part of the dead body namely liver, kidney for chemical examination.
After the receipt of the chemical examiner's report both P.Ws.
5 and 6 gave their opinion that the death was due to poisoning and smothering i.e.
asphyxia.
Further investigation was taken by P.W.
13 and thereafter by P.W.
14.
All the accused were arrested.
After completing the investigation, charge-sheet was laid.
On the side of prosecution P.Ws.
1 to 14 were examined.
8 All the accused denied their complicity with the offence in question and stated that the relationship between the deceased and the accused was on cordial terms, that on the ill-fated night they were all in the marriage house of P.W.
1 and that this case is foisted against them by the appellant on account of the long-standing enmity.
The trial Court accepting the evidence let in by the prosecution convicted A-1 to A-3 under the respective charges and sentenced them as aforementioned.
On being aggrieved, the accused 1 to 3 filed criminal appeal No.
544 of 1987 and the fourth accused who stood convicted only under Section 201, I.P.C.
preferred criminal appeal No.
576 of 1987.

Both the appeals were disposed of by the High Court by the impugned common judgment.
9 The State has not preferred any appeal against the order of acquittal of A-1 to A-3 of the charges punishable u/s.
302 read with Ss.
34 and 498-A of the Indian Penal Code; but this present appeal is by P.W.
8, the father of the deceased.
10 Mr.
Sitaramiah, the learned senior counsel appearing on behalf of the appellant took us very meticulously through the judgments of the trial Court as well of the Appellate Court and strenuously contended that the reasons given by the appellate Court for recording an order of acquittal of the offence of murder are perverse and difficult to comprehend and the Appellate Court has over-looked the important and vital facts which tend to show that the show that the circumstances established are consistent only with the hypothesis of guilt of the accused. According to him, the chain of evidence is complete leaving no reasonable ground for drawing a conclusion consistent with the innocence of the accused.
It is further submitted that the unrealistic and false plea put forth by the accused stating that none of them was present in the house on the ill-acted night is itself an additional circumstance lending support to the other impelling circumstances unfailingly pointing out the guilt of the accused.
The first respondent, State of Andhra Pradesh sails with the appellant supporting the arguments advanced by Mr.
Sitaramiah.
11.
Mr.
P.
Krishna Rao, learned counsel appearing on behalf of the respondents 2 to 4 (Accused 1 to 3) countered the above argument, submitting that the judgment of the Appellate Court is based on sound reasoning and that the totality of the evidence adduced by the prosecution, if at all proves anything it may create only a suspicion against the appellants and that no conviction, as rightly pointed out by the Appellate Court, can be safely recorded on such suspicion or conjecture.
12 Before adverting to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecutions rests its case solely on circumstantial evidence.
This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:
(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.
(Gambhir v.
State of Maharashtra, 1982 Indlaw SC 27 : 1982 Indlaw SC 27), Rama Nand v.
State of Himachal Pradesh, 1981 Indlaw SC 129 : 1981 Indlaw SC 129), Prem Thakur v.
State of Punjab, 1982 Indlaw SC 144 : 1982 Indlaw SC 144), Earabhadrappa v.
State of Karnataka, 1983 Indlaw SC 161 : 1983 Indlaw SC 161), Gian Singh v.
State of Punjab, 1986 Indlaw SC 487 : 1986 Indlaw SC 487), Balvinder Singh v.
State of Punjab, 1986 Indlaw SC 35 : 1986 Indlaw SC 35).
13 Bearing the above principle of law enunciated by this Court we shall scrutinise scrupulously and examine carefully the circumstances appearing in this case with serious and onerous responsibility imposed on this Court.
14 There are certain salient and material features in the present case which are not controverted; they being that A-1 to A-3 and the deceased lived under a common roof, that the deceased had instituted a civil suit against her father, P.W.
8 and brother P.W.

9 claiming exclusive possession of the disputed land, that the deceased was found dead on the morning of 7-9-85 and that there were certain visible injuries such as abrasions, nail marks and contusions of the part of the nose, upper lip, chin and neck etc.
as noted by the Medical Officers (P.Ws.
5 and 6) in the post-martem report Ex.
P-9.
The appellate Court on the strength of the opinion given by the Medical Officers (P.Ws.
5 and 6) had agreed with the view of the trial Court that the death of the deceased was homicidal one and not suicidal and held "therefore suicidal is ruled out".
We also very carefully went thought the evidence of the Medical Officers and found that the prosecution has convincingly established that the death of the deceased was due to forcible administration of poison and smothering.
Hence we are in full agreement with the concurrent findings of the Courts below that it is a clear case of murder.
15 The next important question is whether the circumstances attending case do satisfactorily and unerringly establish the guilt of the accused 1 and 3 or any of them so as to incriminate them with the heinous crime of murder and the offence of cruelty within the mischief of Section 498-A, I.P.C.
The learned counsel appearing on behalf of the appellant seeks to draw an inference of guilt of the accused on the following circumstances:
(1) The demand of the deceased requesting her father to settle the landed property in her name and her subsequent filing of the civil suit in the year 1985 i.e.
within a period of 6 years since her marriage indicate that the accused should have pressurised the deceased to take a hostile attitude towards her father so that they could grab the property.
(2) The very fact that the deceased who was in her prime of youth did not accompany her husband and in laws to attend the marriage celebrated and in the house of P.W.
1, situated just opposite to the accused's house shows that there was no cordial relationship between the deceased and the accused and the deceased was not leading a happy marital life.
(3) The facts that the victim was alive when all the accused are said to have left their house to attend the marriage and she was done away with only during the intervening night of 6th/7th September, 1985 are not in dispute.
(4) The fact that the deceased was found dead lying on an easy chair indicates that the dead body should have been brought and laid on the easy chair by someone else.
(5) The presence of a tin container covered with a cap and pasted with a label inscribed 'Democran' (i.e.
pesticide) near the easy chair which on chemical examination was not found to contain any poisonous substances shows that someone had kept the tin near the dead body so as to create a false impression in the minds of others that the victim had consumed the poison and committed suicide.
(6) The presence of the injuries namely semicircular abrasions resembling that of human nail marks over the upper parts of her lip, nose and chin, to contusions over the front of neck, the congestion of the protruding eye balls and the presence of bluish, black discolouration from the right angle of the mouth extending to right side of neck unequivocally lead to a decisive conclusion that the deceased had been over-powered by the assailants and the poison was administered to her by forcibly opening her mouth and closing the nose and pressing the neck so as to make the victim to gulp the poison and in that process more than one person should have participated.
This view is fortified by the final opinion given by the doctors stating that death might have been caused due to the combined effect of asphyxia due to smothering and poisoning democran.
(7) The conduct of the first accused in handing over three letters Ex.
P6 to P8, alleged to have been written by the deceased herself, to the Investigating Officer on 7-9-85 at the scene house itself is yet another circumstance showing that the accused has by a concerted pre-plan manipulated a defence theory of suicide so as to escape from the culpability of the crime.
The defence of the accused that they were at the marriage house from 8.00 p.m.
on 6-9-85 till the morning of 7-9-85 is patently false and unrealistic since the house of P.W.
1 where the marriages was conducted is almost opposite to the house of the accused.
This plea of the accused is too big a pill to be swallowed.
(8) The introduction of the patently false averments in Ex.
P-14 by accused 4 that deceased had committed suicide should have been made only at the instance of A-1 to A-3 and this conduct of the accused clearly indicates that the accused had pre-

planned and calculated a false theory of defence presumably due to an earlier deliberation and consultation with the local M.L.A.
16 According to the learned defence counsel, the totality of the above circumstances unerringly, unfailingly and unshakably prove that the accused 1 to 3 alone were the perpetrators of this heinous crime of murder and none else.
17 While considering the above circumstances, the appellate Court has expressed its view that the explanation given by the accused that they were at the marriage house of P.W.
1 throughout the night is nothing but a false explanation and the culprits whoever they might have been should have administered the poison to the victim and there by caused her death and that there is very strong suspision against the accused persons but the prosecution cannot be said to have established the guilt of the accused decisively since the suspicion cannot take the place of legal proof.
The relevant portion of the final conclusion of the appellate Court reads thus:
"There is no evidence whatsoever either from the neighbours or from others to show that the accused at any time ill-treated the deceased or treated her cruelly.
In these circumstances, it is not possible to hold that the prosecution has established the guilt on the part of A-1 to A-3.
Thus, there is no conclusive evidence that the accused committed the offence of murder.
It is unfortunate case where cold-blooded murder has been committed and it is difficult to believe that no inmate of the house had any hand in the offence of murder.
But that will be only a suspicion which cannot take the place of proof."
18 We, in evaluating the circumstantial evidence available on record on different aspects of the case, shall be the foremost watchfully examine whether the accused 1 to 3 had developed bad-blood against the deceased to the extent of silencing her for ever, that too in a very inhuman and horrendous manner.
The appellant wants us to infer that the deceased should have been subjected to all kinds of pressures and harassments and compelled to institute the suit against her father and brother claiming exclusive right over the landed property in order to grab the said property, that this conduct of the accused should have been resented by the deceased and that on that score the accused should have decided to put an end to her life.
In our view, this submission has no merit because there is no acceptable evidence showing that there was any quarrel in the family and that the deceased was ill-treated either by her husband or in-laws.
The appellate Court while dealing with this aspect of the case has observed that there is no evidence that the accused ill-treated the deceased, which observation we have extracted above.
Hence, we hold that there is no sufficient material to warrant a conclusion that the accused had any motive to snatch away the life thread of deceased.
There is no denying the fact that the deceased did not accompany her husband and in-laws to attend the marriage celebrated in the house of PW-1 and remained in the scene house and that she has been done away with on the intervening night of 6th/7th September, 1985.
From this circumstance, the Court will not be justified in drawing any conclusion that the deceased was not leading a happy marital life.
19.
As observed by the appellate Court, the explanation offered by accused 1 to 3 that they remained in the house of PW-1 throughout the night is too big a pill to be swallowed.
But at the same time, in our view this unacceptable explanation would not lead to any irresistible inference that the accused alone should have committed this murder and have come forward with this false explanation.
We have no hesitation in coming to the concession that it is a case of murder but to a suicide as we have pointed out supra.
The placing of the tin container with the inscription 'Democran' by the side of the dead body is nothing but a planted one so as to give a misleading impression that the deceased had consumed poison and committed suicide.
But there is no evidence as to who had placed the tin container by the side of the dead body.
Even if we hold that the perpetrators of the crime whoever might have been had placed the tin, that in the absence of any satisfactory evidence against the accused would not lead to any inference that these accused or any of them should have done it.
It is the admitted case that the first accused handed over three letters Exs.
P-6 to P-8 alleged to haves been written by the deceased to the Investigating Officer.

The sum and substance of these letters are to the effect that the deceased had some grouse against her parents and that the accused were not responsible for her death.
The explanation given by accused No.
1 in this written statement is that by about the time of the arrival of the police, one Sathi Presada Reddy handed over these letters to him saying that he (Reddy) found them near the place when the dead body was laid and that he (A-1) in turn handed over them to the police.
PWs.
8 and 9 have deposed that these letters are not under the hand-writing of the deceased.
But the prosecution has not taken any effort to sent the letters to any handwriting expert for compression with the admitted writings of the deceased with the writing found in Exs.
P-6 to P-8.
Under these circumstances, no adverse inference can be drawn against accused No.
1 on his conduct in handing over these letters.
20 No doubt, this murder is diabolical in conception and cruel in execution but the real and pivotal issue is whether the totality of the circumstances unerringly establishes that all the accused or any of them are the real culprits.
The circumstances indicated by the learned counsel undoubtedly create a suspicion against the accused.
But would these circumstances be sufficient to hold that the respondents 2 to 4 (accused 1 to 3) had committed this heinous crime.
In our view, they are not.
21 There are series of decisions holding that no one can be convicted on the basis of mere suspicion, however, strong it may be.
Though we feel it is not necessary to recapitulate all those decisions we will refer to a few on this point.
22 This Court in Palvinder Kaur v.
State of Punjab, 1952 Indlaw SC 50 : 1952 Indlaw SC 50) has pointed out that in cases depending on circumstantial evidence Courts should safeguard themselves against the danger of basing their conclusion on suspicions howsoever strong.
23 In Chandrakant Ganpat Sovitkar v.
State of Maharashtra, 1974 Indlaw SC 481 : 1974 Indlaw SC 481) it has been observed:
"It is well settled that one one can be convicted on the basis of mere suspicion, though strong it may be.
It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety."
24 In Sharad Birdhichand Sarda v.
State of Maharashtra, 1984 Indlaw SC 432 : 1984 Indlaw SC 432), this Court has reiterated the above dictum and pointed out that the suspicion, however, great it may be, cannot take the place of legal proof and that "fouler the crime higher the proof."
25 We are of the firm view that the circumstances appearing in this case when examined in the light of the above principle enunciated by this Court do not lead to any decisive conclusion that either all these accused or any of them had committed the murder of the deceased, Vijaya punishable u/s.
302 read with S.
34 of I.P.C.
or the offence of cruelty within the mischief of Section 498-A, I.P.C.
26.
Hence, viewed from any angle, the judgment of the appellate Court does not call for interference.
The appeal is dismissed accordingly.
Appeal dismissed.

Rajib Ranjan and others v R.
Vijay Kumar
Supreme Court of India

14 October 2014
Cr.A.
No(s).
729-732 of 2010
The Judgment was delivered by : Arjan Kumar Sikri, J.

1.
These appeals are filed by four appellants, who were arrayed as accused persons in the complaint case No.183/2007 filed by the respondent herein before the Court of Judicial Magistrate No.II, Tiruchirapalli, Tamil Nadu.
The complaint has been filed under Sections 120-B, 468, 420 and 500 of the Indian Penal Code (for short 'the IPC').
The learned Judicial Magistrate took cognizance of the said complaint and summoned the appellants.
The appellants (who were arrayed as accused Nos.3, 4, 5 and 6) challenged the said summoning orders and sought quashment of the complaint by filing petition u/s.
482 of the Code of Criminal Procedure (for short 'the Cr.P.C.) inasmuch as according to them the allegations in the complaint did not make out any offence under the aforesaid provisions of the IPC; the complainant had neither any locus standi nor any legal status to prefer any such complaint; the appellants being public servants and Gazetted officers of the State Government of Chhattisgarh, no such criminal proceedings could be initiated against them without prior sanction from the appointing authority as per S.
197 of the Cr.P.C.; and the complaint was blatant misuse and abuse of the process of Court which was filed by the complainant after exhausting the civil remedies in which he had failed.
The High Court, after examination of the matter, has not found any merit in any of the aforesaid contentions raised by the appellants and, consequently, dismissed their petitions.
2.
Before we advert to the submissions of the appellants, which are mirror image of what was argued before the High Court, it would be appropriate to traverse through the relevant facts and events leading to the filing of the said complaint by the complainant.
These are as under:
The Chhattisgarh State Electricity Board (for short 'the CSEB') issued an advertisement inviting tender (NIT) bearing No.
T- 136/2004 dated 02.06.2004 for its work at Hasedeo Thermal Power Station (Korba West) towards Designing, Engineering, Testing, Supply, Erection & Commission of HEA Ignition system.
The applications received there under were required to be processed in three stages successively namely; Part-I (EMD); Part-II (Techno- Commercial Criteria) and Part III (Price Bid).
The respondent herein submitted an application on 26.08.2004 as Chief Executive Officer of M/s Control Electronics India (CEI) requesting for Tender Document.
The application was rejected on the ground that it was accompanied by incomplete documents i.e.
non-submission of documentary evidence of past performance and experience of the respondent.
The respondent made a complaint dated 06.09.2004 against appellant No.
3 herein alleging that the Tender Documents were not issued to the respondent.
It was followed by several letters requesting for issuance of Tender Documents.
He was informed that rather than pressurising the appellants here or other officials, he should furnish documents as per pre-qualifying condition of the Tender.
In response thereto, vide his letter dated 05.11.2004, the respondent filed a copy of purchase order dated 28.01.2002 placed by Jharkhand State Electricity Board (for short 'the JSEB') and assured to supply other documentary evidence (performance report) subsequently.
On such assurance, the Tender Documents were issued to the respondent.
The respondent vide his letter dated 08.12.2004, mentioned that the Performance Report was enclosed in Part-II.
However, the said report was not found enclosed and even after repeated requests from the CSEB to furnish documents, respondent did not fulfill the necessary requirement.
As the respondent did not submit the necessary documents, the CSEB sought the information from the Chief Engineer of JSEB (arrayed in the complaint as accused No.2) vide letter dated 10.12.2004 about the performance of the respondent.
Appellant No.2 herein was also deputed to get the desired information from JSEB.
After meeting the officials of JSEB, appellant No.2 submitted his report stating that the works carried out by the respondent were not satisfactory as many defects were found therein.
As per the appellants, even technical expertise was sought from SE (ET & I) KW (CSEB) and found that the respondent was not technically suitable as per the technical vetting and comparative data of SE (ET & I) KW letter dated 04.02.2005.
On that basis, tender of the respondent was rejected.

The appellants submit that as an outburst, in not getting the Tender in his favour, the respondent made complaints alleging irregularities to various fora including the State Government, which ordered the CSEB to conduct an enquiry.
The CSEB submitted its report on 21.02.2006 stating that there were no such irregularities and that the respondent had not furnished the necessary documents despite repeated requests.
At this stage, the respondent filed the Civil Suit (26-A/06) before the Civil Judge Class-II, Korba against the CSEB.
However, the respondent moved an application seeking to withdraw the said suit.
In any case he did not appear on the date fixed and accordingly the suit was dismissed for non-prosecution on 12.09.2006.
The respondent herein then filed a Writ Petition No.2951 of 2006 before the Chhattisgarh High Court which was dismissed on 25.06.2007.
Even costs of Rs.25,000/- was imposed while dismissing the writ petition with the observations that it was abuse of the process of Court.
Thereafter, SLP No.15897 of 2007 was preferred by the respondent which also came to be dismissed vide order dated 14.09.2007.
After the exhaustion of these remedies, albeit unsuccessfully, the respondent filed a complaint before K.K.
Nagar P.S., Thirucharapalli, Tamil Nadu.
The police authorities refused to register the same on the ground that it is a civil dispute.
It is, thereafter, that the respondent filed the said Criminal Complaint under Sections 120-B, 468, 420 & 500 IPC before the trial Court, which was registered as C.C.
No.
183/07 and the trial Court issued summons to the appellants herein and accused No.1 (Successful Bidder) & accused No.
2 (then Chief Engineer, JSEB).
Petitions of the appellants seeking quashing of the said complaint have been dismissed by the order of the High Court, which is impugned before us.
3.
A reading of the said complaint reveals the following broad allegations levelled by the respondent:
(a) The respondent/complainant alleges that the appellants and accused No.1 (Successful Bidder) & accused No.
2 (then Chief Engineer, JSEB) had conspired secretly to disentitle the complainant's company by creating a discredit and for the said purpose, they were in constant touch so as to create the said Performance Report Cum Certificate, which was issued by accused No.2.
(b) The respondent/complainant alleges that the said conspiracy started with an agreement entered into by the 1st accused and the appellants herein and they planned to fabricate the said certificate dated 28.12.2004.
For this purpose, accused No.
2 was approached so as to tailor the certificate totally discrediting the CEI (Company of the Complainant) with reference to supply and service relationship with Patratu Thermal Power Station (for short 'the PTPS') and JSEB.
(c) The respondent/complainant alleges that the said Certificate cum Report is false, fabricated, motivated and malafide and the same was contrary to the minutes of meeting that the complainant and his officials had with the officials of PTPS and JSEB.
He further alleges that for the said reasons, the accused No.
2 was demoted from his post.
(d) The respondent/complainant alleges that on suspicion of such Certificate Cum Report, the complainant visited the CSEB and on verifying about the same, he found that the said tender was being given to Company of the 1st accused against the Complainant's Company and so he wrote a letter to the Chief Secretary and Chairman of JSEB for verifying and cancelling such certificate. He also wrote to many officials of the CSEB.
(e) The respondent/complainant alleges that the said Certificate is perse defamatory as against the complainant's company and is a crude attempt to favour accused No.1 by spoiling the image of the Complainants company.
He further alleges that this caused a wrongful loss to the complainant's company by robbing its due chance to get a contract for the Boiler Plant Units at Korba.
4.
After recording preliminary evidence, the Magistrate took cognizance of the complaint which order was challenged in the High Court.

Before the High Court, the appellants, inter alia, contended that the allegations made by the respondent under Sections 120-B, 468, 420 & 500 of IPC pertained to the award of tender in favour of accused No.1 in which the respondent was also a competing party.
It was also pleaded that the said complaint has been lodged as an afterthought, having failed in the civil suit for injunction which was dismissed and likewise, after unsuccessful attempt to challenge the award of contract in favour of accused No.1 as the writ petition of the respondent was dismissed by the High Court.
Thus, the lodging of complaint before Judicial Magistrate-II, Tiruchirapalli was nothing but abuse of process of law.
The appellants also contended that the respondents herein had no locus standi nor any legal status to prefer the said complaint, as CEI is not a registered company, having a legal entity.
The appellants further relied on Naresh Kumar Madan v.
State of M.P., (2007) 4 SCC 766 2007 Indlaw SC 333 wherein it has been held that an employee working in the Electricity Board is covered under the definition of 'Public Servant' and State of Maharashtra v.
Dr.
Budhikota Subbarao, (1993) 2 SCC 567 1993 Indlaw SC 955 for the proposition that the absence of sanction order from the appropriate authority under S.
197 Cr.P.C for prosecuting a public servant, vitiates the proceedings.
5.
The respondent refuted the aforesaid submissions by arguing that the appellants herein had deliberately conspired and had committed the offences against the complainant and therefore he has a right to lodge a complaint for the offences committed by the appellants along with accused No.
2 (Chief Engineer, JSEB) in rejecting the tender submitted by the complainant with a view to accept the tender of the 1st accused.
It was argued that they conspired and created false document with an idea of rejecting the claim of the complainant.
The respondent further submitted that complainant's locus standi as a company was not questioned in the earlier proceedings before the Chhattisgarh High Court and that the Judicial Magistrate had applied his mind and after satisfying himself that the complainant/respondent has got legal status to lodge the said complaint, had taken cognizance of the offences committed by the accused persons.
It was also contended that the question of obtaining sanction under S.
197 Cr.P.C.
will not arise in so far as the present complaint is concerned, as the accused are charged for conspiracy, cheating, criminal breach of trust and defamation.
He further submitted that his allegation in the complaint pertained to the fabrication of the Certificate-cum-Report dated 28.12.2004 which was used against him in rejecting his tender and 1st accused was favoured with the award of work.
Therefore, they had committed offences against the complainant and damaged the reputation of the respondent/ complainant.
6.
The High Court while dismissing the petition of the appellants recorded that:
(a) As far as mandatory provisions of S.
197 Cr.P.C is concerned, the High Court accepted that the appellants are 'Public Servants'.
It also observed that if the accusation against the appellants under Sections 120-B, 468, 420 & 500 IPC are connected with the discharge of their duty viz.
if the said acts had reasonable connection with discharge of his duty then applicability of S.
197 cannot be disputed.
However, on going through the allegations in the complaint, the High Court held that even though the appellants are 'Public Servant', the alleged offences committed by them are cognizable offences are not in discharge of their normal duties, in which component of criminal breach of trust is found as one of the elements and hence the provisions of S.
197 Cr.P.C.
are not attracted.
(b) It has also been observed that the evidence regarding the allegations made in the complaint have to be recorded and gone into by the trial court after the evidence have been adduced by the complainant.

It is only thereafter the lower Court, can decide as to whether the allegations about the falsity of the Certificate with conspiracy of accused No.
2 and the appellants herein are correct or not.
7.
It is clear from the above that primarily two questions arise for consideration namely:
(a) Whether prior sanction of the competent authority to prosecute the appellants, who are admittedly public servants, is mandatory under S.
197 of the Code?
(b) Whether, on the facts of this case, the complaint filed by the respondent is motivated and afterthought, after losing the battle in civil litigation and amounts to misuse and abuse of law?
We would like to remark that having regard to the facts of this case the two issues are interconnected and narratives would be overlapping, as would become apparent when we proceed with the discussion hereinafter.
8.
For this purpose, we would first like to point out that the High Court has itself taken note of the judgment of this Court in the Case of Naresh Kumar Madan 2007 Indlaw SC 333 (supra) to hold that the appellants are covered by the description of public servants within the meaning of S.
21 of IPC.
Following observations therefrom have been quoted:
"The officers of the State Electricity Board are required to carry out public functions.
They are public authorities.
Their action in one way or the other may entail civil or evil consequences to the consumers of electrical energy.
They may prosecute a person.
They are empowered to enter into the house of the Board's consumers.
It is only for proper and effective exercise of those powers, the statute provides that they would be public servants, wherefore a legal fiction has been created in favour of those employees, when acting or purported to act in pursuance of any of the provisions of the Act within the meaning of S.
21 of the Indian Penal Code.
Indian Penal Code denotes various persons to the public servants.
It is, however, not exhaustive.
A person may be public servant in terms of another statute.
However we may notice that a person, who, inter alia, is in the service or pay of the Government established by or under a Central, Provincial or State Act, would also come within the purview thereof.
S.
2 (1) (c) of the 1988 Act also brings within its embrace a person in the service or pay of a corporation established by or under a Central Act."
9.
The question is of the applicability of S.
197 of the Code.
Said provision with which we are concerned is reproduced below:
"Prosecution of Judges and public servant.
(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any ofence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-
(a) In the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government."
10.
This provision makes it clear that if any offence is alleged to have been committed by a public servant who cannot be removed from the office except by or with the sanction of the Government, the Court is precluded from taking cognizance of such offence except with the previous sanction of the competent authority specified in this provision.
11.

The sanction, however, is necessary if the offence alleged against public servant is committed by him "while acting or purporting to act in the discharge of his official duties".
In order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, following yardstick is provided by this Court in Dr. Budhikota Subbarao 1993 Indlaw SC 955 (supra) in the following words:
"If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of S.
197 of the Code cannot be disputed."
12.
This principle was explained in some more detail in the case of Raghunath Anant Govilkar v. State of Maharashtra 2008 Indlaw SC 158, which was decided by this Court on 08.02.2008 in SLP (Crl.) No.5453 of 2007, in the following manner:
"On the question of the applicability of S.
197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, Shreekantiah Ramayya Munipalli v.
State of Bombay 1954 Indlaw SC 175 and Amrik Singh v.
State of Pepsu 1955 Indlaw SC 9 was as follows:
It is not every offence committed, by a public servant that requires sanction for prosecution under S.
197 (1) of Criminal Procedure Cod; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.
The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants.
As far as the offence of criminal conspiracy punishable under Sections 120-B read with S.
409 of the Indian Penal Code is concerned and also S.
5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in S.
197 of the Code of Criminal Procedure.
To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct.
Want of sanction under S.
197 of the Code of Criminal Procedure is, therefore, no bar."
13.
Likewise, in Shambhoo Nath Misra v.
State of U.P.
and others, (1997) 5 SCC 326 1997 Indlaw SC 1818, the Court dealt with the subject in the following manner:
"5.
The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc.
can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc.
in furtherance of or in the discharge of his official duties.
The official capacity only enables him to fabricate the record or misappropriate the public fund etc.
It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge.
Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained."
14.
The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of S.
197 of the Code will not be attracted.

In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations namely the allegations pertain to fabricating the false records which cannot be treated as part of the appellants normal official duties.
The High Court has, thus, correctly spelt out the proposition of law.
The only question is as to whether on the facts of the present case, the same has been correctly applied.
If one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified.
However, a little deeper scrutiny into the circumstances under which the complaint came to be filed would demonstrate that allegation of fabricating the false record is clearly an afterthought and it becomes more than apparent that the respondent has chosen to level such a make belief allegation with sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature.
As noted above, the respondent had in fact initiated civil action in the form of suit for injunction against the award of the contract in which he failed.
Order of civil court was challenged by filing writ petition in the High Court.
Plea of the respondent was that the action of the Department in rejecting his tender and awarding the contract to accused No.1 was illegal and motivated.
Writ petition was also dismissed with cost.
These orders attained finality.
It is only thereafter criminal complaint is filed with the allegation that accused No.1 is favoured by creating a false certificate dated 28.12.2004.
We would dilate this discussion with some elaboration, hereinafter.
15.
As already pointed above, tender was floated by the CSEB and the CEI herein was one of the parties who had submitted its bid through the respondent.
However, tender conditions mentioned certain conditions and it was necessary to fulfill those conditions to become eligible to submit the bid and have it considered.
As per the appellants, tender of the respondent was rejected on the ground that plant and equipment erected by the respondent at Patratu Thermal Power Station, Patratu, Jharkhand was not functioning well.
This information was received by the Tender Committee from JSEB.
When the report was sought by CSEB in December, 2004, the Tender Committee took the view that the respondent did not fulfill the pre-qualifying conditions and rejected his tender.
Before doing so, the respondent was asked time and again to send the performance report which he had promised but he failed to comply even when he had assured to do the needful.
In fact, that itself was sufficient to reject that bid of the respondent as it was non compliant with the tender conditions.
Still, in order to verify the claim of the respondent and to consider his bid on merits, though not strictly required, the appellant R.C.
Jain was deputed to get the desired information from JSEB.
He met the officials of JSEB and submitted his report to the effect that the works carried out by the respondent at Patratu Thermal Power Station was not satisfactory.
Even, Shri B.M.
Ram, General Manager of the said Power Station furnished his report dated 28.12.2004 wherein it was summed up that due to the defects in the scanning system, supplied by the respondent, generation had been adversely effected and the said Electricity Board was not satisfied with the equipment supplied by the respondent.
In spite of the aforesaid material, the tender Committee acted with caution and even the technical expertise was sought.
Even the report of the technical experts went against the respondent as it opined that the respondent was not technically suitable on the technical vetting and comparative data.
On the basis of the aforesaid material, the respondent's tender document was not opened and returned and he was informed accordingly.
All this has clearly happened in furtherance of and in discharge of the official duties by the appellant.
In the facts of the present case, we are of the view that allegations of fabricating the records are mischievously made as an afterthought, just to give colour of criminality to a civil case.
16.

As pointed out above, the respondent had even filed the civil suit challenging the decision of the Electricity Board in returning his tender documents on the ground that the same were not as per pre- qualifying conditions of the tender.
He had thus resorted to the civil remedy.
However, he failed therein as for the reasons best known to him, he sought to withdrew the same and accordingly the same was dismissed for non-prosecution.
It is trite that once the suit is withdrawn, that acts as constructive res judicata having regard to the provision of Order XXIII Rule 1 of the Code of Civil Procedure.
Also, when suit is dismissed under Order IX Rule 8 CPC, fresh suit under Order IX Rule 9 is barred.
The legal implication would be of that the attempt of the respondent in challenging the decision of the Tender Committee in not considering his tender remained unfaulted.
Even when the respondent himself invited order of dismissal in the civil suit, curiously enough, he filed a writ petition against the order passed in the civil court dismissing his suit for non-prosecution, but the same was also dismissed by the High Court on 25.06.2007 and even a cost of Rs.25,000/- was imposed on the respondent as the said writ petition was perceived by the High Court as 'abuse of process of the court'.
SLP preferred by the respondent was also dismissed by this Court on 14.09.2007.
It is only thereafter the respondent filed the criminal complaint out of which present proceedings emanate.
No doubt, the respondent in his complaint has right to colour his complaint by levelling the allegations that the appellants herein fabricated the records.
However, on the facts of this case, it becomes difficult to eschew this allegation of the respondent and we get an uncanny feeling that the contents of FIR with these allegations are a postscript of the respondent after losing the battle in civil proceedings which were taken out by him challenging the action of the Department in rejecting his tender.
When he did not succeed in the said attempt, he came out with the allegations of forgery.
It is thus becomes clear that the action of the respondent in filing the criminal complaint is not bonafide and amounts to misuse and abuse of the process of law.
17.
In State of Haryana v.
Bhajan Lal, 1992 Supp (1) SCC 335 1990 Indlaw SC 91, this Court has laid down principles on which Court can quash the criminal proceedings u/s.
482 of Cr.P.C.
These are as follows:
"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s.
156 (1) of the Code except under an order of a Magistrate within the purview of S.
155 (2) of the Code.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.
155 (2) of the Code.
(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."
Principle Nos.6 and 7 are clearly applicable in the present case.

18.
Having regard to the circumstances narrated and explained above, we are also of the view that attempt is made by the respondent to convert a case with civil nature into criminal prosecution.
In a case like this, High Court would have been justified in quashing the proceedings in exercise of its inherent powers u/s.
482 of the Code.
It would be of benefit to refer to the judgment in the case of Indian Oil Corpn.
v.
NEPC India Ltd.
and others, (2006) 6 SCC 736 2006 Indlaw SC 430, wherein the Court adversely commented upon this very tendency of filing criminal complaints even in cases relating to commercial transaction for which civil remedy is available is available or has been availed.
The Court held that the following observations of the Court in this behalf are taken note of:
"13.
While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases.
This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors.
Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families.
There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement.
Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.
In G.
Sagar Suri v.
State of U.P., (2000) 2 SCC 636 2000 Indlaw SC 603, this Court observed:
"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence.
Criminal proceedings are not a short cut of other remedies available in law.
Before issuing process a criminal court has to exercise a great deal of caution.
For the accused it is a serious matter.
This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s.
482 of the Code.
Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."
14.
While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.
One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power u/s.
250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.
Be that as it may."
19.
In Inder Mohan Goswami and another v.
State of Uttaranchal and others, (2007) 12 SCC 1 2007 Indlaw SC 1024, the Court reiterated the scope and ambit of power of the High Court u/s.
482 of the Code in the following words:
"23.
This Court in a number of cases has laid down the scope and ambit of courts' powers u/s.
482 CrPC.
Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.
Inherent power u/s.
482 CrPC can be exercised:

(i) to give effect to an order under the Code;
(ii) to prevent abuse of the process of court, and
(iii) to otherwise secure the ends of justice.
24.
Inherent powers u/s.
482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself.
Authority of the court exists for the advancement of justice.
If any abuse of the process leading to injustice is brought to the notice of the court, then the could would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.
Discussion of decided cases
25.
Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice.
The English courts have also used inherent power to achieve the same objective.
It is generally agreed that the Crown Court has inherent power to protect its process from abuse.
In Connelly v.
DPP : [1964] A.C.
1254 Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.
Lord Salmon in DPP v.
Humphrys, [1977] A.C.
1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene.
He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.
46.
The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.
On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction.
Inherent jurisdiction of the High Courts u/s.
482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases.
In view of the settled legal position, the impugned judgment cannot be sustained."
20.
As a result, these appeals are allowed.
Order of the High Court is set aside.
Consequently, cognizance taken by the learned Magistrate and orders summoning the appellants as accused is hereby set aside resulting into the dismissal of the said complaint.
There shall however be no order as to costs.
Appeals allowed

State of Uttar Pradesh v Mohammad Naim
Supreme Court of India

15 March 1963
Criminal Appeal No.
81 of 1962
The Judgment was delivered by S.
K.
DAS J.
1.
This is an appeal by special leave, and it Presents some unusual features.
The short facts are these.
The Additional Sessions judge of Hardoi in the State of Uttar Pradesh tried Zafar Ali Khan and three other persons on charges under ss.
452 and 307 read with s.

34, Indian Penal Code, 1860.
The case against the aforesaid accused persons started on a first information report lodged at a police station called Shahabad, purporting to have been so lodged at about 3.30 A.
M.
by one Farasat Ali Khan on the night between the 7th and 8th November, 1958.
The case was investigated by one Mohammad Naim who was then the Station Officer of Shahabad police station.
The learned Additional Sessions judge convicted the accused persons though he found, on the evidence given in the case, that it was more probable that the first information was lodged at the police station at about 7 or 8 A.m.
rather than at 3.30 A.
M.
From the conviction and sentences passed by the Additional Sessions judge there was an appeal to the High Court at Allahabad (Lucknow Bench).
This appeal was heard by Mulla J.
He found that Mohammad Naim had dressed' up a totally unbelievable case which destroyed the evidentiary value of the statements of Farasat Ali and his wife, Ummati Begum, two of the principal witnesses for the prosecution.
The Learned judge allowed the appeal and set aside the conviction and sentences of the four appellants before him.
The learned judge further observed in his judgment:
"There is ample evidence to prove that the first information report in this case was not lodged at 3.30 A.
M.
This is also the finding of trial court.
The time noted in the first information report is, therefore, a fictitious time and a fabrication has been made in the public records.
I, therefore, direct the office to issue a notice to Sri Mohammad Naim as to why a complaint should not be instituted against him by this court u/s.
195 I.
P.
Code."
"I issued the notice because I want to clean the public administration as for as possible but an individual's efforts cannot go very far.
If I had felt that with my lone efforts I could have cleaned this augean stable, which is the police force, I would not have hesitated to wage this war single-handed.
I am on the verge of retirement and taking such steps for two months or three months more would not make any difference to the constitution and the character of the police force.....
Somehow the police force in general, barring few exceptions, seems to have come to the conclusion that crime cannot be investigated and security cannot be preserved by following the law and this can only be achieved by breaking or circumventing the law.
At least the traditions of a hundred years indicate that this is what they believe.
If this belief is not rooted out of their minds, there is hardly any chance of improvement.....
I say it with all sense of responsibility that there is not a single lawless group in the whole of the country.
whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force.
If the Police Force must be manned by officers like Mohmmad Naim then it is better that we tear up our Constitution, forget all about democracy and the rights of citizens and change the meaning of law and other terms not only in our penal enactments but also in our dictionaries.
It is for these reasons that I am accepting this apology and not filing any complaint against Mohmmad Naim.
Where every fish barring perhaps a few stinks, it is idle to pick out one or two and say that it stinks.
1, therefore, discharge the notice issued against Shri Mohmmad Naim."
"If I had felt that with my lone efforts I could have cleaned this augean stable, which is the police force, I would not have hesitated to wage this war single handed."
(b)" That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit whichh is known as the Indian Police Force."

(c)" Where every fish barring perhaps a few stinks, it is idle to pick out one or two and say that it stinks."
2.
The main ground which the State of Uttar Pradesh urged in support of their petition was that "the observations over the entire police force, bring the same into contempt, lower its prestige in the eyes of mankind, have a tendency to interfere with the' administration of the country and injure the security of the State."
3.
Mr.
justice Mulla heard the application and came to the following main conclusions :- (1) That the State of Uttar Pradesh was not an aggrieved party and had no locus standi to make an application under s.
561-A Code of Criminal Procedure in respect of the observations made.
(2) The observations required only one clarification namely, that they were made in respect of the police force of Uttar Pradesh and not of the whole country.(3) The observations made under (a) above would have been expunged, if the aggrieved party had approached the learned Judge.
(4) As to the rest of the observations, there were no good grounds for expunging them because they were based upon the learned Judge's personal knowledge and experience and did not contain any over statements.
4.
He accordingly dismissed the application of the State.
The State then moved the High Court for a certificate of fitness under Art.
134(1) (c) of the Constitution of India and being unsuccessful there, asked for special leave of this court under Art.
136 of the Constitution.
This court granted special leave on April 12, 1962.
The present appeal has been preferred from the order of the learned judge rejecting the application under s.
5(31-A Cr.
P.
C., in pursuance of the leave granted by this court.
5.
The first point which falls for consideration is whether the State of Uttar Pradesh had locus standi to make the application under s.
561-A Cr.
P.
C.
We may first read the section :
"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."
6.
It is now well settled that the section confers no new powers on the High Court.
It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice.
The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the -court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code , We shall presently deal with the question whether the High Court has inherent power to expunge the remarks made by it or by a lower court to prevent abuse of the process of any court or otherwise to secure the ends of justice.
Assuming that the High Court has such power, the question now before us is, can the State Government invoke this inherent jurisdiction of the High Court? The learned judge of the High Court gave two reasons for his finding that the State Government had no locus standi to make an application under s.
561-A Cr.
P.
C.
The first reason he gave was that the State Government could not be said to have been aggrieved by the observations made by him.

The second reason he gave was that the State represented the executive as well as the judiciary and therefore it would be anomalous if it made an application under s.
561-A Cr.
P.
C., for such an application would be by the State through its executive to expunge remarks made by it as the judiciary.
7.
We do not think that any of these two grounds is tenable.
Under Art.
154 of the Constitution the executive power of the State is vested in the Governor and shall be exercised by him either directly or through officers subordinate to him.
The expression "State Government" has a meaning assigned to it under the General Clauses Act, 1897 (X of 1897).
Briefly stated, it means the authority or person authorised at the relevant date to exercise executive government in the State, and after the commencement of the Constitution, it means the Governor of the State.
It is not disputed that the police department is a department of the State Government through which the executive power of the State as respects law and order is exercised.
If the State Government considers that the observations made by a court in respect of a department or officers through whom the State Government exercises its executive powers are such as require invoking the inherent power of the High Court under s.
561 -A Cr.P.
C., it is difficult to see why the State Government cannot be considered to be the party aggrieved by such observations.
Furthermore, it is not disputed that the State is a juristic person.
The Code of Criminal Procedure itself recognises in some of its provisions the rights of the State Government; such as, the right to give sanction and to move the court for necessary action etc. the State Government being the authority or person authorised to exercise executive Government at the relevant date.
8.
Some of these provisions are contained in ss.
144 (6), 190 (2), 190 (3), 196, 196-A, 197 etc.
of the Code.
One outstanding example is furnished by s.
417 of the Code which gives to the State Government a right of appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court.
It is also not disputed that the State Government may invoke the revisional jurisdiction of the High Court under s.
439 of the Code, though that section is general in its terms and does not specifically mention the State Government.
Therefore, we fail to see why the State Government cannot make an application under s.
561-A.
We see nothing anomalous in the State Government moving the court for redress when it feels aggrieved by remarks made against it, The State Government may make an application to the High Court under s.
561-A in the same way as it may direct the Public Prosecutor to present an appeal on its behalf to the High Court under s.
417 or may invoke through one of its officers the jurisdiction of the High Court under s.
439 of the Code.
We have, therefore, come to the conclusion that the finding of the learned judge that the State Government has no locus standi to make the appli- cation under s.
561-A Cr.
P.C.
is erroneous in law.
Our attention was drawn to some cases where the State Government made such applications in a pending appeal.
No question was however raised therein whether the State Government had locus standi to make the applications; therefore, we have thought fit to decide the point on principle rather than on cases where such applications were made.The second point for consideration is this, has the High Court inherent power to expunge remarks made by itself or by a lower court to prevent

abuse of the process of any court or otherwise to secure the ends of justice ? There was at one time some conflict of judicial opinion on this question.
The position as to case-law now seems to be that except for a somewhat restricted view taken by the Bombay High Court, the other High Courts have taken the view that though the jurisdiction is of an exceptional nature and is to be exercised in most exceptional cases only, it is undoubtedly open to the High Court to expunge remarks from a judgment in order to secure the ends of justice and prevent abuse of the process of the court lsee Emperor v.
Ch.
Mohd.
Hassan 1943 AIR(Lah) 298.); State v.
Chhotay Lal 1955 ALJ 240.); Lalit Kumar v.
S.
S.
Bose 1956 Indlaw ALL 121.); S.Lal Singh v.
State 1959 AIR(P&H) 211.) Ram Sagar Singh v.
Chandrika Singh 1960 Indlaw PAT 790.); and In re Ramaswami 1958 AIR(Mad) 303.) The view taken in the Bombay High Court is that the High Court has no jurisdiction to expunge passages from the judgment of an inferior court which has not been brought before it in regular appeal or revision; but an application under s.
561-A Cr.
P.
C.
is maintainable and in a proper case the High Court has inherent jurisdiction, even though no appeal or revision is preferred to it, to correct judicially the observations made by pointing out that they were not justified, or were without foundation, or were wholly wrong or improper I see State v.
Nilkanth Shripad Bhave 1954 ILR(Bom) 148.).
In State of U.
P.
v.
J.
N.
Bagga (judgment in Cr.
A.
122/1959 of this court decided on January 16 1961.), this court made an order expunging certain remarks made against the State Government by a learned Judge of the High Court of Allahabad. The order was made in an appeal brought to this court from the appellate judgment and order of the Allahabad High Court.
In State of U.
P.
v.
Ibrar Hussain (Judgment of this court in Cr.
As.
148/) 957 and 4 of 1958 decided on April 28, 1959.), this court observed that it was not necessary to make certain remarks which the High Court made in its judgment.
Here again the observation was made in an appeal from the judgment and order of the High Court.
We think that the view taken in the High Courts other than the High Court of Bombay is correct and the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only.
In fairness to learned counsel for the appellants we may state here that he has submitted before us that the State Government will be satisfied if we either expunge the remarks or hold them to be wholly unwarranted on the facts of the case.
He has submitted that the real purpose of the appeal is to remove the stigma which has been put on the police force of the entire State by those remarks the truth of which it had no opportunity to challenge.The last question is, is the present case a case of an exceptional nature in which the learned judge should have exercised his inherent jurisdiction under s.
561-A Cr.

P.
C.
in respect of the observations complained of by the State Government ? If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this court.
At the same time it is equally necessary that in expressing their opinions judges and Magistrates must be guided by considerations of justice, fairplay and restraint.
It is not infrequent that sweeping generalisations defeat the very purpose for which they are made.
It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself ; (b) whether there is evidence on record bearing on that conduct justifying the remarks ; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.
It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.
9.
In the case before us the learned judge chose to make sweeping and general observations against the entire police force of the State.
The case before him related to only one police officer, Mohammad Naim, about whose conduct the learned judge was undoubtedly justified in making adverse remarks.
The learned Judge himself realised that the remarks which he had made were much too general and sweeping in character, because in his later order he said that the remarks were meant for the police force in Uttar Pradesh only and he further said he would have expunged the remarks under the head (a) referred to earlier, if the party aggrieved had come before him.
We consider that the remarks made by the learned judge in respect of the entire police force of the State were not justified on the facts of the case, nor were they necessary for the disposal of the case before him.
The learned judge conceded that the general remarks he made were not based on any evidence in the record; he said that he drew largely from his knowledge and experience at the Bar and on the Bench.
10.
Learned counsel for the appellant has very frankly stated before us that the learned judge has had very great experience in the matter of criminal cases, and was familiar with the method of investigation adopted by the local police.
He has contended, however, that it was not proper for the judge to import his personal knowledge into the matter.
We do not think that in the present case we need go into the question as to the extent to which a judge or Magistrate may draw upon his experience in assessing or weighing evidence or even in judging the conduct of a person.
We recognise the existence of exceptional circumstances in a case where the judge or Magistrate may have to draw upon his experience to determine what is the usual or normal conduct with regard to men and affairs.
We say this with respect, but it appears to us that in the present case even allowing' for the great experience which the learned judge had in the matter of criminal trials, his statement that
"there was not a single lawless group in the whole country whose record of crime came anywhere near the record of that organised unit which is known as the Indian Police Force"
11.
To characterise the whole Police Force of the State as a lawless group is bad enough ; to say that its record of crime is the highest in the State is worse and coming as it does from a Judge of the High Court, is sure to bring the whole administration of law and order into disrepute.
For a sweeping generalisation of such a nature, there must be a sure foundation and the necessity of the case must demand it.
We can find neither in the present case.
We think that the State Government was justifiably aggrieved by such a sweeping remark.

Similar in nature is the remark about the stinking of "every fish in the police force barring, perhaps, a few." The word "perhaps" seems to indicate that even about the few, the learned judge had some doubt.
We consider that these sweeping generalisations defeat their own purpose.
They were not necessary for the disposal of the case against Mohammad Naim.
It would have been enough for the learned judge to say that when a large number of police officers were resorting to an objectionable method of investigation, it was unnecessary to pick out one petty officer and prosecute him for doing what several others had done with impugnity, It was wholly unnecessary for the learned judge to condemn the entire police force and say that their record of crime was the highest in the country.
Such a remark instead of serving the purpose of reforming the police force, which is the object the learned judge says he had in mind, is likely to undermine the efficiency of the entire police force.
We think that in his zeal and solicitude for the reform of the police force, the learned judge allowed himself to make these very unfortunate remarks which defeated the very purpose he had in mind.
Having said all this, we must add, lest we be misunderstood, that the conduct of Mohammad Naim and officers like him deserves the severest condemnation, and the learned judge rightly observed that such conduct required very serious notice by superior officers of the Police.
It is difficult to avoid the reflection that unless an example is made of such officers by taking the most stringent action against them, no improvement in police administration is possible.For the reasons given above, we have come to the conclusion, a conclusion which justice demands, that the present case is one of those exceptional cases where the inherent jurisdiction of the court should have been exercised and the remarks earlier referred to as (a), (b) and (c) should have been expunged.
We accordingly allow the appeal and direct that the aforesaid remarks do stand expunged from the order of the learned judge dated August 4, 1961.

Kundanbhai Dulabhai Shaikh and another v Distt.
Magistrate, Ahmedabad and Others
Supreme Court of India

13 February 1996
Writ Petition (Crl.) 491 of 1995
The Judgment was delivered by : S.
Saghir Ahmad, J.
1 These two petitions filed under Article 32 of the Constitution of India for writs in the nature of habeas corpus were allowed by us a short order on 21st November, 1995.
We now proceed to give our reasons.
2 Kundanbahi Dulabhai Shaikh, petitioner in Writ Petition (Crl.) No.
491 of 1995 and Rameshchandra Somchand Shah, petitioner in Writ Petition (Crl.) No.
492 of 1995, were detained in jail in pursuance of the orders dated 16th August, 1995, passed by the District Magistrate, Ahmedbad and District Magistrate, Surat, respectively, under section 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (For short, "Act").
These orders are contained in Annexure 'A' to the writ petition in both the cases.
The grounds of detention were supplied separately, though on the same date, and they are contained in Annexure 'B'.
3 Petitioner in Writ Petition (Crl.) No.
491/95 is the owner of a godown where 4 barrels containing 800 litres of kerosene meant for distribution to the public under the Public Distribution Scheme were found loaded on an auto-rickshaw.
On enquiry made by the staff of the supply Department, it was revealed that those barrels brought from Shreeji Petroleum Agency, Sarkhej, at the instance of Shri Ishamilbhai who was in possession of the godown and that petitioner was the owner of the auto-rickshaw, Ishamilbhai, on being questioned, have out that kerosene in 4 barrels was loaded at his instance and that he was the tenant of the godown.
The grounds contain various other details.
Which need not be mentioned here as those details are not relevant to the question on which we intend to dispose of this petition,
4 Petitioner in Writ Petition (Crl.) No.
492/95 carries on business in government foodgrains in a fair price shop.

He was to sell the wheat at the concessional rate of Rs.
per kg.
but when his shop as also the registers and documents contained therein were inspected by the staff of the supply Department, it was found that he had committed serious irregularities in the sale of wheat.
Consequently, he was detained under Section 3(2) of the Act in order to prevent him from carrying on his activities prejudicial to the maintenance of supplies of essential commodities.
5 In both these petitions, the principal contention raised by the counsel for the petitioners is that he representation made by the petitioners against the order of detention were not dealt with expeditiously and were not disposed of by the State Government at the earliest.
6 The opposite parties have filed counter-affidavits in which they have denied the allegations made by the petitioners and have set out in detail as to how their representations were dealt with.
The reply filed by the State Govt.
in Writ Petition (Crl.) No.
491/95, so far as it relates to the disposal of representation, is, as under:
" In fact, the above said representation dated 23.8.1995 made by the wife of the detenu Smt. Madinabibi Shaikh was addressed to Chief Minister, Gujarat State, which was received by Chief Minister's office on 25.8.1995, and was sent to the office of Secretary, Food and Civil Supplies Department which was received by the office of the secretary, Food and Civil Supplies Department on 29.8.1995.
The said representation thereafter was sent to the Special Branch of Food and Civil Supplies Department.
It was received by the concerned Branch, i.e.
Special Branch on 1.9.1995.
The Special Branch put up a note on the said representation on 6.9.1995, as there were around 40 to 50 representations which were pending for disposal during the said period.
They were taken up chronologically.
Therefore, the said representation came to be put up for disposal on 6.9.1995 as 5.9.1995 was holiday being Sunday.
The file was cleared by Section Officer on 7.9.1995 and submitted by the Branch on 7.9.1995 to the Department which was cleared by Department on 7.9.1995 and was put up before the Deputy Secretary who in turn cleared it on 8.9.1995 and submitted it before the secretary who also cleared it on the same day and submitted the file before the Hon'ble Minister for Civil Supplies for his orders.
The file was cleared by the Hon'ble Minister on 12.9.1995 as 9.9.1995 and 10.9.1995 were government holidays.
The Minister, Food and Civil Supplies, rejected the request of the petitioner and confinned the detention order.
The file was received back by the Special branch from the concerned Minister and by a letter dated 14.9.1995 detenu was informed about the decision taken on the said file of representation.
It is, therefore, submitted from, the above facts that there is no delay whatsoever in disposing the representation made by the wife of the detenu so far as the State Government is concerned,"
7 The Central Government, in its first counter affidavit, admitted that the representation dated 2.9.1995 of the petitioner against the order of detention was still pending, though it was received on 4.10.1995 along with the State Government's covering letter dated 27.9.1995.
It was indicated that the State Government did not sent its comments in spite of the telegram dated 12.10.95 and the reminder dated 19.10.95.
However, in the Additional Affidavit dated 20.11.1995, the Central Government says (through V.K. Jacob, Under Secretary in the Ministry of Civil supplies) that comments from the State Government were received on 6.11.95 and, after due consideration, the representation of the petitioner was rejected on 8.11.95.
8 The reply of the State Government with regard to the disposal of representation in Writ Petition (Crl.) No.
492/95 is as under:
"That the representation of the petitioner dated 23.8.95 addressed to the Minister for Food and Civil Supplies (Annexure 'D' to the writ petition) was received by the concerned Special Branch of the Food and Civil Supplies Department through the office of the Minister on 29.8.1995.
The said representation was put up by the Special Branch along with the file and note on 2.9.1995.

The file of the said representation was then submitted before the deponent on 5.9.1995 and the same was cleared by the deponent on the same day.
That the deponent forwarded the Concerned file to the Deputy Secretary, Department of Food and Civil Supplies, The Deputy Secretary cleared this file on 6.9.1995 and submitted it before the Secretary who also cleared it on the same day, i.e.
6.9.1995.
The representation was then sent to the Minister for Food and Civil Supplies on 7.9.1995 for his orders.
The file was received back by the Special Branch on 8.9.1995.
It is stated that the decision regarding the rejection of the representation was communicated to the detenu by a letter dated 11.9.1995.
Copies of the said representation of the petitioner were sent to the Advisory Board on 12.9.95 before its scheduled meeting to be held on 14.9.95.
A copy of the said representation was also sent to the Central Government by speed post letter dated 19.9.1995.
The Central Government asked for the comments of the State Govt.
regarding the said representation vide its telex dated 22.9.1995.
Soon after the telex was received by the special Branch of the Department, the remarks were translated in English and were sent to the Central Government by speed post letter dated 11.10.1995."
9 In this case, the Central Government has also filed a counter affidavit in which the plea of the detenu with regard to the delay in the disposal of his representation is answered as follows :
"The contents are not admitted hence denied.
However a representation dated 23.8.95 of the detenu forwarded by the State Government vide letter dated 19.9.95 was received in the Ministry on 21.9.95.
After considering the contents of the representation of the detenu, it was felt necessary that remarks of the State Government should be called for and therefore, I called for the same vide our telegram date 22.9.95.
However in spite of our reminders dated 29.9.95 and 5.10.95 the same were received on 18.10.95.
The Central Government therefore, examined the representation on the basis of the facts available with them which are sent by the State Government through Reports/grounds of detention through their letter dated 25.8.95.
The representation was rejected on 19.10.95 as there was no specific reasons furnished by the detenu that may warrant the revocation of detention order.
The decision of the Central Government was conveyed to Supdt.
Central Prison, Sabarmati, Ahmedabad on 19.10.95 by telegram with direction to convey to detenu.
The State Government was also informed simultaneously on the same day."
Article 22(5) of the Constitution of India provides as under:
"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
10.
Sub-section (1) of Section 8 of the Act, inter alia, provides as under:
" Grounds of order of detention to be disclosed to person affected by the order-(l) when a person is detained in pursuance of a detention order, the authority making the order shall.....communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."
The words "appropriate Government" have been defined in Section 2(a) of the Act as under:
"2(a).
"appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or as respects a person detained under such order, the State Government;"
11 Apart from the above, Section 14 of the Act provides that order of detention may be revoked either by the State Government or by the Central Government.

The Central Government can revoke even those orders which have been made by the State Government.
The Act also provides that within seven days of the making of a order of detention, copy of the order was also the grounds on which the order was passed shall he sent to the Central Government.
12 From the above, it will be sees that the right to make representation against the order of detention is not only a constitutional right but a statutory right as well.
Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is a corresponding duty on the authorities to whom the representation is made to dispose of the representation at the earlier or else the Constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning.
13 We may, at this stage, notice a frivolous contention, raised, on behalf of the respondents that since the authorities to whom the representation can be made have not been specified in Article 22(5) of the Constitution, the right of the detenu of making a representation to the appropriate government cannot be treated to be a constitutional right.
Respondents, for this purpose, have placed reliance upon the decision of this court in John Martin v.
The State of West Bengal, AIR 1975 SC 775 1975 Indlaw SC 603.
14 It will be seen that right to represent has been given not only by Article 22(5) of the Constitution but also by Section 8 of the Act, the right provided under the Act has, therefore, to be treated as an extension of the Constitutional right already available to a detenu under Article 22(5).
The legislature has, in fact, given effect to the Constitutional right by providing in Section 8 of the Act that the delenu shall have the right of making a representation to the appropriate government In Amir Shad Khan v.
L.
Hmingtiana & Ors., [1991] 4 SCC 391991 Indlaw SC 241, this Court, while considering the provisions of the conservation of foreign Exchange and Prevention of Smmoolina Activities Act, 1974 abserved as under.
"This clause casts a dual obligation on the Detaining Authority, namely (i) to communicate to the detenu the grounds on which the detention order has been made; and (ii) to afford to the detenu the earliest opportunity of making a representation against the detention order.
Consequently the failure to communicate the grounds promptly or to afford the detenu an opportunity of making a representation against the order would clearly violate the Constitutional guarantee afforded to the detenu by clause (5) of Article 22 of the Constitution.
It is by virtue of this right conferred on the detenu that the Detaining Authority considers it a duty to inform the appellant-detenu of his right to make a representation to the State Government, the Central Government and the Advisory Board.
The right to make a representation against the detention order thus flows from the Constitutional guarantee enshrined in Article 22 (5) which casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires".
15 This decision was considered in Veeramani v.
State of Tamil Nadu, [1994] 2 SC 337 1994 Indlaw SC 1450 and it was laid down as under:
"The right to make representation against the detention order flows from Art.
22(5).
But that article does not say to whom such representation if to be made.
Such a representation must be made to the authority who has power to approve, rescind or revoke the decision.
To know who has such power, the provisions of the Act have to be seen.
Under the T.N.
Act any detention order made by the empowered officer shall cease to be in operation if not approved within 12 days.
Therefore, the Act never contemplated that the detaining authority has specific power to revoke and it cannot be inferred that a representation can be made to it within the meaning of Art.
22(5).
Therefore, representation to be made by the detenu, after the earlier opportunity was afforded to him, can be only to the Government which has the power to approve or to revoke."
16 These decision are enough the reject the contention of the respondents.
17 Turning now to the main question relating to the early disposal of the representation, we may immediately observed that this Court in a large number of cases, has already laid down the

principle in clear and specific terms that the representation has to be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the court or else the unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of the detention, and in that situation, continued determination would become bad.
This has been the consistent view of this Court all along from its decision in Sk, Abdul Karim & Ors.
v.
State of West Bengal, [1969] 1 SCC 433 1969 Indlaw SC 262; In re : Durga show & On., [1970] 3 SCC 696 1969 Indlaw SC 497: Jayanarayan Sukul v.
State of West Bengal, [1970] 1 SCC 219 1969 Indlaw SC 445; Shait Hanif v.
State of West Bengal, [1974] 1 SCC 637 1974 Indlaw SC 30; Raisuddin @ Babu Tamchi v.
State of U.P.
& Anr.
[1983] 4 SCC 537 1983 Indlaw SC 114; Frances Coralie Mullin v.
W.C.
Khambra & Ors., [1980] 2 SCC 275 1980 Indlaw SC 590; Mohinuddin Alias Main Master v.
District Magistrate, Bead & Ors., [1987] 4 SCC 58 1987 Indlaw SC 28885; Rama Dhondu Board v.
V.K.
Saraf.
Commissioner of Police & Ors., [1989] 3.
SCC 173 1989 Indlaw SC 618; Aslam Ahmed Zahire Ahmed Saik v.
Union of India & Ors., [1989] 3 SCC 277 1989 Indlaw SC 566; Mahesh Kumar Chauhan alias Banti v.
Union of India & Ors., [1990] 3 SCC 148 1990 Indlaw SC 52, right upto its reiteration in Gazi Khan alias Chotia v.
Slate of Rajasthan and Anr., [1990] 3 SCC 459 1990 Indlaw SC 693.
18 Almost all these decisions were against considered in State of Tamil Nadu & Anr.
v.
A.
Vaidivel Alias Sundaravadivel, JT (1992) 5 SC 318 1992 Indlaw SC 201 and above view was reiterated, which was repeated against in K.M.
Abdulla Kunhi & B.L.
Abdul Khader v.
Union of India & Ors., [1991] 1 SCC 476 1991 Indlaw SC 473 and julia Jose Mavli v.
Union of India & Ors., (1992) Crl.
LJ.
109 1991 Indlaw SC 60 (SC).
19 In.
Mohitiuddin1987 Indlaw SC 28885 and Ram Dhondu' cases1989 Indlaw SC 618 (supra), it was provided that inordinate and unexplained delay in the disposal of representation would make the continued detention of a person, illegal and unconstitutional.
In Devi Lal Mahto v.
State of Bihar & Anr., AIR (1982) SC 1548 1982 Indlaw SC 139, the continued detention was held to have become bad on account of the indifferent attitude of the Government in not attending to the representation for about 10 days.
20 In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the secretariat for various reasons including red tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion.
The government and its officers will not give up their habit of maintaining a consistent attitude of lethargy.
So also, this Court will not hesitate in quashing the order of detention to restore the "liberty and freedom" to the person whose detention is allowed to become bad by the government itself on account of his representation not being disposal of at the earliest.
21 22, In both these cases, we have to read the old story of lethargy of the State Government.
In the first case, the representation dated 23.8.95 was received in the office of the Chief Minister on 25.8.95 and was ultimately disposed of on 12.9.95 and the order was communicated to the detenu on 14.9.95.

During this period, the file was being processed in the government departments.
It is pointed out in the counter-affidavit that the representation, on being received in the office of the Chief Minister on 25.8.95 was sent to the Secretary, Food & Civil Supplies Department, where it was received on 29.8.95.
The internal movement of the file thus took four days, The representation was then sent to the Special Branch where it was received on 1.9.95.
The representation was taken up by the Special Branch on 6.9.95.
The inactivity in taking up the representation for six days is explained by showing in the counter-affidavit that there were about 40 to 50 representations pending for disposal and they were taken up chronologically.
This indicates that the representation was placed in the queue and was not given precedence over other representation which are not said, in the counter-affidavit, to relate to detention orders. Even if they related to preventive detention, then such of those which were ready for disposal and in respect of which comments from various departments had been gathered and other formalities completed should have been disposed of immediately and should not have been kept pending on the ground of "chronological disposal" by saying that representations filed earlier by other detenus were still to be disposed of.
The chronology must be broken as soon as a representation is ready for disposal.
22 Apart from the above, the representation dated 2.9.95, which was made to the Central Government could not be disposed of for want of comments from the State Government.
It will be noticed that this representation was lying with the State Government from 2.9.95 to 27.9.95 and it was on that date that it was sent to the Central Government which received it on 4.10.95.
The Central Government, in spite of its telegrams and reminders, was not furnished the comments by the State Government for over a month.
The comments of the State Government were received by the Central Government on 6.11.95 and the representation was disposed of on 8.11.95.
This again is a glaring example of the lethargy on the part of the State Government, as a result of which petitioner's representation could not be disposed of expeditiously by the Central Government with the obvious consequence that the petitioner's right under Article 22 (5) of the Constitution read with Section 8 of the Act was violated.
23 In the second case also, the representation dated 23.8.95 made by the detenu was forwarded to the Central Government by the State Government under its letter dated 19.9.95 which was received on 21.9.95 by the Central Government, which by its telegram dated 22.9.95 and reminders dated 29.9.95 and 5.10.95 called for the comments of the State Government, The State Government, true to its colours, sent the comments on 18.10.95.
The representation was rejected by the Central Government on 19.10.95.
The representation thus remained lying with the State Government from 23.8.95 to 19.9.95 and when it was ultimately sent to the Central Government, the comments were not furnished by the State Government till 18.10.95.
Thus, in this case also, the guarantee of early disposal of representation set out in Arlicle 22 (5) was infringed
24 Blackmarketing is a social evil.
Persons found guilty of economic offences have to be dealt with a firm band, but when it conies to fundamental rights under the Constitution, this Court, irrespective of enormity and gravity of allegations made against the detenu, has to intervene as was indicate in Mahesh Kumar Chauhan's case 1990 Indlaw SC 52(supra) and in an earlier decision in Mahesh kumar Deorah v. District Magistrate, Kamrup & Ors., AIR (1974) SC 183 1973 Indlaw SC 486, in which it was observed that the gravity of the evil to the community resulting from anti-social activities cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the particularly as normal penal laws would still be available for being invoked rather than keeping a person in detention without trial.
25 Learned Counsel for the respondents referred to us the decision of this Court in State of U.P. v.
Shakeel Ahmad, [1996] 1 SCC 337 1995 Indlaw SC 1985 and contended that this Court ignored the delay of over 23 days in the disposal of the representation.
This decision is of no help to the respondents as the necessary facts on the basis of which the Court came to the conclusion that there was no delay in the disposal of representation, have not been set out.

All that has been said is that "in the facts and circumstances of this case, the delay in disposal of the representation of about 23 days also is not fatal".
Moreover, the period of detention had already expired and, therefore, what was laid down therein would be of no assistance to the respondents.
26 In view of the foregoing discussion we, after having considered the arguments of the counsel on both sides, by our order dated 21st November, 1995, as aforesaid, allowed these writ petitions and have now recorded the reasons therefore.
Petition allowed

H.
B.
Gandhi, Excise and Taxation v Messrs Gopi Nath and Sons and Others
Supreme Court of India

11 December 1989
C.A.
Nos.
5092-93 of 1989
The Order of the Court was as follows:
Special leave is granted.
1 These appeals are by the Revenue and are directed against the order dated May 20, 1983 of the Division Bench of the High Court of Punjab and Haryana in L.P.A.
Nos.
444 and 445 of 1982 dismissing the appeal preferred by the appellant against and affirming the orders dated January 13, 1983 of the learned Single Judge in Civil Writ Petition Nos.
2054 and 2170 of 1982.
By those writ petitions, the respondents assailed orders of assessment of sales tax under the Haryana General Sales Tax Act, 1973 bringing to tax a turnover of sales of articles of food said to have been sold by the respondents in their restaurants.
2 Against the respective orders of assessment the respondents filed appeals provided for in the statute.
S.
39(5) of the Act contemplates that no appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority is satisfied that the amount of tax assessed has been paid.
The proviso to that sub-section, however, invests the appellate authority with the discretion to waive the requirement of the payment of tax as a precondition to the entertainability of the appeal and to proceed to consider it on the merits subject to the appellant furnishing a bank guarantee or adequate security for the tax.
In the present cases, appeals envisaged and permitted by the statute had been lodged.
However, respondents were aggrieved by the order of the appellate authority declining to exercise the discretion under proviso to S.
39(5) in favour of respondents and calling upon them to deposit the tax due as a condition for the appeals being heard on the merits.
Respondents appear to have assailed the order declining to exempt them from payment of the tax in further appeals; but without any success.
3 Respondents thereafter approached the High Court u/art.
226 of the Constitution.
From the order of the learned Single Judge, which has come to be affirmed by the Division Bench, it would appear that the appellants did not confine their challenge to the legality of the order of the appellate authorities declining relief under proviso to sub-s.
(5) of Section 39, but the respondents raised and the High Court permitted a challenge to the merits of the assessment itself on the ground that the transactions assessed to sales tax were in fact services rendered by the respondent restaurants to their customers and did not constitute sale of articles of food.
The High Court entertained the writ petition and upon a re-appreciation of the facts proceeded to hold that the transactions did not constitute sales but were mere transactions of service.
In these appeals the permissibility of such a re-assessment of the evidence by the High Court at a stage where appeals were the appropriate remedy and where in fact such appeals had been filed is assailed.

Learned counsel for the Revenue urged that the question whether supply of articles of food and drinks to a customer in a hotel constitute sale of goods invoking a transfer of the property in the goods to the customer or whether the transactions are essentially and predominantly one of merely the rendering of service - the supply of food and drinks being merely incidental - is a complex and difficult question to be decided on a number of criteria and dependent on primary facts to be found by the fact-finding authority under the statute.
This, indeed, is so.
4.
In the Northern India Caterers (India) Ltd.
case, 1979 Indlaw SC 110 the complexities of the exercise were indicated by this Court
"We have no hesitation in saying that where food is supplied in an eating house or restaurant, and it is established upon the facts that the substance of the transaction, evidenced by its dominant object, is a sale of food and the rendering of services is merely incidental, the transaction would undoubtedly be exigible to sales tax.
In every case it will be for the taxing authority to ascertain the facts when making an assessment under the relevant sales tax law and to determine upon those facts whether a sale of the food supplied is intended."
5 In the course of the proceedings of assessment the assessing authority said:
"After going through the above judgment of the Supreme Court of India, it becomes clear that where a food is supplied in an eating house or a restaurant and the substance of the transaction has a dominant object of sale and rendering of services is merely incidental, the transactions would be subject to sales tax.
The deciding factor in the case of this dealer, therefore, is whether the transaction made by him is the purpose of providing entertainment and other services to the customers or the dominant factor was sale of foodstuffs.
As already held by the Supreme Court in Northern India Caterers case, 1979 Indlaw SC 110 there may be high style restaurants or residential hotels rendering a bundle of special services like ball dance, rare music, viands of high regale, etc.
as described by learned judges in their above-cited judgment.
The establishment of the dealer does not answer the above description and cannot be considered to be of a high style restaurant providing services.
It is an ordinary restaurant.
I have paid a visit to the restaurant and have observed that the furniture and crockery provided in the restaurant is of an ordinary type which is barely necessary to run any restaurant in a small place like Karnal.
No special music has been provided nor any bikini dances or special shows are held.
Their Lordships of the Supreme Court have clearly held that where the charges for music, dances and the supply of foodstuffs are made in a consolidated form and it is not possible to bifurcate the items and decide the bills to discover separately the components of goods sold and in case where the service charges are much more than the value of the goods supplied, the transactions would not attract the levy of sales tax.
It is, however, unambiguous that where the charges for the foodstuffs are dominant in the bills and the services are nominal, the object of the dealer is definitely one of sale of foodstuffs and not of rendering services.
I have examined some of the bills of the dealer and find that he has charged the price of foodstuffs only and there is no other consideration for any type of services.
The dominant object in his case is, therefore, undoubtedly the sale of foodstuffs and not of providing any music, or entertainment services.
I think the Supreme Court had in mind those establishments where the entrance is on some payment, where shows are held and the supply of foodstuffs is just nominal and incidental to the entertainment.
A visitor to such entertainment or amusement house spends few hours for the purpose of entertainment on payment.
Naturally, the establishment providing such amusement/entertainment to the customer has to satisfy his bodily wants and amounts charged for satisfying such bodily wants are nominal as compared to the charges of services and providing amusement etc.
No such thing is, however, found in his restaurant"
6 The constitutional validity of the provisions in sub-s.
(5) of S.
39 of the Act were not assailed in the writ petition.

Similar provisions, accompanied by similar proviso, have been held valid.
At the stage at which the respondents approached the High Court, what the respondents could have, if the facts so justified, assailed was the question of the refusal of the appellate authority to exercise the discretion under the proviso.
When an hierarchy of appeals is envisaged by a taxing statute, it is generally to be insisted that an assessee must go through the statutory proceedings.
In C.
A.
Abraham v.
ITO 1960 Indlaw SC 280, it was observed
"In our view the petition filed by the appellant should not have been entertained.
The Income Tax Act provides a complete machinery for assessment of tad and imposition of penalty and for obtaining relief in respect of any improper orders passed by the income tax authorities, and the appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court u/art.
226 of the Constitution when he had adequate remedy open to him by an appeal to the Tribunal"
7 In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate.
In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment.
While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to S.
39(5) was proper or not, it was not open to the High Court to re-appreciate the primary or perceptive facts which have otherwise within the domain of the fact-finding authority under the statute.
The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities.
But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves.
It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.
8 But here what was assailed was the correctness of findings as if before an appellate forum.
Judicial review, it is trite, is not directed against the decision but is confined to the decision making process.
Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact.
The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court.
Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.
It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.
9 On a consideration of all the circumstances of the case, we think that the order of the High Court cannot be allowed to remain undisturbed.
We allow these appeals, set aside the judgments of the Division Bench in the letters patent appeals as also the orders of the learned Single Judge in the writ petitions in the High Court.
10 Learned counsel for the respondents, however, said that though the legality of the refusal of the benefit of an order under the proviso to S.
39(5) had been raised before the High Court, that question receded to the background in view of the relief having been allowed on the main question touching the nature of the transactions.
Learned counsel said that the former question yet remains to be examined.
Learned counsel also submitted that the refusal of the appellate authorities to exempt respondents from the deposit of the assessed tax as a precondition to the entertainability of the appeals was unsupportable and that in their present straitened financial circumstances it will not be possible for the respondents to avail themselves of the right of appeal.

11 It appears to us that having regard to the circumstances that we are considering this matter after lapse of several years it would neither be necessary nor appropriate to remit the matter to the High Court to examine the question whether the refusal of the appellate authorities to give to the respondents a benefit of the proviso to S.
39(5) was legal or not.
It appears just that respondents should be enabled to have the benefit of the right of appeal and that we should, as a rough and ready measure, determine the conditions on which relief under the proviso should be given to them.
12.
We, accordingly, set aside the orders of the appellate authorities declining or confirming, as the case may be, the refusal of the benefit of an order under said proviso and direct that the appeals filed by the respondents before the first appellate authority be now restored and proceeded with on the merits in accordance with law, subject to the condition that the respondent, in each of the appeals, deposits a sum of Rs 5000 towards the assessed tax and furnishes security in respect of the balance of the tax to the satisfaction of the said first appellate authority within two months from today.
13 The appeals shall be taken up for consideration of the merits and dealt with and disposed of in accordance with law after compliance with these conditions.
These appeals are disposed of accordingly.
No costs.
Appeals disposed of.

Ashok Kumar Pandey v State of West Bengal and Others
Supreme Court of India

18 November 2003
Writ Petition (crl.) 199 of 2003
The Judgment was delivered by : Hon'ble Justice Arijit Pasayat
1.
This petition u/art.
32 of the Constitution of India, 1950 (in short 'the Constitution') has been filed purportedly in public interest.
The prayer in the writ petition is to the effect that the death sentence imposed on one Dhananjay Chatterjee @ Dhana (hereinafter referred to as 'the accused') by the Sessions Court, Alipur, West Bengal, affirmed by the Calcutta High Court and this Court, needs to be converted to a life sentence because there has been no execution of the death sentence for a long time.
Reliance was placed on a Constitution Bench decision of this Court in Smt.
Triveniben vs.
State of Gujarat, (1989 (1) SCC 678 1989 Indlaw SC 43).
2.
According to the petitioner, he saw a news item in a TV channel wherein it was shown that the authorities were unaware about the non-execution of the death sentence and, therefore, condemned prisoner, the accused has suffered a great degree of mental torture and that itself is a ground for conversion of his death sentence to a life sentence on the basis of ratio in Triveniben's case 1989 Indlaw SC 43 (supra).
It needs to be noted here that prayer for conversion of death sentence to life sentence has already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively as stated in the petition.
When the matter was placed for admission, we asked the petitioner who appeared in-person as to what was his locus standi and how a petition u/art.
32 is maintainable on such nature of information by which he claims to have come to know of it.
His answer was that as a public spirited citizen of the country, he has a locus to present the petition and when the matter involved life and liberty of a citizen, this Court should not stand on technicalities and should give effect to the ratio in Triveniben's case 1989 Indlaw SC 43 (supra).
There has been violation of Art.
21 of the Constitution and the prolonged delay in execution of sentence is violative of Article 21, so far as the accused is concerned.
3.
Reliance was also placed on few decisions, for example, Sunil Batra (II) vs.
Delhi Administration, (1980 (3) SCC 488 1979 Indlaw SC 329); S.P.

Gupta vs.
Union of India, (1981 (Supp.) SCC 87 1981 Indlaw SC 599); Daya Singh vs.
Union of India, (1991 (3) SCC 61) 1991 Indlaw SC 103 and Janata Dal vs.
H.S.
Choudhary, (1992 (4) SCC 305 1992 Indlaw SC 1257) to substantiate the plea that the petitioner had locus standi to present the petition in public interest and this was a genuine public interest litigation.
4.
When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out.
Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect.
Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation".
If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well.
There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe.
It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity.
Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction.
A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.
These aspects were highlighted by this Court in The Janta Dal case 1992 Indlaw SC 1257 (supra) and Kazi Lhendup Dorji vs.
Central Bureau of Investigation, (1994 Supp (2) SCC 116 1994 Indlaw SC 422).
A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective.
See Ramjas Foundation vs.
Union of India, (AIR 1993 SC 852 1992 Indlaw SC 1037) and K.R.
Srinivas vs.
R.M.
Premchand, (1994 (6) SCC 620 1994 Indlaw SC 1765).
5.
It is necessary to take note of the meaning of expression 'public interest litigation'.
In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:
"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."
6.
In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :
"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected.
It does not mean anything the particular localities, which may be affected by the matters in question.
Interest shared by national government "
7.
In Janata Dal case 1992 Indlaw SC 1257 (supra) this Court considered the scope of public interest litigation.
In para 52 of the said judgment, after considering what is public interest, has laid down as follows :
"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy.

Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."
8.
In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:
"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."
9.
In para 96 of the said judgment, it has further been pointed out as follows:
"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."
10.
In subsequent paras of the said judgment, it was observed as follows:
"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration.
Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".
11.
It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants.
Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc.
etc.
are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the do others of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.
12.
Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking.
It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens.
The attractive brand name of public interest litigation should not be used for suspicious products of mischief.
It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration.
The Court must not allow its process to be abused for oblique considerations.
Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives.
Often they are actuated by a desire to win notoriety or cheap popularity.
The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.
13.
The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:
"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests.
Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests.
Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."
14.
The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite.
The information should show gravity and seriousness involved.
Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.
In such case, however, the Court cannot afford to be liberal.
It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.
The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men.
They masquerade as crusaders of justice.
They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.
15.
Courts must do justice by promotion of good faith, and prevent law from crafty invasions.
Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good.
(See State of Maharashtra vs.
Prabhu, (1994 (2) SCC 481 1993 Indlaw SC 461), and Andhra Pradesh State Financial Corporation vs.
M/s GAR Re-Rolling Mills and Anr., (AIR 1994 SC 2151 1994 Indlaw SC 1633).
No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes.
Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions.
(See Dr.
B.K.
Subbarao vs.
Mr.
K.
Parasaran, (1996) 7 JT 265 1996 Indlaw SC 977).
Today people rush to Courts to file cases in profusion under this attractive name of public interest.
They must inspire confidence in Courts and among the public.
16.
As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else.

It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations.
Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases.
Though in Dr.
Duryodhan Sahu and Others.
v.
Jitendra Kumar Mishra and Others.
(AIR 1999 SC 114 1998 Indlaw SC 235), this Court held that in service matters PILs should not be entertained, the inflow of so- called PILs involving service matters continues unabated in the Courts and strangely are entertained.
The least the High Courts could do is to throw them out on the basis of the said decision.
The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them.
In one case, it was noticed that an interesting answer was given as to its possession.
It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents.
Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs.
It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.
17.
Coming to the facts of the case, it has not been shown as to how and in what manner the accused, condemned prisoner is handicapped in not seeking relief if any as available in law.
The matter pertains to something to happen or not at Kolkatta and what was the truth about the news or cause for the delay, even if it be is not known or ascertained or even attempted to be ascertained by the petitioner before approaching this Court.
To a pointed query, the petitioner submitted that the petitioner "may not be aware" of his rights, that except the news he heard he could not say any further and "the respondent-State may come and clarify the position.
This petition cannot be entertained on such speculative foundations and premises and to make a roving enquiry.
May be at times even on certain unconfirmed news but depending upon the gravity or heinous nature of the crime alleged to be perpetrated which would prove to be obnoxious to the avowed public policy, morals and greater societal interests involved, Courts have ventured to intervene but we are not satisfied that this could be one such case, on the facts disclosed.
It is reliably learnt that a petition with almost identical prayers was filed before the Calcutta High Court by relatives of the accused and the same has been recently dismissed by the High Court.
18.
In Gupta's case 1981 Indlaw SC 599 (supra) it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant.
He has also left the following note of caution:
"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration.
The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."
19.
In State of H.P.
vs.
A Parent of a Student of Medical College, Simla and Others.
(1985 (3) SCC 169 1985 Indlaw SC 286), it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.
20.
Khalid, J.

in his separate supplementing judgment in Sachidanand Pandey vs.
State of W.B., (1987 (2) SCC 295 1987 Indlaw SC 28720, 331) said:
"Today public spirited litigants rush to courts to file cases in profusion under this attractive name.
They must inspire confidence in courts and among the public.
They must be above suspicion * * *
Public interest litigation has now come to stay.
But one is led to think that it poses a threat to courts and public alike.
Such cases are now filed without any rhyme or reason.
It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions.
If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions * * *
I will be second to none in extending help when such help is required.
But this does not mean that the do others of this Court are always open for anyone to walk in.
It is necessary to have some self-imposed restraint on public interest litigants."
21.
Sabyasachi Mukharji, J.
(as he then was) speaking for the Bench in Ramsharan Autyanuprasi vs.
Union of India, (1989 Supp (1) SCC 251 1988 Indlaw SC 916), was in full agreement with the view expressed by Khalid, J.
in Sachidanand Pandey's case 1987 Indlaw SC 28720 (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases.
22.
See also separate judgment by Pathak, J.
(as he then was) in Bandhua Mukti Morcha vs.
Union of India, (1984 (3) SCC 161 1983 Indlaw SC 192).
23.
Sarkaria, J.
in Jasbhai Motibhai Desai vs.
Roshan Kumar, Haji Bashir Ahmed and Others.
(1976 (1) SCC 671 1975 Indlaw SC 372) expressed his view that the application of the busybody should be rejected at the threshold in the following terms:
"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper.
Persons in the last category are easily distinguishable from those coming under the first two categories.
Such persons interfere in things which do not concern them.
They masquerade as crusaders for justice.
They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.
They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives.
Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration.
The High Court should do well to reject the applications of such busybodies at the threshold."
24.
Krishna Iyer, J.
in Fertilizer Corporation Kamgar Union (Regd.) Sundri and Others.
v.
Union of India, (1981 (1) SCC 568 1980 Indlaw SC 243) in stronger terms stated:
"If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."
25.
In Chhetriya Pardushan Mukti Sangharsh Samiti v.
State of U.P., (1990 (4) SCC 449 1990 Indlaw SC 199), Sabyasachi Mukharji, C.J.
observed:

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon u/art.
32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."
26.
In Union Carbide Corporation v.
Union of India, (1991 (4) SCC 584 1991 Indlaw SC 912, 610), Ranganath Mishra, C.J.
in his separate judgment while concurring with the conclusions of the majority judgment has said thus:
"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large.
Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."
27.
In Subhash Kumar v.
State of Bihar, (1991 (1) SCC 598 1991 Indlaw SC 913) it was observed as follows:
"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity.
If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court.
Personal interest cannot be enforced through the process of this Court u/art.
32 of the Constitution in the garb of a public interest litigation.
Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.
A person invoking the jurisdiction of this Court u/art.
32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity.
It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".
28.
In the words of Bhagwati, J.
(as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J.
"the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J.
has pointed out, "the do others of the courts should not be ajar for such vexatious litigants".
29.
It will be appropriate at this stage to take note of what this Court felt when dealing with petitions u/art.
32 with somewhat similar issues.
The petitioner in one case filed writ petition u/art.
32 of the Constitution challenging the order of this Court whereby it had affirmed the conviction of two accused and confirmed the death sentence for reasons stated in its judgment in State of Maharashtra v.
Sukhdeo Singh (AIR 1992 SC 2100 1992 Indlaw SC 44).
30.
The writ petition was dismissed holding that third party has no locus standi to challenge the conviction by filing the writ petition u/art.
32 of the Constitution.
(See Simranjit Singh Mann v.
Union of India (AIR 1993 SC 280 1992 Indlaw SC 75)
31.
The petitioner there claimed to be a friend of the convicts, and it was held that he has no locus standi to move the Court u/art.
32 of the Constitution.

Unless the aggrieved party is a minor or an insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g., next friend, to move the Court on his behalf; for example, see Ss.
320(4-a), 330(2) read with Ss.
335(1)(b) and 339 of the Code of Criminal Procedure, 1973 (in short the 'Code').
Ordinarily the aggrieved party has the right to seek redress.
Admittedly, it was not the case of the petitioner that the two convicts are minothers or insane persons but had argued that since they were suffering from an acute obsession such obsession amounts to a legal disability which permits the next friend to initiate proceedings u/art.
32 of the Constitution.
32.
A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code or any other law which would permit initiation of proceedings by a third party, be he a friend.
It must be remembered that the repercussions of permitting such a third party to challenge the findings of the Court can be serious, e.g., in the instant case, itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction.
33.
Similar view was expressed in Karamjeet Singh v.
Union of India (AIR 1993 SC 284 1992 Indlaw SC 202).
34.
It was noted that Art.
32 which finds a place in Part III of the Constitution entitled "fundamental rights" provides that right to move this Court for the enforcement of the rights conferred in that part is guaranteed.
It empowers this Court to issue directions or orders or writs for the enforcement of any of the fundamental rights.
The petitioner did not seek to enforce any of his fundamental rights nor did he complain that any of his fundamental right was violated.
He sought to enforce the fundamental rights of others, namely, the two condemned convicts who themselves did not complain of their violation.
Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognizes as sufficient to permit another person, e.g.
next friend, to move the court on his behalf.
35.
Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party be a member of the Bar to question the decision against third parties.
36.
Neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence.
37.
Based on the above backgrounds, we do not think this a fit case which can be entertained and that too, u/art.
32 of the Constitution and is accordingly dismissed, but without costs.

Ramjee Rai and Others v State of Bihar
Supreme Court of India

24 August 2006
W.P.
(Cr.) 1621 of 2005
The Judgment was delivered by: S.
B.
Sinha, J.
1.

The Appellants herein with Bharat Rai and Ganeshi Rai (since deceased) were prosecuted for commission of the offence of causing intentional death to one Baijnath Singh and disappearance of his dead body.
A First Information Report was lodged by Rajnath Singh (PW-3), brother of Baijnath Singh (deceased) alleging that on 21.8.1980 at about 4 in the afternoon he along with him was at their plot of land situated by the side of a Dhab in the north of village Dudhiyan where they had gone for cutting Masuria Crops.
The Appellants together with Bharat Rai and Ganeshi Rai, variously armed, took them forcibly on a boat to the Dhab letting the boat moving freely.
After the boat had proceeded some distance, they started assaulting the deceased.
He, however, finding an opportunity in this behalf jumped from the boat and started swimming towards the higher ground, shouting and crying for help.
Baijnath Singh died as a result of the assault and his dead body was carried away in their boat.
It was stated that the occurrence had been seen by Satyanand Singh (PW-1), Kameshwar Singh (PW-2) and Pancham Singh (PW-5).
2.
It was alleged that in view of the flood conditions as also due to night fall, the report could not be lodged in the night.
As regards motive for commission of the said offence, the informant alleged that the deceased had a piece of land near the house of the accused and they repeatedly used to pluck the maize and cut away the Masuria crop grown on that land as a result whereof the parties had been quarreling with each other.
Allegedly, Baijnath Singh had also apprehended the accused cutting away his Masuria crop wherefor he had abused them in retaliation.
The accused persons are said to be belonging to one family and they had been indulging in commission of theft and dacoity.
The murder of Baijnath Singh was said to have committed in retaliation of the said incident.
In the First Information Report, two accused were said to be carrying country made pistols while the rest were armed with gandasas, lathies and spears.
The dead body was recovered after five days, i.e., 26.8.1980.
The dead body was first seen by the Chowkidar (PW-4) of the village.
He reported to the informant thereabout.
He came and also identified the dead body.
All the accused persons were convicted for commission of an offence under Section 302/34 read with S.
201 of the Indian Penal Code and sentenced to undergo imprisonment for life under Section 302/34 and five years rigorous imprisonment under S.
201 of the Indian Penal Code by a judgment and order dated 31.7.1987.
An appeal preferred there against by the accused has been dismissed by the High Court by the impugned judgment.
3.
Mr.
P.S.
Mishra, learned senior counsel appearing on behalf of the Appellants, submitted that the learned Sessions Judge as also the High Court committed a serious error in holding that the dead body had been identified to be that of the deceased.
According to the learned counsel, keeping in view the post mortem report which clearly showed that only bones were visible, it could not have been identified and in that view of the matter the prosecution case cannot be said to have been proved.
4.
It was further submitted that some of the independent witnesses who could throw light on the prosecution case had deliberately been withheld by the prosecution as a result whereof the Appellants suffered grave prejudice.
Non-examination of independent and uninterested witnesses by the prosecution, having regard to the fact of the case, Mr.
Mishra would submit, was imperative.
Reliance in this behalf has been placed on Sahaj Ram and Others v.
The State of U.P.
[(1973) 1 SCC 490 1972 Indlaw SC 432] and Habeeb Mohammad v.
The State of Hyderabad 1954 SCR 475 1953 Indlaw SC 118].

5.
The High Court, it was urged, committed a serious error in passing the impugned judgment insofar as it failed to take into consideration the fact that the deceased was having criminal background and, thus, could have been done to death by others.
The Appellants, it was contended, have been implicated because of the enmity.
Inconsistency in depositions of PWs, it was submitted, had also not been taken into consideration by the courts below.
It also argued that the Trial Court as also the High Court ought to have considered individual overt acts on the part of each of the Appellants.
6.
Ms.
Kirti Sinha, learned counsel appearing on behalf of the State, on the other hand, submitted that the learned Sessions Judge and the High Court rightly convicted the Appellants herein in view of the evidence of the eye witnesses to the occurrence, viz., PWs.
1, 2, 3 and 5.
The learned Trial Judge in his judgment inter alia held:
"(i) The injuries inflicted on the body of the deceased were homicidal in nature.
(ii) The prosecution has been able to show that the dead body of Baijnath Singh had been identified.
(iii) Although PW-3 was inimically disposed of towards the accused, it cannot be said that he had falsely implicated the Appellants.
(iv) The prosecution has assigned sufficient reasons for non- examination of the witnesses named in the chargesheet.
(v) Evidences adduced on behalf of the prosecution witnesses being consistent, the prosecution case has been proved."
7.
The High Court in its judgment opined:
"(i) The prosecution has brought on records sufficient evidences to prove that the assailants had arrived on a boat, assaulted the deceased and carried away his dead body.
(ii) The prosecution witnesses being closely associated with the deceased, it was not difficult for them to identify the corpse.
(iii) Ocular evidences being consistent in nature, the prosecution has been able to prove the charges as against the Appellants."
8.
PW-3 is the informant.
The First Information Report was lodged at the earliest possible opportunity.
The informant categorically stated that he not only saw the deceased being assaulted, he at the first opportunity jumped from the boat, swam across the Dhab and somehow escaped from the clutches of the Appellants.
He categorically stated that he had gone to Akilpur, which was an out-post but the Officer-Incharge was not present there thence.
He thereafter returned to his house and in the next morning came to the Danapur Police Station on a boat.
9.
It is not in dispute that the dead body of Baijnath Singh was first seen by Ganga Paswan, who was a chowkidar.
He was also resident of same village.
He knew the deceased from his childhood.
He categorically stated that the deceased, on his right hand side of the forehead had patch of grey hair.
A one paisa coin was also tied against his waist.
He had thick mustache and same resembled with that of Baijnath Singh.
He identified the dead body seeing his face and other features.
The dead body was found in a field of maize situate in Mauza Banwarichak.
It was at a distance of about 1.5 kms.
from the place of occurrence.
According to him, river Ganges flows at a distance of 3 kms.
South from that field and about 20 kms.
from the West of the said field.

From the place where the dead body was found, river Ganges flows at a distance of 1.5 miles East.
The place has been completely surrounded by the said river.
According to him, crops had also been sown in the field.
10.
The dead body was also noticed by Ram Swarup Singh.
The informant (PW-3) was informed thereabout.
He also went to the spot and identified the dead body as that of his brother.
The police authorities were also informed in regard thereto.
11.
Another witness who was examined by the prosecution was Satyanand Singh (PW-1).
He was also an eye-witness.
He was sitting on a Machan.
He not only named the accused persons having assaulted Baijnath Singh, but also stated that he had seen the informant escaping from the clutches of the accused.
12.
PW-2 another eye-witness is Kameshwar Singh.
He was also in his maize field at the time of occurrence.
He corroborated the statements of PWs 1 and 3.
He is again an eye-witness.
He also identified the dead body.
In his deposition, he stated:
"I told the police that I was in my field on the date of incident.
I saw Baijnath Singh, Rajnath Singh in their field before the coming of the accused.
There was sickle in their hand at that time.
At the time when Rajnath Singh jumped from the boat there was nothing in his hand.
The field of Rajnath Singh in Dhudhiya village is at a distance of 2-4-10 Laggi from the Basti."
13.
He also stated that despite cries nobody from the village came in view of the water.
They have gone to their respective fields by wading through risen water.
One Pancham Singh was examined as PW-5.
He also was an eye- witness.
He testified having seen Baijnath Singh was being assaulted.
According to him, as the deceased stopped shouting, he realized that he was no more.
The learned Sessions Judge had placed implicit reliance on the testimonies of these witnesses opining:
"Therefore, in view of the discussions made above, I find that all the eye-witnesses are quite competent and reliable and their evidence coupled with the evidence of Doctor (PW.6) and I.O. (PW.7) fully establishes that on the alleged date all the accused persons armed with lathi, Bhala, Gandasa, pistol came on boat, in the field of the informant and forcibly picked up the informant and Baijnath Singh on boat, and then went towards Dhab and assaulted Baijnath Singh with their respective weapons, causing his death."
14.
The High Court also in its impugned judgment discussed the evidence of the eye-witnesses and held:
"We are unable to accept the submission and on a careful examination of the written report and the depositions of all the witnesses, including the informant, P.W.3, we find no inconsistency in those statements.
In the written report, it is stated that while the informant and his brother Baijnath Singh were cutting Masuriya crop on their plot of land, the accused arrived with variously armed and threatening them with their arms, they forcibly took him and his brother to the Dhab on a boat.
We are unable to read to statement in the written report to mean that the accused had come to the land, where the informant was there with his brother, on foot and they took them along on foot up to Dhab where they boarded the boat that was waiting there.
The statement in the written report on a careful reading plainly means that the accused arrived there on a boat and forcibly picked up the informant and his brother on it and took them in the direction of the Dhab.
We, thus, find no inconsistency, much less, any contradiction in the prosecution story as stated in the written report and as deposed before the court by the witnesses."
15.

In regard to the identification of the dead body, the learned Sessions Judge held that the dead body was that of Baijnath Singh which had duly been proved by PWs 3 and 4.
We may at this juncture notice the medical evidence.
16.
Dr.
Sheonandan Barunwal, who examined himself as PW-6, proved the post mortem report.
The dead body before him had been identified as that of Baijnath Singh by the constable, Rajnath Singh and the Chowkidar.
The age of the deceased was said to be 35 years.
The clothes were having a ganji, dhoti and a small chadar.
The body was in a decomposed condition.
Rigor mortis was absent.
The body had three cut wounds.
It was categorically stated that the hairs of scalp were intact.
The post mortem report does not suggest that there was no mark on face or identification marks were totally absent.
In his opinion, the death might have been due to amputation of hands.
He categorically stated that the dead body was thrown in water and the soft parts were eaten away by the fish.
According to him, it was difficult to assess the period past since death.
But, according to him, it may be approximately 10 days.
17.
The Appellants did not even suggest that the deceased did not have the special features whereabout PW-4 made categorical statement.
His age at the time of death had also not been disputed.
The Investigating Officer Ram Naresh Shukla (PW-7) also stated in categorical terms that the entire flesh below the stomach had been eaten away by the animals and the dead body had been identified by Chowkidar Ram Swarup Singh and Raghunandan Paswan, Ganga Paswan and Kameshwar Singh of Banwarichak stating that the same was that of Baijnath Singh.
Even the age of the deceased was not disputed.
18.
It is now a trite law that corpus delicti need not be proved.
Discovery of the dead body is a rule of caution and not of law.
In the event, there exists strong circumstantial evidence, a judgment of conviction can be recorded even in absence of the dead body.
[See Rama Nand and Others v.
State of Himachal Pradesh, (1981) 1 SCC 511 1981 Indlaw SC 129].
19.
In Ram Gulam Chaudhary and Others v.
State of Bihar [(2001) 8 SCC 311 2001 Indlaw SC 228], this Court noticed the decision in Rama Nand 1981 Indlaw SC 129 (supra) and opined:
"There can be no dispute with the proposition of law set out above.
As is set out in the various authorities (referred to above), it is not at all necessary for a conviction for murder that the corpus delicti be found.
Undoubtedly, in the absence of the corpus delicti there must be direct or circumstantial evidence leading to the inescapable conclusion that the person has died and that the accused are the persons who had committed the murder "
20.
What was, therefore, necessary for the courts below to arrive at a finding of guilt as against the Appellants in regard to their involvement in the crime.
It is not a case where the dead body could not be identified.
There had been sufficient materials placed by the prosecution to bring home the said fact.
So far as submission of Mr.
Mishra that some independent witnesses have not been examined is concerned, from the records it may be noticed that it would appear that the public prosecutor categorically stated before the learned Sessions Judge that some of the witnesses were inimically disposed of towards the informant.
The Appellants have not brought on record any material to show that the aforementioned stand taken by the prosecution was not correct.

It is true that ordinarily the prosecution should examine all witnesses whose names have been disclosed in the chargesheet; but, then the same cannot be said to be a rule having universal application.
Each case has to be considered on its own facts.
21.
It is now well-settled that what is necessary for proving the prosecution case is not the quantity but quality of the evidence.
The court cannot overlook the changes in the value system in the society.
When an offence is committed in a village owing to land dispute, the independent witnesses may not come forward.
22.
In Sheelam Ramesh and Another v.
State of A.P.
[(1999) 8 SCC 369 1999 Indlaw SC 1505], this Court opined:
"Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence."
23.
Yet again in Pohlu v.
State of Haryana [(2005) 10 SCC 196 2004 Indlaw SC 1672], this Court opined:
"It is true that it is not necessary for the prosecution to multiply witnesses, if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution.
However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the court.
If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the prosecution "
24.
In Balram Singh v.
State of Punjab, [(2003) 11 SCC 286 2003 Indlaw SC 435], this Court opined:
"The appellants' contention that the prosecution has relied only on interested evidence of PWs 1 and 2 and has not examined the other independent witnesses who were present or for that matter the non-examination of another son of the deceased by the name of Jasbir Singh should give rise to an adverse inference, cannot also be accepted because so far as Jasbir Singh is concerned, though there is some material on record to show that he was examined by a doctor on the night of the incident, there is no material to show that he was actually involved in this fight.
His name is not mentioned in the FIR also, therefore if the prosecution has thought it not necessary to examine this witness, we do not think an adverse inference could be drawn on the basis of this non-examination of the said Jasbir Singh.
This view of ours also holds good in regard to the so-called other independent witnesses who were present at the time of the incident since in a family feud like this it is rare that an independent witness would come forward to give evidence."
25.
Yet again in State of U.P.
v.
Anil Singh [1988 Supp SCC 686 1988 Indlaw SC 28], it was observed:
"Of late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses.
In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence.
We have recently pointed out the indifferent attitude of the public in the investigation of crimes.
The public are generally reluctant to come forward to depose before the court.
It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined.
Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable."
26.
In Habeeb Mohammad 1953 Indlaw SC 118 (supra), whereupon Mr.
Mishra has placed strong reliance, this Court stated that prosecution was not bound to call all available witnesses irrespective of consideration of number of reliability, witnesses essential to the

unfolding of the narrative on which the prosecution was based must be called by the prosecution, whether in the result the effect of their testimony is against the case of the prosecution.
27.
However, in that case the Appellant there was a Subedar.
The allegation against him was that he ordered the police to fire.
The Deputy Commissioner of Police who had accompanied the Appellant and had witnessed the occurrence had not been examined by the prosecution.
It was in that fact situation held that the prosecution should have examined the said witness.
It was held that the Appellant was considerably prejudiced by the omission on the part of the prosecution to examine the said officer and other officers in the circumstances of the said case and the conviction of the Appellant merely based on the testimony of the police jamedar cannot be said to have been arrived at after a fair trial, particularly, when no satisfactory explanation has been given or even attempted for this omission.
28.
In Sahaj Ram 1972 Indlaw SC 432 (supra) again, relied by Mr.
Mishra, there was a group rivalry.
In that case, the Court found serious mistakes committed by the Sessions Judge as also the High Court in appreciating evidence.
Keeping in view the peculiar nature of the case and having regard to the fact that there had been group rivalry, it was opined:
"As pointed out by this Court in Habeeb Mohammed v.
State of Hyderabad though the prosecution is not bound to call all available witnesses irrespective of considerations of number or reliability, witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether in the result the effect of their testimony is for or against the case of the prosecution.
This Court approved the decision of the Judicial Committee in Stephen Seneviratne v.
King laying down a similar proposition.
In this case the first information report clearly states that Shitabi, CW 1, was an employee of the deceased and he was with his master at the time of the incident.
He has also given information about the incident to PW 1 and others.
Whatever justification there may have been for not examining Ram Prasad, the prosecution, in our opinion, was not justified in keeping back Shitabi "
29.
In Lakshmi and Others v.
State of U.P.
[(2002) 7 SCC 198 2002 Indlaw SC 1780], this Court opined:
"Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence u/s.
302 IPC.
This, however, is not an inflexible rule.
It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder.
It would depend on the facts and circumstances of each case.
A charge of murder may stand established against an accused even in the absence of identification of the body and cause of the death."
30.
In the instant case, however, some of the witnesses examined by the prosecution are independent.
The evidence of all the witnesses are more or less consistent.
Nothing has been pointed out to discredit their testimonies.
The learned Sessions Judge as also the High Court, therefore, cannot be said to have committed any mistake in relying upon the testimonies of the said witnesses.
31.
A contention was raised that autopsy surgeon opined that the death must have taken place 10 days prior to the post mortem examination and in that view of the matter the prosecution case should be disbelieved.
The murder allegedly took place on a boat.
The dead body was thrown in the water.

It remained under water for more than five days.
Rigor mortis was absent and the body was fully decomposed.
The soft tissues of some of the parts of the body had been eaten away by fish.
Medical science has not achieved such perfection so as to enable a medical practitioner to categorically state in regard to the exact time of death.
In a case of this nature, it was difficult to pinpoint the exact time of death.
The autopsy surgeon told about the approximate time lag between the date of post mortem examination and the likely date of death.
He did not explain the basis for arriving at his opinion.
This Court on a number of occasions noticed that it may not be possible for a doctor to pinpoint the exact time of death.
32.
In Ramreddy Rajeshkhanna Reddy and Anr.
v.
State of Andhra Pradesh [(2006) 3 SCALE 452 2006 Indlaw SC 144], this Court observed:
"In this case, the time of actual offence having regard to the different statements made by different witnesses may assume some importance as one of the grounds whereupon the High Court has based its judgment of conviction is the time of death of the deceased on the basis of the opinion rendered by Dr.
P.
Venkateshvarlu (P.W.13).
In Modi's Medical Jurisprudence, 22nd edition, as regard duration of rigor mortis, it is stated:
It was, therefore, extremely difficult to purport the exact time of death of the deceased, more so when no sufficient reason was assigned in the post-mortem report."
33.
Submission of Mr.
Mishra is also to the effect that the learned Sessions Judge had not discussed about the individual overt acts of the Appellants.
The prosecution witnesses categorically stated about the whole incident.
The occurrence took place on a boat.
Out of two persons forcibly taken on the boat, PW-3 could escape.
There were fourteen accused persons.
They had inflicted injuries upon him.
Post mortem suggests that sharp cutting weapons had been used.
Two accused persons, as noticed hereinbefore, were held to be possessed of some cutting weapons.
The Appellants came in a group.
Some of them started assaulting the deceased with weapons in their hands.
In a case of this nature, it was well nigh impossible for the first informant to pinpoint the exact overt acts committed by each of the accused persons individually.
S.
34 of the Indian Penal Code, therefore, is clearly attracted in a case of this nature.
34.
In a recent judgment in Bishna Alias Bhiswadeb Mahato and Others v.
State of W.B.
[(2005) 12 SCC 657 2005 Indlaw SC 1047], the law has been stated in the following terms:
"For the purpose of attracting S.
149 and/or 34 IPC, a specific overt act on the part of the accused is not necessary.
He may wait and watch and the inaction on the part of an accused may sometime go a long way to hold that he shared a common object with others."
35.
For the reasons aforementioned, we are of the opinion that no case has been made out for interference with the impugned judgment.
The appeal is dismissed.
Appeal dismissed.

R.
K.
Lakshmanan v A.
K.

Srinivasan and Another
Supreme Court of India

1 August 1975
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.
1 30 of 1975.
Appeal by Special Leave from the Judgment and Order dated the 13th March, 1974 of the Kerala High Court in Criminal Misc.
Petition No.
7 of 1974 with Crl.
M.P.
No.
967/73.
The Judgment was delivered by: R.
S.
Sarkaria, J.
1 This appeal by special leave is directed against a judgment of the Kerala High Court rejecting the appellant's application under s.
561-A.
Criminal Procedure Code for expunction of certain remarks made against him in the High Court's order, dated 20-11-1973, in Criminal Misc.
Petition No.
967 of 1973.
2 The appellant is a member of the Kerala Judicial Service, while the respondent herein is an Advocate practising at Ernakulam.
On 14-8-1973, the appellant was working as District Magistrate Ernakulam.
One Kamaleswaran, who was an accused in C.C.
Nos.
216 and 217 of 1973 pending before him, was ordered to be released on bail on his executing a bond for Rs.
1,000/with two sureties in the like amount.
The two sureties were Kamaleswaran, the brother of the accused, and Sri Thankappan Nair.
Thankappan's address was given as "businessman, son of Parameswaran Pillai, Thambanoor Trivandrum." The affidavit filed by Thankappan, while offering himself as surety, was attested by Sri A.
K.
Srinivasan Advocate stating "solemnly affirmed at Ernakulam on this 14th day of August 1973 and signed before me who is personally known to me".
3 The above cases stood posted for examination of the accused under s.
342 of the Code of Criminal Procedure.
When on that date the cases were called for hearing, the accused was absent.
His Counsel Shri Srinivasan appeared and represented that although he had no information from the accused, who had to come from Trivandrum.
yet he was expecting him to reach the court in time.
The appellant (District Magistrate) thereupon ordered cancellation of the bail bonds and directed issue of notices to the Surety under s.
514 of the Code of Criminal Procedure calling upon him to show cause before 16-10-1973 why the terms of the Surety bonds providing for forfeiture of the sum of Rs.
1,000/be not enforced.
The notices issued to the Surety Thankappan Nair, were returned unserved whereupon on the 17th October, 1973.
the appellant issued a non-bailable warrant for the arrest of the Surety.
On the following day, the appellant issued a notice to Sri A.
K.
Srinivasan, Advocate which ran as under:
"Ernakulam District Magistrate Court No.
M.C.
106 and M.C.
107 of 1973.
Notice for Shri A.

K.
Srinivasan, Advocate.
The above-mentioned cases are being fixed for hearing 3-11-1973 at 11 A.M.
You are required to appear before the Court.
....
.....
By order
Sd./
18th October.
1973 SARISHADAR."
4 It may be mentioned here that in the proceedings initiated under s.
514 of the Code of Criminal Procedure in the two cases .
Mr.
Srinivasan, Advocate was not the duly constituted attorney or the Surety, Thankappan.
5.
On receipt of the aforesaid notice, Mr.
Srinivasan, Advocate filed Crl.
M.P.
967 of 1973 before the High Court of Kerala under s.
561-A of the Code of Criminal Procedure praying that the appellant be directed to withdraw the notice, dated 18-10-1973, on the ground that the issue of notice was arbitrary and amounted to an abuse of the process of the court because-
(a) There is no provision in the Criminal Procedure Code empowering the Magistrate to issue such a notice to command the Advocates' appearance when he is not connected either as a witness or a party or otherwise with the proceedings relating to cancellation of bailbonds;
(b) The notice was issued to humiliate him and the Bar since the latter had passed a resolution, on 21-7-1973, pro testing against the improper and discourteous treatment meted out by the Magistrate to the members of the Bar.
6 The learned Judge of the High Court before whom this petition came up for hearing, by an order dated 2-11-1973, called for a report from the appellant by 5-11-1973 regarding the allegations contained in, the Advocate's petition and particularly as to under which provision of law and under what circumstances he had thought it fit to issue a notice to the Advocate requiring him to appear before him on 3-11-1973.
The appellant thereupon submitted the report to the High Court, the material part of which reads:
"When notice was sent to the surety Thankappan Nair whose address is given as, business-man, Thambanoor, Trivandrum, it was reported by the Police that there is no such person, as far as they could gather, from the detailed enquiries made and therefore notice could not be served.
In the affidavits filed by Shri Thankappan Nair in these two cases when he offered himself as surety the signatures of the deponent were attested by Shri A.
K.
Sreenivasan, Advocate stating Solemnly affirmed at Ernakulam on this the 14th day of August 1973 and signed before me? who is personally, known to me.
From the report of the Police Trivandrum it appeared that this might be a case of false personation.
It is seen that in several cases the accused have been got re leased by false sureties.
have already submitted a report about this to the Hon'ble High Court as per my letter dated 31-10-1973.
There are several other similar instances of false personation and filing false affidavits pending enquiry before this Court.
Under the circumstances in this case also it appeared to the court that a false affidavit has been filed by false personation.
If it is false personation, the attestation by the advocate should necessarily be false.
The offences under Sections 193, 196, 197, 199 and 205 of the Indian Penal Code appear to have been committed.
These are some of the offences mentioned in S.
195 Cr.
P.C.
Under s.
476 of the Cr.
P.C.

when any Civil, Revenue or Criminal Court is whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in s.
195, Sub-s.
(1), Cl.
(b) or cl.
(c), which appears to have been committed in or in relation to a proceeding in that court, such court may, after such preliminary inquiry if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court..
To ascertain whether there is a person as described in the affidavits filed in the name of Shri Thankappan Nair notice was issued as part of the preliminary enquiry contemplated u/s.
476 Cr.
P.C.
to Shri A.
K.
Sreenivasan who has attested the affidavits of the said Thankappan Nair stating that the deponent is personally known to him.
This had to be done in view of the report of the police.
Notice to Shri A K.
Sreenivasan was issued to appear in court on 3-11-1913 not in his capacity as Advocate appearing for the accused but as the person who has attested the affidavit of the said surety stating that he personally knows the surety.
The court can make the preliminary enquiry mentioned above, either through the police or to the accused or to the other surety or to the person who attested the affidavit.
In this matter accused is absconding.
the other surety could not be served and the police report is as stated above.
So the only person to whom the inquiry under 476 could be made in the circumstances is the person who has attested the affidavit."
7 On 8-11-1973, the Advocate filed an affidavit in which he inter alia averred:
"I submit that the present explanation that the notice was issued to me as a part of the preliminary enquiry contemplated under sec.
476 of the Criminal Procedure Code is obviously an after-thought, since it is difficult that any reasonable man would have inferred from the Police Report dated 12-10-1973 that Sri Thankappan Nair" one of the sureties was a nonexistent person and therefore the attestation mad by me on 14-8-1973 would have been false".
8.
He further reiterated with elaboration the allegations in his petition that the impugned action of the Magistrate lacked good faith and due care and had been issued to humiliate the bar generally and the petitioner particularly.
After taking into consideration the appellant's report and other material on record, the High Court quashed the notice holding that the "action of the District Magistrate in issuing the impugned notice to the appellant constitutes grave misuse of his power and flagrant abuse of the process of the court".
9 The appellant then moved an application (Cr.
M.P.
No.
7 of 1974) for expunction of the remarks made against him by the High Court in its order, dated 20-11-1973.
The application was rejected.
10.
Against that order, dated 13-3-1974, refusing to expunge the adverse remarks, Shri Lakshmanan the District Magistrate has come in appeal to this Court.
11 11l the reply affidavit, dated 21-3-1975, filed in this Court, the appellant has submitted that if this Court is prima In of the opinion that the passages requested to be expunged are too many and spread over throughout the order, at least these four passages be expunged from the order in question:
"(i) I cannot help remarking that the information furnished to this Court by the District Magistrate in his report dated 3-11-1973 regarding the contents of the Police Report is grossly inaccurate and misleading."

"(ii) I make no secret of my opinion that the action taken by the District Magistrate, in the present case in issuing a notice to the petitioner, who is a member of the bar, was most highly arbitrary and the very casual fashion in which the said action has been done renders it all the more objectionable."
"(iii) that the action taken against the petitioner by the District Magistrate is totally devoid of any legal sanction and highly arbitrary.
'
"(iv) I hold that the action of the District Magistrate in issuing the impugned notice to the petitioner constitutes a grave misuse of his power and also flagrant abuse of the process of his court".
12 The tests to be applied in considering the expunction of disparaging remarks against persons or authorities whose conduct comes in for consideration before courts of law in cases to be decided by them, were neatly summed up by this Court, speaking through S.
K.
Das, J., in State of U.P.
v.
Muhammad Nain, thus:
"(i) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
(ii) Whether there is evidence on record bearing on that conduct justifying the remarks; and
(iii)Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that con duct.
It has also been recognised that judicial pronouncements must be judicial in nature, and should n not normally depart from sobriety, moderation and reserve."
Let us now apply these tests to the present case.
13.
In the petition filed under s.
561-A, Code of Criminal Procedure by the Advocate, the appellant was impleaded as the sole respondent.
The appellant was called upon by the High Court to explain his conduct in issuing the impugned notice.
In reply, the appellant submitted a detailed report.
It is not controverted that before the High Court.
the appellant was represented by a senior Public Prosecutor who had been directed to defend him by the State Government.
The appellant had thus adequate opportunity of explaining his conduct and defending the impugned action.
Indeed, in his report submitted to the High Court, he did his best to justify his conduct in that case.
The appellant therefore, cannot complain that the remarks in question were passed by the High Court without affording him due opportunity to explain and defend his action.
14 Nor can it be said that this is a case where there was no evidence on record bearing on the conduct of the appellant to which the re marks in question pertain.
15.
It is true that ex-facie, the notice requiring the Advocate to attend the Court of the Appellant on 3-11-73, though couched in curt and peremptory language, was not, by itself, a very offensive document.
But the Advocate's allegation was that it had not been issued in good faith and the sole purpose of issuing this notice was to humilate the Advocate and the Bar who had earlier passed a resolution complaining to the High Court against the misbehaviour of the appellant towards the members of the Bar.
Subsequently, on 8-11-1973 the Advocate field an affidavit setting forth full particulars of the circumstances which, according to him, showed how the notice was illegal.
arbitrary and tainted by bad faith.
He annexed a copy of the Bar's resolution, to his affidavit.
the report sent by the appellant to the High Court confirmed that the allegations made in the Advocate's petition were not empty apprehensions.
The report revealed that the notice was not an innocuous request to the Counsel to furnish better k particulars of the Surety, but it was a preliminary step taken under cover of s.
476, Criminal Procedure Code for possible prosecution of the Advocate.
The appellant gave a clear clue to his ulterior intent, when in the report, he said:

"Notice to Shri A.
K.
Sreenivasan was issued....not in his capacity as Advocate appearing for the accused but as the person who has attested the affidavit of the said Surety ....
"
16 Thus there was ample material before the High Court bearing on the impugned conduct of the appellant, justifying the adverse comments in question.
17.
Again, the passages sought to be expunged could not be said to be irrelevant or alien to the subject matter of the case before the High Court.
The notice issued to the Surety had been returned by the police with an endorsement which, rendered into English, reads as under:
"Notice could not be served on the person referred to in the notice as he (process server) did not get any information about him after detailed enquiry made about him in Tampanoor from different businessmen.
For want of sufficient information and more detailed particulars regarding the nature of the business conducted at Tampanoor by the person referred to in the notice, the service could not be ' effected.
Submitted for orders".
18 But in his report submitted to the High Court, the appellant stated that "it was reported by the Police that there is no such person as far as they could gather from the detailed inquiries made and therefore notice could not be served".
Manifestly, this statement did not present a faithful and correct picture of the endorsement of the process server.
Evidently, this misleading stand was taken by the appellant to show that action under s.
476, Criminal Procedure Code against the Advocate would not be groundless.
In these premises it cannot be said that the observations of the High Court that "information furnished to this Court by the District Magistrate in his report dated 3-11-73 regarding the contents of the Police Report is grossly inaccurate and misleading" was unjustified.
19 The substance of the other remarks in question is substantially the same, viz., that the issue of the impugned notice to the Advocate by the appellant was illegal and arbitrary and amounted to a gross abuse of the process of the Court.
These remarks were an integral part of the reasoning of the High Court.
They were not irrelevant or foreign to the matter in issue.
They were inextricably intertwined with the findings and the order recorded by the High Court in that case.
Excision of these remarks would emasculate the order of the High Court, robbing it of its very rationale.
20.
Judged by the aforesaid tests, no case for interference by this Court has been made out.
21 Accordingly, we dismiss the appeal, with no order as to costs.
Appeal dismissed.

Secretary, State of Karnataka and Others v Umadevi and Others
Supreme Court of India

10 April 2006
Appeal (Civil) 3595-3612 of 1999 with C.A.
No.
1861-2063/2001, 3849/2001, 3520-3524/2002 and C.A.
No.
1968 of 2006 Arising out of S.L.P.(C) 9103-9105 of 2001
The Judgment was delivered by: P.
K.
Balasubramanyan, J.
Leave granted in SLP(C) Nos.9103-9105 of 2001.
1 Public employment in a sovereign socialist secular democratic re public has to be as set down by Constitution and the laws made there under.
Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf.

Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that un equals are not treated equals.
Thus, any public employment has to be in terms of the Constitutional scheme.
2 A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages.
Going by a law newly enacted, The National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act.
But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.
3 But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed.
The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post.
It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts.
Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service.
A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the Constitutional scheme.
Such orders are passed apparently in exercise of the wide powers u/art.
226 of the Constitution of India.
4.
Whether the wide powers u/art.
226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over.
It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established.
The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment.
It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers u/art.
226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.
5 This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment.
Such directions are issued presumably on the basis of equitable considerations or individualization of justice.
The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements.
It is this conflict that is reflected in these cases referred to the Constitution Bench.

6 The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (See Basu's Shorter Constitution of India).
Art.
309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States.
That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts.
It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc.
If rules have been made under Art.
309 of the Constitution, then the Government can make appointments only in accordance with the rules.
7.
The State is meant to be a model employer.
The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers.
Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure.
Normally, statutory rules are framed under the authority of law governing employment.
It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law.
This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme.
It may even amount to negating the accepted service jurisprudence.
Therefore, when statutory rules are framed under Art.
309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.
8 These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision.
The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing.
The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned.
There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.
9 In Civil Appeal Nos.3595-3612 of 1999 the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the department, entitled to all the benefits of regular employees.
They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3.7.1984.
Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation.
These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim.
The Administrative Tribunal rejected their claim finding that they have not made out a right either to get wages equal to that of others regularly employed or for regularization.

Thus, the applications filed were dismissed.
The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal.
10.
It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed.
It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years.
The High Court also issued a command to the State to consider their cases for regularization within a period of four months from the date of receipt of that order.
The High Court seems to have proceeded on the basis that, whether they were appointed before 01.07.1984, a situation covered by the decision of this Court in Dharwad District Public Works Department vs.
State of Karnataka (1990 (1) SCR 544 1990 Indlaw SC 723) and the scheme framed pursuant to the direction there under, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularization in their posts.
11 Civil Appeal Nos.1861-2063 of 2001 reflects the other side of the coin.
The appellant association with indefinite number of members approached the High Court with a writ petition u/art.
226 of the Constitution of India challenging the order of the government directing cancellation of appointments of all casual workers/daily rated workers made after 01.07.1984 and further seeking a direction for the regularization of all the daily wagers engaged by the government of Karnataka and its local bodies.
A learned Single Judge of the High Court disposed of the writ petition by granting permission to the petitioners before him, to approach their employers for absorption and regularization of their services and also for payment of their salaries on par with the regular workers, by making appropriate representations within the time fixed therein and directing the employers to consider the cases of the claimants for absorption and regularization in accordance with the observations made by the Supreme Court in similar cases.
The State of Karnataka filed appeals against the decision of the learned Single Judge.
12.
A Division Bench of the High Court allowed the appeals.
It held that the daily wage employees, employed or engaged either in government departments or other statutory bodies after 01.07.1984, were not entitled to the benefit of the scheme framed by this Court in Dharwad 1990 Indlaw SC 723 District Public Works Department case, referred to earlier.
The High Court considered various orders and directions issued by the government interdicting such engagements or employment and the manner of entry of the various employees.
Feeling aggrieved by the dismissal of their claim, the members of the associations have filed these appeals.
13 When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges.
The order of reference is reported in This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judge Benches of this Court and by two Judge Benches and hence the question required to be considered by a larger Bench.
When the matters came up before a three Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General.
The order of reference is reported in 2003 (10) SCALE 388.
It appears to be proper to quote that order of reference at this stage.
It reads:
"1.
Apart from the conflicting opinions between the three Judges' Bench decisions in Ashwani Kumar and Ors.
Vs.

State of Bihar and Ors., reported in 1997 (2) SCC 1 1996 Indlaw SC 372, State of Haryana and Ors vs., Piara Singh and Ors.
Reported in 1992 (4) SCC 118 1992 Indlaw SC 777 and Dharwad Distt.
P.W.D.
Literate Daily Wage Employees Association and Ors.
Vs.
State of Karnataka and Ors.
Reported in 1990 (2) SCC 396 1990 Indlaw SC 723, on the one hand and State of Himachal Pradesh vs.
Suresh Kumar Verma and Anr., reported in AIR 1996 SC 1565 1996 Indlaw SC 3143, State of Punjab vs.
Surinder Kumar and Ors.
Reported in AIR 1992 SC 1593 1991 Indlaw SC 952, and B.N.
Nagarajan and Ors.
Vs.
State of Karnataka and Ors., reported in 1979 (4) SCC 507 1979 Indlaw SC 600 on the other, which has been brought out in one of the judgments under appeal of Karnataka High Court in State of Karnataka vs.
H.
Ganesh Rao, decided on 1.6.2000, reported in 2001 (4) Karnataka Law Journal 466, learned Additional Solicitor General urged that the scheme for regularization is repugnant to Arts.
16(4), 309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).
"
2.
On the other hand, Mr.
M.C.
Bhandare, learned senior counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provision of Arts.
14 and 21 of the Constitution.
3.
Mr.
V.
Lakshmi Narayan, learned counsel, appearing in CC Nos.109-498 of 2003, has filed the G.O. dated 19.7.2002 and submitted that orders have already been implemented.
4.
After having found that there is conflict of opinion between three Judges Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.
5.
Let these matters be placed before Hon'ble the Chief Justice for appropriate orders."
14.
We are, therefore, called upon to resolve this issue here.
We have to lay down the law.
We have to approach the question as a constitutional court should.
15 In addition to the equality clause represented by Art.
14 of the Constitution, Art.
16 has specifically provided for equality of opportunity in matters of public employment.
Buttressing these fundamental rights, Art.
309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State.
In view of the interpretation placed on Art.
12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Art.
12 of the Constitution.
With a view to make the procedure for selection fair, the Constitution by Art.
315 has also created a Public Service Commission for the Union and Public Service Commissions for the States.
Art.

320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters.
As a part of the affirmative action recognized by Art.
16 of the Constitution, Art.
335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment.
The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations.
the Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.
16 In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently.
This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation.
But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment.
Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed.
Once this right of the Government is recognized and the mandate of the Constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting u/art.
226 of the Constitution or u/art.
32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the Constitutional scheme.
17 What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time.
Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts.
It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the Constitutional scheme.
In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution.
The approving of such acts also results in depriving many of their opportunity to compete for public employment.
We have, therefore, to consider the question objectively and based on the Constitutional and statutory provisions.
In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs.
Jagdip Singh & Ors.
(1964 (4) SCR 964 1963 Indlaw SC 314).
It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."
18 During the course of the arguments, various orders of courts either interim or final were brought to our notice.
The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining.
Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once for all

so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders.
The submission of learned counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court.
The bypassing of the Constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality.
While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment.
19.
The argument on behalf of some of the respondents is that this Court having once directed regularization in the Dharwad 1990 Indlaw SC 723 case (supra), all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized.
Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the Constitutional scheme of appointment.
This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment.
The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other.
It is necessary to put an end to uncertainty and clarify the legal position emerging from the Constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.
20 Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence.
In State Of Mysore Vs.
S.V.
Narayanappa [1967 (1) S.C.R.
128 1966 Indlaw SC 70], this Court stated that it was a mis-conception to consider that regularization meant permanence.
In R.N.
Nanjundappa Vs T.
Thimmiah & Anr.
[(1972) 2 S.C.R.
799 1971 Indlaw SC 281], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment.
This Court stated:-
"Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules u/ art.
309.
Both the contentions are fallacious.
If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.
Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment.
Regularization cannot be said to be a mode of recruitment.
To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."
21.
In B.N.
Nagarajan & Ors.
Vs.
State of Karnataka & Ors.

[(1979) 3 SCR 937 1979 Indlaw SC 600], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments.
They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.
This court emphasized that when rules framed under Art.
309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government u/art.
162 of the Constitution in contravention of the rules.
These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions.
We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.
22 We have already indicated the Constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed.
This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the Constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.
23 Without keeping the above distinction in mind and without discussion of the law on the question or the effect of the directions on the Constitutional scheme of appointment, this Court in Daily Rated Casual Labour Vs.
Union of India & Ors.
(1988 (1) SCR 598 1987 Indlaw SC 28447) directed the Government to frame a scheme for absorption of daily rated casual labourers continuously working in the Posts and Telegraphs Department for more than one year.
This Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge.
While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its Executive, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made there under concerning public employment.
The same approach was made in Bhagwati Prasad Vs.
Delhi State Mineral Development Corporation (1989 Suppl.
(2) SCR 513 1989 Indlaw SC 347) where this Court directed regularization of daily rated workers in phases and in accordance with seniority.
24 One aspect arises.
Obviously, the State is also controlled by economic considerations and financial implications of any public employment.
The viability of the department or the instrumentality or of the project is also of equal concern for the State.
The State works out the scheme taking into consideration the financial implications and the economic aspects.
Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking.
The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight.
It is not as if this had not happened.
So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter- productive.

25 The Decision in Dharwad Distt.
P.W.D.
Literate Daily Wage Employees Association & ors.
Vs.
State of Karnataka & Ors.
(1990 (1) SCR 544 1990 Indlaw SC 723) dealt with a scheme framed by the State of Karnataka, though at the instance of the court.
The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularization, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily wage basis.
In other words, employees who had been appointed without following the procedure established by law for such appointments.
This Court, at the threshold, stated that it should individualize justice to suit a given situation.
With respect, it is not possible to accept the statement, unqualified as it appears to be.
This Court is not only the Constitutional court, it is also the highest court in the country, the final court of appeal.
By virtue of Art.
141 of the Constitution of India, what this Court lays down is the law of the land.
Its decisions are binding on all the courts.
Its main role is to interpret the Constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution.
We have given unto ourselves a system of governance by rule of law.
The role of the Supreme Court is to render justice according to law.
As one jurist put it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law.
Consistency is a virtue.
Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos.
Its role, therefore, is really to interpret the law and decide cases coming before it, according to law.
Orders which are inconsistent with the legal conclusions arrived at by the court in the self same judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.
26 In Dharwad 1990 Indlaw SC 723 case, this Court was actually dealing with the question of 'equal pay for equal work' and had directed the State of Karnataka to frame a scheme in that behalf.
In the judgment, this Court stated that the precedents obliged the State of Karnataka to regularize the services of the casual or daily/monthly rated employees and to make them the same payment as regular employees were getting.
Actually, this Court took note of the argument of counsel for the State that in reality and as a matter of statecraft, implementation of such a direction was an economic impossibility and at best only a scheme could be framed.
Thus a scheme for absorption of casual/daily rated employees appointed on or before 1.7.1984 was framed and accepted.
The economic consequences of its direction were taken note of by this Court in the following words.
"We are alive to the position that the scheme which we have finalized is not the ideal one but as we have already stated, it is the obligation of the court to individualize justice to suit a given situation in a set of facts that are placed before it.
Under the scheme of the Constitution, the purse remains in the hands of the executive.
The legislature of the Statecontrols the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met.
The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer.
Therefore, unduly burdening the State for implementing the Constitutional obligation forthwith would create problems which the State may not be able to stand.
We have, therefore, made our directions with judicious restraint with the hope and trust that both parties would appreciate and understand the situation.
The instrumentality of the State must realize that it is charged with a big trust.

The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people.
May be that in every situation the same tax payer is not the beneficiary.
That is an incident of taxation and a necessary concomitant of living within a welfare society."
27.
With respect, it appears to us that the question whether the jettisoning of the Constitutional scheme of appointment can be approved, was not considered or decided.
The distinction emphasized in R.N.
Nanjundappa Vs T.
THIMMIAH & ANR.
(supra), was also not kept in mind.
The Court appears to have been dealing with a scheme for 'equal pay for equal work' and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily rated workers.
With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually.
If that were the ratio, with respect, we have to disagree with it.
28 We may now consider, State of Haryana Vs.
Piara Singh and Others [1992) 3 SCR 826 1992 Indlaw SC 777].
There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour.
This Court started by saying:
"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive.
It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature.
This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Art.
309 of the Constitution or (in the absence of such rules) by issued rules/instructions in exercise of its executive power.
The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service"
29.
This Court then referred to some of the earlier decisions of this Court while stating:
"The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Arts.
14 and 16.
It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be.
As is often said, the State must be a model employer.
It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution.
it is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long.
Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization.
While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."
This Court then concluded :
"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made.
In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/ appointment.
If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.
The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.
Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee.
This is necessary to avoid arbitrary action on the part of the appointing authority.
Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file.
If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Art.
16 should be followed.
In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.
An unqualified person ought to be appointed only when qualified persons are not available through the above processes.
If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State "
30.
With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment.
The direction to make permanent the distinction between regularization and making permanent, was not emphasized here can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete.
With respect, the direction made in Piara Singh 1992 Indlaw SC 777 (supra) are to some extent inconsistent with the conclusion therein.
With great respect, it appears to us that the last of the directions clearly runs counter to the Constitutional scheme of employment recognized in the earlier part of the decision.
Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.
31 We shall now refer to the other decisions.
In State of Punjab and others Vs.
Surinder Kumar and others (1991 Suppl.
(3) SCR 553 1991 Indlaw SC 952), a three judge bench of this Court held that High Courts had no power, like the power available to the Supreme Court u/art.
142 of the Constitution of India, and merely because the Supreme Court granted certain reliefs in exercise of its power u/art.
142 of the Constitution of India, similar orders could not be issued by the High Courts.
The bench pointed out that a decision is available as a precedent only if it decides a question of law.
The temporary employees would not be entitled to rely in a Writ Petition they filed before the High Court upon an order of the Supreme Court which directs a temporary employee to be regularized in his service without assigning reasons and ask the High Court to pass an order of a similar nature.
32.
This Court noticed that the jurisdiction of the High Court while dealing with a Writ Petition was circumscribed by the limitations discussed and declared by judicial decisions and the High Court cannot transgress the limits on the basis of the whims or subjective sense of justice varying from judge to judge.
Though the High Court is entitled to exercise its judicial discretion in deciding Writ Petitions or Civil Revision Applications coming before it, the discretion had to be confined in declining to

entertain petitions and refusing to grant reliefs asked for by the petitioners on adequate considerations and it did not permit the High Court to grant relief on such a consideration alone.
This Court set aside the directions given by the High Court for regularization of persons appointed temporarily to the post of lecturers.
The Court also emphasized that specific terms on which appointments were made should be normally enforced.
Of course, this decision is more on the absence of power in the High Court to pass orders against the Constitutional scheme of appointment.
33 In Director, Institute of Management Development, U.P.
Vs.
Pushpa Srivastava (Smt.) (1992 (3) SCR 712 1992 Indlaw SC 1190), this Court held that since the appointment was on purely contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularization in service in the absence of any rule providing for regularization after the period of service.
A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the concerned calendar year was issued.
This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end.
This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee.
34 In Madhyamik Shiksha Parishad, U.P.
Vs.
Anil Kumar Mishra and Others [AIR 1994 SC 1638 1992 Indlaw SC 1292], a three judge bench of this Court held that ad hoc appointees/temporary employees engaged on ad hoc basis and paid on piece-rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from one to two years.
This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere.
35 In State of Himachal Pradesh Vs.
Suresh Kumar Verma (1996 (1) SCR 972 1996 Indlaw SC 3143), a three Judge Bench of this Court held that a person appointed on daily wage basis was not an appointee to a post according to Rules.
On his termination, on the project employing him coming to an end, the Court could not issue a direction to re-engage him in any other work or appoint him against existing vacancies.
This Court said:
"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly.
From the date of discharging the duties attached to the post the incumbent becomes a member of the services.
Appointment on daily wage basis is not an appointment to a post according to the Rules."
"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."
36 In Ashwani Kumar and others Vs.
State of Bihar and others (1996 Supp.
(10) SCR 120 1995 Indlaw SC 830), this Court was considering the validity of confirmation of the irregularly employed.
It was stated:
"So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned.
But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration

and even if such purported regularization or confirmation is given it would be an exercise in futility."
This Court further stated:
"In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies.
Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure.
But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry.
The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment.
A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned.
But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment."
The Court noticed that in that case all constitutional requirements were thrown to the wind while making the appointments.
It was stated, "On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Arts.
14 and 16(1) of the Constitution of India, both at the initial stage as well as at the stage of confirmation of these illegal entrants.
The so called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which these 6000 initial entrants were drafted in the scheme."
37 It is not necessary to notice all the decisions of this Court on this aspect.
By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization.
The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the Constitutional scheme for public employment.
38 In A.
Umarani Vs.
Registrar, Cooperative Societies and Others (2004 (7) SCC 112 2004 Indlaw SC 606), a three judge bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed there under and by ignoring essential qualifications, the appointments would be illegal and cannot be regularized by the State.
The State could not invoke its power u/art.
162 of the Constitution to regularize such appointments.
This Court also held that regularization is not and cannot be a mode of recruitment by any State within the meaning of Art.
12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed there under.
Regularization furthermore cannot give permanence to an employee whose services are ad hoc in nature.
It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularization.
39 Incidentally, the Bench also referred to the nature of the orders to be passed in exercise of this Court's jurisdiction u/art.

142 of the Constitution.
This Court stated that jurisdiction u/art.
142 of the Constitution could not be exercised on misplaced sympathy.
This Court quoted with approval the observations of Farewell, L.J.
in Latham vs.
Richard Johnson & Nephew Ltd.
(1913 (1) KB 398)" "We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment.
Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles."
40.
This Court also quoted with approval the observations of this Court in Teri Oat Estates (P) Ltd.
Vs.
U.T., Chandigarh (2004 (2) SCC 130 2003 Indlaw SC 1504) to the effect:
"We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right.
It is further trite that despite an extraordinary constitutional jurisdiction contained in Art.
142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."
41.
This decision kept in mind the distinction between 'regularization' and 'permanency' and laid down that regularization is not and cannot be the mode of recruitment by any State.
It also held that regularization cannot give permanence to an employee whose services are ad hoc in nature.
42 It is not necessary to multiply authorities on this aspect.
It is only necessary to refer to one or two of the recent decisions in this context.
In State of U.P.
vs.
Niraj Awasthi and others (2006 (1) SCC 667 2005 Indlaw SC 1017) this Court after referring to a number of prior decisions held that there was no power in the State under Art.
162 of the Constitution of India to make appointments and even if there was any such power, no appointment could be made in contravention of statutory rules.
This Court also held that past alleged regularisation or appointment does not connote entitlement to further regularization or appointment.
It was further held that the High Court has no jurisdiction to frame a scheme by itself or direct the framing of a scheme for regularization.
This view was reiterated in State of Karnataka vs.
KGSD Canteen Employees Welfare Association (JT 2006 (1) SC 84 2006 Indlaw SC 1).
43 In Union Public Service Commission Vs.
Girish Jayanti Lal Vaghela & Others [2006 (2) SCALE 115 2006 Indlaw SC 26], this Court answered the question, who was a Government servant and stated:
"Art.
16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
The main object of Art.
16 is to create a constitutional right to equality of opportunity and employment in public offices.
The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc.
The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made.
A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered.
Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Art.
16 of the Constitution (See B.S.

Minhas Vs.
Indian Statistical Institute and others AIR 1984 SC 363 1983 Indlaw SC 42)."
44 There have been decisions which have taken the cue from the Dharwad 1990 Indlaw SC 723 (supra) case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment.
The philosophy behind this approach is seen set out in the recent decision in The Workmen of Bhurkunda Colliery of M/s Central Coalfields Ltd.
Vs.
The Management of Bhurkunda Colliery of M/s Central Coalfields Ltd.
(JT 2006 (2) SC 1 2006 Indlaw SC 17), though the legality or validity of such an approach has not been independently examined.
But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent.
45 At this stage, it is relevant to notice two aspects.
In Kesavananda Bharati Vs.
State of Kerala (1973 Supp.
S.C.R.
1), 1973 Indlaw SC 537 this Court held that Article 14, and Article 16, which was described as a facet of Article 14, is part of the basic structure of the Constitution of India.
The position emerging from Kesavananada Bharati 1973 Indlaw SC 537 (supra) was summed up by Jagannatha Rao, J., speaking for a Bench of three Judges in Indira Sawhney Vs.
Union of India (1999 Suppl.
(5) S.C.R.
229 1996 Indlaw SC 1534).
That decision also reiterated how neither the Parliament nor the Legislature could transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Art.
14 of which Art.
16 (1) is a facet.
This Court stated, " The preamble to the Constitution of India emphasises the principle of equality as basic to our constitution.
In Keshavananda Bharati v.
State of Kerala 1973 Indlaw SC 537, it was ruled that even constitutional amendments which offended the basic structure of the Constitution would be ultra vires the basic structure.
Sikri, CJ.
laid stress on the basic features enumerated in the preamble to the Constitution and said that there were other basic features too which could be gathered from the Constitutional scheme .
Equality was one of the basic features referred to in the Preamble to our Constitution.
Shelat and Grover, JJ.
also referred to the basic rights referred to in the Preamble.
They specifically referred to equality .
Hegde & Shelat, JJ.
also referred to the Preamble.
Ray, J.
(as he then was) also did so .
Jaganmohan Reddy, J.
too referred to the Preamble and the equality doctrine.
Khanna, J.
accepted this position.
Mathew, J.
referred to equality as a basic feature.
Dwivedi, J.
and Chandrachud, J.(as he then was) accepted this position.
46.
What we mean to say is that Parliament and the legislatures in this Country cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Art.
14 of which Art.
16(1) is a facet."
47 In the earlier decision in Indra Sawhney Vs.
Union of India [1992 Supp.

(2) S.C.R.
454 1992 Indlaw SC 735), B.P.
Jeevan Reddy, J.
speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Arts.
14 and 16 of the Constitution of India in the scheme of things.
His Lordship stated:
"6) The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in Art.
14 but proceeded further to state the same rule in positive and affirmative terms in Arts.
15 to 18
7) Inasmuch as public employment always gave a certain status and power --- it has always been the repository of State power ---besides the means of livelihood, special care was taken to declare equality of opportunity in the matter of public employment by Art.
16.
Clause (1), expressly declares that in the matter of public employment or appointment to any office under the state, citizens of this country shall have equal opportunity while cl.
(2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
At the same time, care was taken to, declare in cl.
(4) that nothing in the said Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizen which in the opinion of the state, is not adequately represented in the services under the state .."
48.
These binding decisions are clear imperatives that adherence to Arts.
14 and 16 of the Constitution is a must in the process of public employment.
49 While answering an objection to the locus standi of the Writ Petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized, Chief Justice Bhagwati, speaking on behalf of the Constitution Bench in Dr.
D.C.
Wadhwa & Ors.
Vs.
State of Bihar & Ors.
(1987 (1) S.C.R.
798 1986 Indlaw SC 247) stated:
"The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the Constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No.
1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the Constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."
Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Art.
14 or in ordering the overlooking of the need to comply with the requirements of Art.
14 read with Art.
16 of the Constitution.
Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.
If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.
Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment.

It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.
It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.
High Courts acting u/art.
226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme.
Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service.
In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required.
The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the Constitutional and statutory mandates.
50 The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules.
This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle.
The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf.
But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent.
Doing so, would be negation of the principle of equality of opportunity.
The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment.
Take the situation arising in the cases before us from the State of Karnataka.
Therein, after the Dharwad 1990 Indlaw SC 723 decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given.
Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive.
Some of the appointing officers have even been punished for their defiance.
It would not be just or proper to pass an order in exercise of jurisdiction u/art.
226 or 32 of the Constitution or in exercise of power u/art.
142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements.
Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.
51 While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time.
It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment.
He accepts the employment with eyes open.

It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets.
But on that ground alone, it would not be appropriate to jettison the Constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently.
By doing so, it will be creating another mode of public appointment which is not permissible.
If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee.
A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them.
After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment.
It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.
In other words, even while accepting the employment, the person concerned knows the nature of his employment.
It is not an appointment to a post in the real sense of the term.
The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State.
The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Art.
14 of the Constitution of India.
52 Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad 1990 Indlaw SC 723 (supra), Piara Singh 1992 Indlaw SC 777 (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized.
The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V.
Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn.
Vs.
S.
Raghunathan, (1998 (7) SCC 66 1998 Indlaw SC 1178) and Dr.
Chanchal Goyal Vs.
State of Rajasthan (2003 (3) SCC 485 2003 Indlaw SC 161).
There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it.
The very engagement was against the Constitutional scheme.
53.
Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out.
No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad 1990 Indlaw SC 723 decision.

Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court.
Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment.
The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation.
The argument if accepted would also run counter to the Constitutional mandate.
The argument in that behalf has therefore to be rejected.
54 When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature.
Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission.
Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.
It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent.
The State cannot constitutionally make such a promise.
It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.
55 It was then contended that the rights of the employees thus appointed, under Arts.
14 and 16 of the Constitution, are violated.
It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work.
The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them.
There is no case that the wage agreed upon was not being paid.
Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules.
No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work.
56.
There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.
As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Arts.
14 and 16 of the Constitution.
The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed.
That would be treating unequals as equals.
It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.
The arguments based on Arts.
14 and 16 of the Constitution are therefore overruled.
57 It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law.
The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier.
In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees.

Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the Constitutional scheme adopted by us, the people of India.
It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages.
When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced.
Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Arts.
14 and 16 of the Constitution.
58 It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Art.
21 of the Constitution.
But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment.
In the guise of upholding rights under Art.
21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment.
59.
The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Art.
21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Art.
21 of the Constitution.
The argument that Art.
23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted.
After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment.
The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances.
It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the Constitutional scheme and the Constitutional goal of equality.
60 The argument that the right to life protected by Art.
21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture.
The law is dynamic and our Constitution is a living document.
May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right.
The new statute is perhaps a beginning.
As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment.
Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door.
The obligation cast on the State u/art.
39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood.
It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution.
In the name of individualizing justice, it is also not possible to shut our eyes to the Constitutional scheme and the right of the numerous as against the few who are before the court.

The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens.
We, therefore, overrule the argument based on Art.
21 of the Constitution.
61 Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue.
In this context, the question arises whether a mandamus could be issued in favour of such persons.
At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr.
Rai Shivendra Bahadur Vs.
The Governing Body of the Nalanda College [(1962) Supp.
2 SCR 144 1961 Indlaw SC 358].
That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college.
This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it.
This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.
62 One aspect needs to be clarified.
There may be cases where irregular appointments (not illegal appointments) as explained in S.V.
Narayanappa 1966 Indlaw SC 70 (supra), R.N.
Nanjundappa 1971 Indlaw SC 281 (supra), and B.N.
Nagarajan 1979 Indlaw SC 600 (supra), and referred to in paragraph above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals.
The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment.
In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.
The process must be set in motion within six months from this date.
We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme.
63 It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.
64 In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed.
The objection taken was to the direction for payment from the dates of engagement.
We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed.
It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit.

They had also been engaged in the teeth of directions not to do so.
We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment.
Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court.
Since, they are only daily wage earners, there would be no question of other allowances being paid to them.
65.
In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization.
We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court.
In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent.
If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection.
But when regular recruitment is undertaken, the respondents in C.A.
No.
3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weight age for their having been engaged for work in the Department for a significant period of time.
That would be the extent of the exercise of power by this Court u/art.
142 of the Constitution to do justice to them.
66 Coming to Civil Appeal Nos.
1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the association.
These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard.
We have also held that they are not legally entitled to any such relief.
Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf.
Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief.
These appeals have, therefore, to be dismissed.
67 C.A.
Nos.
3520-24 of 2002 have also to be allowed since the decision of the Zilla Parishads to make permanent the employees cannot be accepted as legal.
Nor can the employees be directed to be treated as employees of the Government, in the circumstances.
The direction of the High Court is found unsustainable.
68 In the result, Civil Appeal Nos.
3595-3612 of 1999, Civil Appeal No.
3849 of 2001, Civil Appeal Nos.
3520-3524 of 2002 and Civil appeal arising out of Special Leave Petition (Civil) Nos.
9103-9105 of 2001 are allowed subject to the direction issued u/art.
142 of the Constitution and the general directions contained in the judgment and Civil Appeal Nos.
1861-2063 of 2001 are dismissed.
There will be no order as to costs.
Appeal dismissed.

S.D.S.
Shipping Pvt.
Ltd.
v Jay Container Services Co.

Pvt.
Ltd.
and others
Supreme Court of India

8 May 2003
C.A.
No.
4064 of 2003
The Judgment was delivered by: ARIJIT PASAYAT, J.
Leave granted.
1.
2.
Shorn of unnecessary details, the factual background giving rise to the present appeal is as follows:-
2 Respondent no.1 as plaintiff filed a suit in the ordinary original civil jurisdiction of the Bombay High Court, inter alia, with the following prayers:
"a) That the Defendant No.1 be ordered to pay the Plaintiffs a sum of Rs.
1,61,13,173.24 details of which are given in the enclosure at Annexure 'A' to this plaint and the Defendant No.1 be directed to pay interest @ 21% till the date of actual payment.
a-1 That Defendant No.1 be ordered and decreed to pay a sum of US $ 4140 per month alongwith interest @ 18% per annum from due date till payment/realization with effect from 1st November, 1997 towards lease rent until all the 92 containers are returned.
In the alternative and without prejudice:"
3.
Appellant is defendant no.1 in the suit.
4.
According to the plaintiff it is a private limited company engaged amongst others in the business of supply of containers for the ships to carry goods from one place to another.
It supplied containers to the present appellant from time to time.
There was lease agreement entered into between the parties for use of leased containers.
The agreement expired on 30th March, 1996; but was further extended by one month.
Even during the extended period and thereafter the containers were not returned by the defendant.
no.1.
It entered into correspondence with defendant no.1 calling up it to return the containers and to pay the lease charges.
Cheques issued by the said defendant bounced on presentation.
The defendant no.1 by letter dated 26th April, 1996 addressed to the attorneys of the plaintiff informed that efforts were on to look for a suitable vessel to bring those containers from Plot Louis to Bombay.
But the containers were not returned.
Prior to the said letter dated 26th April, 1996 by two communications dated 10th January, 1996, it had been communicated that out of the total lot of 92, 35 containers could not be returned.
It was stated that those containers were lost leaving a balance of 57 containers.
The containers were given on lease basis and since there was no dispute about non-return, demands were made for payment.
There was also no dispute regarding lease rental.
Ultimately, when the plaintiff found that the containers were not returned and also the lease charges were not paid, the suit No.
4794 of 1997 was filed seeking a sum of Rs.
1,61,13,173.14.
This included the claim for non-return of the containers and the claim for outstanding rental.
2.
After the suit was filed, plaintiff took out a motion, being Notice of Motion No.
378 of 1998 for Receiver and injunction for the containers which were not returned.
The learned Single Judge by order dated 11th August, 1999, took the view that there was no case for appointing a Receiver for the properties by way of security for the amounts which may be due.
He also held that no irreparable loss will be caused if interim relief was not granted.

While rejecting this motion, however, liberty was granted to the plaintiff to take out the appropriate proceedings for a direction to defendant no.1 to deposit the arrears of rent, if any, due.
Order of the learned Single Judge was upheld by the Division Bench.
While disposing of the appeal, however, it was observed by it that the view expressed by learned Single Judge were of prima facie nature and were intended to dispose of the motion.
It was further observed that if the plaintiff moves an application for attachment before judgment, observations made in the order of learned Single Judge as well as the Division Bench will not prejudice the application.
5.
Thereafter another notice of motion was taken where it was prayed that defendant no.1 be directed to deposit the amount of Rs.
81,77,632.50, being the amount towards arrears of rental and also for a direction that per month an amount of Rs.
1,78,020/- be deposited from time to time.
Learned Single Judge took the view that the power of the Court under Order 12 Rule 6 of Civil Procedure Code, 1908 dealing with decree on admission could not be invoked in the matter.
It was held that S.
151 of the Code was not available to the plaintiff to invoke the inherent jurisdiction on the facts of the case.
6.
The orders were challenged by the plaintiff before the Division Bench which by the impugned order directed defendant no.1 to deposit an amount of Rs.
81,77,632.50 within 12 weeks period.
It was further directed that the amount was to be deposited in a nationalised bank for a period of 37 months and the deposit was to be renewed at a time by 13 months until the suit was decided.
This order is under challenge.
7.
Mr.
R.F.
Nariman, learned senior counsel for the appellants submitted that the Division Bench manifestly erred in directing deposit by overlooking the factual and legal background involved.
In a commercial suit where there was dispute regarding the liability such directions could not have been given.
Even in respect of a summary suit under Order 37 there was no scope for giving the type of direction as done.
The Division Bench while implicitly upholding the view of learned Single Judge that Order 12 Rule 6 was not applicable could not have applied the logic of Order 39 Rule 10 of the Code which operates in an entirely different background.
It was pointed out that the Division Bench committed factual error in observing that there was no clear denial to the claim of the plaintiff and/ or that its stand was an evasive one and at times in the nature of an afterthought.
Having ruled out application of Order 12 Rule 6, it was not open to the Division Bench to bring in operation of Rule 39 Rule 10, of the Code with the help of S.
151.
It was also submitted that the claim as made clearly exaggerated, without any foundation or basis and neither in law nor equity plaintiff was entitled to any relief.
8.
It was, however, accepted that at the most the plaintiff may be entitled to the arrears of rentals and nothing beyond that.
The question of making any payment for the rentals after expiry of the agreement period is also not contemplated in law.
There was no termination of the agreement and on the contrary it lost its currency after the extended period of one month beyond the initially stipulated last date.
9.
Responding to the above submissions, Mr.
K.K.
Venugopal, learned senior counsel for the plaintiff (respondent no.1) submitted that here is a case where the party has taken advantage of its own wrong doings.
Undisputedly it had taken the containers on lease.
Cl.

6 of the agreement clearly stipulates that rental charges were to be paid till the containers are returned.
This has admittedly not been done.
There are several letters where there was express acceptance of the liability.
Finally it was submitted that this is not a case where this Court should exercise powers u/art.
136 of the Constitution of India, 1950.
10.
By way of reply to the submissions made by Mr.
Venugopal, Mr.
Nariman submitted that the scope and ambit of Art.
136 is too well known and, therefore, where substantial question of law relating to jurisdiction of a commercial court is raised, the Court has to see whether the impugned judgment meets the requirement of law.
According to him, it is too futile to contend that Art.
136 will not be exercised in a case of this nature where the Division Bench of the High Court clearly acted contrary to well-settled principle of law.
11.
Few facts of relevance need to be noted in view of the rival stands.
Undisputedly, the order impugned is an interim order.
The direction is for deposit and no liberty has been granted to the plaintiff for withdrawal after the deposit.
As noted supra, there was no serious dispute relating to the claim for arrears of rentals.
Admittedly, 92 containers were leased out by the plaintiff to the defendant no.1 according to whom some of the containers were not traceable and were lost.
We may add here that subsequent to the filing of the suit, it was contended that all the 92 vessels were lost.
12.
In view of the factual scenario unfolded above, it does not appear to be a case where interference u/art.
136 of the Constitution is called for.
That power is exercised only on showing substantial injustice, and not for merely technical flaws in a proceeding.
.
The position was illuminatingly stated in Rashpal Malhotra vs.
Mrs.
Satya Rajput and Anr.
1987 Indlaw SC 28884).
This Court in Heavy Engineering Corporation Ltd., Ranchi vs.
K.
Singh and Co., Ranchi 1977 Indlaw SC 375) expressed the opinion that although the powers of this Court were wide under Article 136, it could not be urged that because leave had been granted the court must always in every case deal with the merits, even though it was satisfied that the ends of justice did not justify its interference in a given case.
It is not as if, in an appeal with leave under Article 136, this Court was bound to decide the question if on facts at the later hearing the court felt that the ends of justice did not make it necessary to decide the point.
Similarly in Baigana vs.
Deputy Collector of Consolidation 1978 Indlaw SC 162) it was held that this Court was more than a court of appeal.
It exercises power only when there is supreme need.
It is not the fifth court of appeal, but the final court of the nation.
Therefore, even if legal flaws might be electronically detected, it may not interfere save manifest injustice or substantial question of public importance.
13.
In Taherakhatoon (D) by Lrs.
vs.
Salambin Mohammad 1999 Indlaw SC 983), it was noted that even in cases where leave has been granted, the Court might after declaring the correct legal position decline to interfere saying that it would not exercise discretion to decide the case on merits and that it would decide on the

basis of the equitable considerations in the facts and circumstances of the case and mould the final order.
14.
Even if it is accepted for the sake of arguments that there was some faulty conclusion in law, the impugned order being an interim one, we do not consider this to be fit case for interference in exercise of jurisdiction u/art.
136.
But, taking note of the peculiar facts, ends of justice would be best served if the appellant is directed to deposit Rupees Fifty lacs instead of Rupees Eighty two lacks by end of June, 2003.
15.
The appeal is accordingly disposed of leaving the parties to bear their respective costs.
Appeal disposed of.

Baikuntha Nath Das And Anr.
v Chief District Medical Officer, Baripada and
Supreme Court of India

19 February 1992
Civil Appeal No.
869 of WITH CA No.
870 of 1987
The Judgment was delivered by : B.
P.
Jeevan Reddy, J.
1 These appeals raise the question-whether it is permissible to the government to order compulsory retirement of a government servant on the basis of material which includes uncommunicated adverse remarks.
While the appellants (government servants, compulsory retired) rely upon the decisions of this court in Brij Mohan Singh Chopra, [1987] 2 S.C.C.
1988 1987 Indlaw SC 28735 and Baidyanath Mahapatra, [1989] 4 S.C.C.
664 1989 Indlaw SC 804, in support of their contention that it is not permissible, the respondent-government relies upon the decision in M.E.
Reddy.
[1980] 1 S.C.R.
736 1979 Indlaw SC 187 to contend that it is permissible to the government to take into consideration uncommunicated adverse remarks also while taking a decision to retire a government servant compulsorily.
2 The appellants in both the appeals have been compulsorily retired by the government of Orissa in exercise of the power conferred upon it by the first proviso to Rule 71 (a) of the Orissa Service Code.
Since the relevant facts in both the appeals are similar, it would be sufficient if we set out the facts in Civil Appeal No.
869 of 1987.
3 The appellant, Sri Baikuntha Nath Das was appointed as a Pharmacist (then designated as Compounder) by the Civil Surgeon, Mayurbhanj on 15.3.1951.
By an order dated 13.2.1976 the government of Orissa retired him compulsorily under the first proviso to sub-rule of Rule 71 of the Orissa Service Code.
The order reads as follows:
"In exercise of the powers conferred under the first proviso to sub-rule (a) of rule 71 of Orissa Service Code, the Government of Orissa is pleased to order the retirement of Sri Baikunthanath Das, Pharmacist now working under the Chief District Medical Officer, Mayurbhanj on the expiry of three months from the date of service of this order on him.
By order of the Governor."
4 The petitioner challenged the same in the High Court of Orissa by way of a writ petition, being O.J.C.No.
412 of 1976.
His case was that the order was based on no material and that it was the result of ill-will and malice the Chief District Medical Officer bore towards him.
The petitioner was transferred by the said officer from place to place and was also placed under suspension at one stage.

He submitted that his entire service has been spot-less and that at no time were any adverse entries in his confidential character rolls communicated to him.
In the counter-affidavit filed on behalf of the government, it was submitted that the decision to retire the petitioner compulsorily was taken by the Review Committee and not by the Chief Medical Officer.
It was submitted that besides the remarks made in the confidential character rolls, other material was also taken into consideration by the Review Committee and that it arrived at its decision bonafide and in public interest which decision was accepted and approved by the government. The allegation of malafides was denied.
5 The High Court looked into the proceedings of the Review Committee and the confidential character rolls of the petitioner and dismissed the writ petition on the following reasoning: An order of compulsory retirement after putting in the prescribed qualifying period of service does not amount to punishment as has been repeatedly held by this court.
6.
The order in question was passed by the State Government and not by the Chief Medical Officer. It is true that the confidential character roll of the petitioner contained several remarks adverse to him which were, no doubt, not communicated to him, but the decision of this court in Union of India v.
M.E.Reddy, [1980] 1 S.C.R.
736 1979 Indlaw SC 187, holds that uncommunicated adverse remarks can also be relied upon while passing an order of compulsory retirement.
The said adverse remarks have been made by successive Civil Surgeons and not by the particular Chief District Medical Officer against whom the petitioner has alleged malafides.
It is unlikely that all the Chief District Medical Officers were prejudiced against the petitioner.
In particular, the court observed, "the materials placed before us do not justify a conclusion that the remarks in the confidential character rolls had not duly and properly been recorded." The decision to retire has been taken by the Review Committee on proper material and there are no grounds to interfere with its decision, it opined.
7 The adverse remarks made against the petitioner - in the words of the High Court - are to the following effect:
".....most insincere, irregular in habits and negligent and besides being a person of doubtful integrity, he had been quarrelsome with his colleagues and superior officers and had been creating problems for the administration."
8 Rule 71 (a) alongwith the first proviso appended thereto - which alone is relevant for our purpose - reads thus:
"71.
(a) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31st March, 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the Government servant in the 55th year of age in order to determine whether he/she should be allowed to remain in service upto the date of the completion of the age of 58 years or retired on completing the age of 55 years in the public interest:
Provided that a Government servant may retire from service any time after completing thirty years qualifying service or on attaining the age of fifty years, by giving a notice in writing to the appropriate authority at least three months before the date on which he wishes to retire or by giving the said notice to the said authority before such shorter period as Government may allow in any case.
It shall be open to the appropriate authority to withhold permission to a Government servant who seeks to retire under this rule, if he is under suspension or if inquires against him are in progress.
The appropriate authority may also require any officer to retire in public interest any time after he has completed thirty years qualifying service or attained the age of fifty years, by giving a notice in writing to the Government servant at least three months before the date on which he is required to retire or by giving three months pay and allowances in lieu of such notice.
xx xx xx."
9 It is evident that the latter half of the proviso which empowers the government to retire a government servant in public interest after he completes 30 years of qualifying service or after attaining the age of 50 years is in pari materia with the Fundamental Rule 56(j).
10 The Government of Orissa had issued certain instructions in this behalf.

According to these instructions, the Review Committee, if it is of the opinion that a particular government servant should be retired compulsorily, must make a proposal recording its full reasons therefor.
The administrative department controlling the services to which the particular government servant belongs, will then process the proposal and put it up to the government for final orders.
11 In Shyam Lal v.
State of Uttar Pradesh, [1955] 1 S.C.R.
26 1954 Indlaw SC 30, a Constitution Bench of this court held that an order of compulsory retirement is not a punishment nor is there any stigma attached to it.
It said:
"There is no such element of charge or imputation in the case of compulsory retirement.
The two requirements for compulsory retirement are that the officer has completed twenty five years' service and that it is in the public interest to dispense with his further services.
It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence of Note 1 to Article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power.
In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity."
12 In Shivacharana v.
State of Mysore, A.I.R.
1965 S.C.
280 1964 Indlaw SC 9, another Constitution Bench reaffirmed the said principle and held that "Whether or not the petitioner's retirement was in the public interest, is a matter for the State Government to consider and as to the plea that the order is arbitrary and illegal, it is impossible to hold on the material placed by the petitioner before us that the said order suffers from the vice of malafides."
13 As far back as 1970, a Division Bench of this court comprising J.C.
Shah and K.S.
Hegde, JJ.
held in Union of India v.
J.N Sinha, [1971] 1 S.C.R.
791 1970 Indlaw SC 17, that an order of compulsory retirement made under F.R.
56 (j) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant.
It was pointed out that the said rule embodies one of the facets of the pleasure doctrine embodied in Art.
310 of the Constitution and that the rule holds the balance between the rights of the individual Government servant and the interest of the public.
14.
The rule is intended it was explained, to enable the Government to energise its machinery and to make it efficient by compulsory retiring those who in its opinion should not be there in public interest.
It was also held that rules of natural justice are not attracted in such a case.
If the appropriate authority forms the requisite opinion bonafide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision.
It is significant to notice that this decision was rendered after the decisions of this court in State of Orissa v.
Dr.Binapani Devi, [1967] 2 S.C.R.
625 1967 Indlaw SC 144 and A.K.Kraipak v.
Union of India, A.I.R.
1970 S.C.
150 1969 Indlaw SC 271.Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action.
The contention, was not accepted as stated above.

The principles enunciated in the decision have been accepted and followed in many a later decision.
There has never been a dissent - not until 1987.
15 In R.L.
Butial v.
Union of India 1970 Indlaw SC 146, relied upon by the appellant's counsel, the Constitution Bench considered a case where the government servant was denied the promotion and later retired compulsorily under F.R.
56(j) on the basis of adverse entries in his confidential records.
The appellant, an electrical engineer, entered the service of Simla Electricity Board in 1934.
In 1940, he was transferred to Central Electricity Commission - later designated as Central Water and Power Commission (Power Wing).
16.
In 1955 he was promoted to the post of Director wherein he was confirmed in the year 1960.
In his confidential reports relating to the years 1964 and 1965, certain adverse remarks were made.
They were communicated to him.
He made a representation asking for specific instances on the basis of which the said adverse remarks were made.
These representations were rejected.
Meanwhile, a vacancy arose in the higher post.
The appellant was overlooked both in the year 1964 as well as in 1965 by the Departmental Promotion Committee and the U.P.S.C.
On August 15, 1967, on his completing 55 years of age, he was compulsorily retired under F.R.
56(j).
Thereupon he filed three writ petitions in the High Court challenging the said adverse entries as also the order of compulsory retirement.
The writ petitions were dismissed whereupon the matters were brought to this court on the basis of a certificate.
the Constitution Bench enunciated the following propositions:
17 The rules framed by the Central Water and Power Commission on the subject of maintenance of confidential reports show that a confidential report is intended to be a general assessment of work performed by the government servant and that the said reports are maintained to serve as a data of operative merit when question of promotion, confirmation etc.
arose.
Ordinarily, they are not to contain specific instances except where a specific instance has led to a censure or a warning.
In such situation alone, a reasonable opportunity has to be afforded to the government servant to present his case.
No opportunity need be given before the entries are made.
Making of an adverse entry does not amount to inflicting a penalty.
18 When the petitioner was overlooked for promotion his representations against the adverse remarks were still pending.
But inasmuch as the said representations were rejected later there was no occasion for reviewing the decision not to promote the appellant.
Withholding a promotion is not a penalty under the Central Service Rules.
Hence, no enquiry was required to be held before deciding not to promote the appellant-more so, when the promotion was on the basis of selection and not on the basis of seniority alone.
19 So far as the order of compulsory retirement was concerned, it was based upon a consideration of his entire service record including his confidential reports.
The adverse remarks in such reports, were communicated from time to time and the representations made by the appellant were rejected.
It is only thereafter that the decision to retire him compulsorily was taken and, therefore, there was no ground to interfere with the said order.
20 It is evident that in this case, the question arising for our consideration viz, whether uncommunicated adverse remarks can be taken into consideration alongwith other material for compulsorily retiring a government servant did not arise for consideration.
That question arose directly in Union of India v.
M.E.Reddy 1979 Indlaw SC 187.
21 The respondent, M.E.

Reddy belonged to Indian Police Services.
He was retired compulsorily under Rule 16 (3) ofAll India Service (Death-cum-Retirement Rules) 1958 - corresponding to F.R.
56 (j).
The contention of the respondent was that the order was passed on non-existing material inasmuch as at no time were any adverse remarks communicated to him.
His contention was that had there been any adverse entries they ought to have been communicated to him under the rules.
The said contention was dealt with in the following words:-
".....This argument, in our opinion, appears to be based on a serious misconception.
In the first place, under the various rules on the subject it is not every adverse entry or remarks that has to be communicated to the officer concerned.
The superior officer may make certain remarks while assessing the work and conduct of subordinate officer based on his personal supervision or contract.
Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys.
It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys".
22 The Learned Judges referred to the decisions in R.L.Butail,J.N.Sinha and several other decisions of this court and held that the confidential reports, even though not communicated to the officer concerned, can certainly be considered by the appointing authority while passing the order of compulsory retirement.
in this connection, they relied upon the principle in J.N.
Sinha that principles of natural justices are not attracted in the case of compulsory retirement since it is neither a punishment nor does it involve any civil consequences.
23 the principle of the above decision was followed in Dr.
N.V.Puttabhatta v.State of Mysore, A.I.R.
1972 S.C.
21851972 Indlaw SC 302, a decision rendered by A.N.Grover and G.K.Mitter , J.J.
Indeed, the contention of the appellant in this case was that since an order of compulsory retirement has adverse effects upon the career and prospects of the government servant, the order must be passed in accordance with principles of natural justice.
It was contended that before passing the order, a notice to show cause against the order proposed must be given to the government servant .
24.
Reliance was placed upon the decisions in Binapani Devi and Kraipak.
This contention was negatived following the decision in J.N.Sinha.
It was also pointed out, applying the principles of Shivacharana that an order of compulsory retirement is not a punishment nor does it involve any stigma or implication or misbehaviour.
Another contention urged in this case was that the order of compulsory retirement was based upon uncommunicated adverse remarks and that the appellant was also not afforded an opportunity to make a representation against the same.
At the relevant time, no appeal lay against the orders passed upon the representation.
Dealing with the said contention, the court observed:
"as the confidential reports rules stood at the relevant time, the appellant could not have appealed against the adverse remarks and if the opinion of the government to retire him compulsorily was based primarily on the said report, he could only challange the order if he was in a position to show that the remarks were arbitrary and malafide."
25 Yet another contention which is relevant to the present case is this : the retirement of the appellant therein was ordered under Rule 235 of Mysore Civil Services Rules.
The language of the said rule corresponded to F.R.56(j) but it did not contain the word "absolute" as is found in F.R.56(j).
An argument was sought to be built up on the said difference in language but the same was rejected holding that even in the absence of the word "absolute" the position remains the same.
We are refering to the said aspect in as much as the proviso to Rule 71 (a) of the Orissa Service Code, concerned in the appeals before us, also does not contain the word "absolute".
26 In (A.I.R.1980 S.C.1894) Gian Singh Mann v.

Punjab and Haryana High Court 1980 Indlaw SC 178, a Bench consisting of Krishna Iyer and Pathak, JJ.
reiterated the principle that an order of compulsory retirement does not amount to punishment and that no stigma or implication of misbehaviour is intended or attached to such an order.
27 In O.N.G.C v.
Iskandar Ali, a probationer was terminated on the basis of adverse remarks made in his assessment roll.
A Bench comprising three learned Judges (Fazal Ali, A.C.
Gupta and Kailasam, JJ.) held that the order of termination in that case was an order of termination simpliciter without involving any stigma or any civil consequences.
Since the respondent was a probationer, he had no right to the post.
The remarks in his assessment roll disclosed that the respondent was not found suitable for being retained in service and even though some sort of enquiry was commenced, it was not proceeded with.
The appointing authority considered it expedient to terminate the service of the respondent in the circumstances and such an order was beyond challenge on the ground of violation of Art.
311.
28 This court has taken the view in certain cases that while taking a decision to retire a government servant under Rule 56(j), more importance should be attached to the confidential records of the later years and that much importance should not be attached to the record relating to earlier years or to the early years of service.
In Brij Bihari Lal Agarwal v.
High Court of Madhya Pradesh, [1981] 2 S.C.R 29 1980 Indlaw SC 232, upon which strong reliance is placed by the appellant's counsel - a Bench comprising Pathak and Chinappa Reddy,JJ.
observed thus:
".....What we would like to add is that when considering the question of compulsory retirement, while it is not doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration.
It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation.
Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance."
29 We may mention that the order of compulsory retirement in the above case is dated 28th September, 1979.
The High Court took into account the confidential reports relating to the period prior to 1966 which were also not communicated to the concerned officer.
However, the decision is based not upon the non-communication of adverse remarks but on the ground that they were too far in the past.
It was observed that reliance on such record has the effect of denying an opportunity of improvement to the officer concerned.
The decision in Baldev Raj Chaddha v.
Union of India, [1981] 1 S.C.R.
430 1980 Indlaw SC 173, is to the same effect.
In J.D.
Srivastava v.
State of Madhya Pradesh, [1984] 2 S.C.R.
466 1984 Indlaw SC 56, it was held by a Bench of three learned Judges that adverse reports prior to the promotion of the officer cannot reasonably form a basis for forming an opinion to retire him.
The reports relied upon for retiring the appellant were more than 20 years old and there was no other material upon which the said decision could be based.
It was held that reliance on such stale entries cannot be placed for retiring a person compulsorily, particularly when the officer concerned was promoted subsequent to such entries.
30 We now come to the decision in Brij Mohan Singh Chopra v.
State of Punjab 1987 Indlaw SC 28735, relied upon by the learned counsel for the petitioner.
In this case, there were no adverse entries in the confidential records of the appellant for a period of five years prior to the impugned order.
Within five years, there were two adverse entries.

In neither of them, however, was his integrity doubted.
These adverse remarks were not communicated to him.
The Bench consisting of E.S.
Venkataramiah and K.N.
Singh JJ.
quashed it on two grounds viz.,
31 It would not be reasonable and just to consider adverse entries of remote past and to ignore good entries of recent past.
If entries for a period of more than 10 years past are taken into account it would be an act of digging out past to get some material to make an order against the employee.
32 In Gurdyal Singh Fiji v.
State of Punjab, [1979] 3 S.C.R.
518 1979 Indlaw SC 255 and Amarkant Chaudhary v.
State of Bihar, [1984] 2 S.C.R.
299 1984 Indlaw SC 117, it was held that unless an adverse report is communicated and representation, if any, made by the employee is considered, it may not be acted upon to deny the promotion.
The same consideration applies where the adverse entries are taken into account in retiring an employee pre-maturely from service.
K.N.
Singh, J.
speaking for the Bench observed: "it would be unjust and unfair and contrary to principles of natural justice to retire pre- maturely a government employee on the basis of adverse entries which are either not communicated to him or if communicated, representations made against those entries are not considered and disposed of".
33 This is the first case in which the principles of natural justice were imported in the case of compulsory retirement even though it was held expressly in J.N.
Sinha that the said principles are not attracted.
This view was reiterated by K.N.
Singh, J.
again in [1989] 4 S.C.C.
6641989 Indlaw SC 804 Baidyanath Mahapatra v.
State of Orissa 1989 Indlaw SC 804, (Bench comprising of K.N.
Singh and M.H.
Kania, JJ.).
34.
In this case, the Review Committee took into account the entire service record of the employee including the adverse remarks relating to the year 1969 to 1982 (barring certain intervening years for which no adverse remarks were made).
The employee had joined the Orissa Government service as an Assistant Engineer in 1955.
In 1961 he was promoted to the post of Executive Engineer and in 1976 to the post of Superintending Engineer.
In 1979 he was allowed to cross the efficiency bar with effect from 1.1.1979.
He was compulsorily retired by an order dated 10.11.1983.
The Bench held in the first instance that the adverse entries for the period prior to his promotion as Superintending Engineer cannot be taken into account.
35 It was held that if the officer was promoted to a higher post, and that too a selection post, notwithstanding such adverse entries, it must be presumed that the said entries lost their significance and cannot be revived to retire the officer compulsorily.
Regarding the adverse entries for the subsequent years and in particular relating to the years 1981-82 and 1982-83 it was found that though the said adverse remarks were communicated, the period prescribed for making a representation had not expired.
The Bench observed:
".....These facts make it amply clear that the appellant's representation against the aforesaid adverse remarks for the years 1981-82 and 1982-83 was pending and the same had not been considered or disposed of on the date of impugned order was issued.
It is settled view that it is not permissible to prematurely retire a government servant on the basis of adverse entries, representations against which are not considered and disposed of.
See Brij Mohan Singh Chopra v.
State of Punjab 1987 Indlaw SC 28735."

36 On the above basis, it was held that the Review Committee ought to have waited till the expiry of the period prescribed for making representation against the said remarks and if any representation was made it should have been considered and disposed of before they could be taken into consideration for forming the requisite opinion.
In other words, it was held that it was not open to the Review Committee and the government to rely upon the said adverse entries relating to the years 1981-82 and 1982-83, in the circumstances.
Unfortunately, the decision in J.N.
Sinha was not brought to the notice of the learned Judges when deciding the above two cases.
37 The basis of the decisions in Brij Mohan Singh Chopra and Baidyanath Mahapatra, it appears, is that while passing an order of compulsory retirement, the authority must act consistent with the principles of natural justice.
It is said to expressly in Brij Mohan Singh Chopra.
This premise, if carried to its logical end, would also mean affording an opportunity to the concerned government servant to show cause against the action proposed and all that it involves.
It is true that these decisions do not go to that extent but limit their holding to only one facet of the rule viz., 'acting upon undisclosed material to the prejudice of a man is a violation of the principle of natural justice.' This holding is in direct conflict with the decision in J.N.Sinha which excludes application of principles of natural justice.
38.
As pointed out above, J.N.
Sinha was decided after, and expressly refers to the decisions in, Binapani Devi and Kraipak and yet holds that principles of natural justice are not attracted in a case of compulsory retirement.
The question is which of the two views is the correct one.
While answering this question, it is necessary to keep the following factors in mind:
(a) Compulsory retirement provided by F.R.
56 (j) or other corresponding rules, is not a punishment.
It does not involve any stigma nor any implication of misbehaviour or incapacity.
Three Constitution Benches have said so vide Shyam Lal Shivacharana and R.L.
Butail.
(b) F.R.
56 (j) as also the first proviso to Rule 71(a) of the Orissa Service Code, empower the government to order compulsory retirement of a government servant if in their "opinion", it is in the public interest so to do.
This means that the action has to be taken on the subjective satisfaction of the government.
In R.L.
Butail,the Constitution Bench observed:
".....In Union of India v.
Col J.N.
Sinha 1970 Indlaw SC 17 this Court stated that F.R.
56(j) in express terms confers on the appropriate authority an absolute right to retire a Government servant on his attaining the age of 55 years if such authority is of the opinion that it is in public interest so to do.
The decision further states: "If that authority, bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts.
It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."
39 The law on the subjective satisfaction has been dealt with elaborately in Barium Chemicals v.
Company Law Board, AIR 1967 S.C.
295 1966 Indlaw SC 85.
Shelat, J., after referring to several decisions dealing with action taken on subjective satisfaction, observed thus:
"Bearing in mind these principles the provisions of S.
237 (b) may now be examined.
The clause empowers the Central Government and by reason of delegation of its powers the Board to appoint inspectors to investigate the affairs of the company, if "in the opinion of the Central Government" (now the Board) there are circumstances "suggesting" what is stated in the three sub-clauses.
The power is executive and the opinion requisite before an order can be made is of the Central Government or the Board as the case may be and not of a Court.

Therefore, the Court cannot substitute its own opinion for the opinion of the authority.
But the question is, whether the entire action under the section is subjective?"
40 The learned Judges then referred to certain other decisions including the decision in Vallukunnel v.
Reserve Bank of India, AIR 1962 S.C.
1371 1962 Indlaw SC 395 and concluded as follows:
"Therefore, the words, "reason to believe" or "in the opinion of"do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the court that such "reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rule of natural justice where the function is administrative."
41 The blurring of the dividing line between a quasijudicial order and an administrative order, pointed out in Kraipak has no effect upon the above position, more so when compulsory retirement is not a punishment nor does it imply any stigma.
Kraipak- or for that matter, Maneka Gandhi cannot be understood as doing away with the concept of subjective satisfaction.
42 On the above premises, it follows, in our respectful opinion that the view taken in J.N.
Sinha is the correct one viz., principles of natural justice are not attracted in a case of compulsory retirement under F.R.
56(j) or a rule corresponding to it.
In this context, we may point out a practical difficulty arising from the simultaneous operation of two rules enunciated in Brij Mohan Singh Chopra.
On one hand, it is stated that only the entries of last ten years should be seen and on the other hand, it is stated that if there are any adverse remarks therein, they must not only be communicated but the representations made against them should be considered and disposed of before they can be taken into consideration.
43.
Where do we draw the line in the matter of disposal of representation.
Does it mean, disposal by the appropriate authority alone or does it include appeal as well.
Even if the appeal is dismissed, the government servant may file a revision or make a representation to a still higher authority.
He may also approach a court or Tribunal for expunging those remarks.
Should the government wait until all these stages are over.
All that would naturally take a long time by which time, these reports would also have become stale.
A government servant so minded can adopt one or the other proceeding to keep the matter alive.
This is an additional reason for holding that the principle of M.E.
Reddy should be preferred over Brij Mohan Singh Chopra and Baidyanath Mahapatra, on the question of taking into consideration uncommunicated adverse remarks.
44 Another factor to be borne in mind is this: most often, the authority which made the adverse remarks and the authority competent to retire him compulsorily are not the same.
There is no reason to presume that the authority competent to retire him will not act bonafide or will not consider the entire record dispassionately.
As the decided cases show, very often, a Review Committee consisting of more than one responsible official is constituted to examine the cases and make their recommendation to the government.
The Review Committee, or the government, would not naturally be swayed by one or two remarks, favourable or adverse.
They would form an opinion on a totality of consideration of the entire record - including representations, if any, made by the government servant against the above remarks - of course attaching more importance to later period of his service.
Another circumstance to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a government servant.
45 We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of.
The adverse remarks ought to be communicated in the normal course, as required by the Rules/ orders in that behalf.

Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude.
All that we are saying is that the action under F.R.56(j) (or the Rule corresponding to it) need not await the disposal or final disposal of such representation or representations, as the case may be.
In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration.
On this account alone, the action under F.R.56(j) need not be held back.
46.
There is reason to presume that the Review Committee or the government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same.
Similarly, if any representation made by the government servant is there, it shall also be taken into consideration.
We may reiterate that not only the Review Committee is generally composed of high and responsible officers, the power is vested in government alone and not in a minor official.
It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action.
Such an unlikely situation if indeed present, may be indicative of malice in law.
We may mention in this connection that the remedy provided by Art.
226 of the Constitution is no less an important safeguard.
Even with its well-known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action.
47 At this stage, we think it appropriate to append a note of clarification.
What is normally required to be communicated is adverse remarks - not every remark, comment or observation made in the confidential rolls.
There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R.
56(j) or a Rule corresponding to it.
The object and purposes for which this power is to be exercised are well-stated in J.N.
Sinha and other decisions referred supra.
The following principles emerge from the above discussion:
(i) An order of compulsory retirement is not a punishment.
It implies no stigma nor any suggestion of misbehaviour.
(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily.
The order is passed on the subjective satisfaction of the government.
(iii) Principles of natural justice have no place in the context of an order of compulsory retirement.
This does not mean that judicial scrutiny is excluded altogether.
While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.
(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years.
The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse.
If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration.
That circumstance by itself cannot be a basis for interfere.
Interference is permissible only on the grounds mentioned in (iii) above.
This aspect has been discussed as above.
48 Before parting with the case, we must refer to an argument urged by Sri R.K.
Garg.

He stressed what is called, the new concept of Art.
14 as adumberated in Maneka Gandhi (A.I.R.
1978 S.C.
1978 Indlaw SC 212) and submitted on that basis that any and every arbitrary action is open to judicial scrutiny.
The general principle evolved in the said decision is not in issue here.
We are concerned mainly with the question whether a facet of principle of natural justice - audi alteram partem is attracted in the case of compulsory retirement.
In other words, the question is whether acting upon undisclosed material is a ground for quashing the order of compulsory retirement.
Since we have held that the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the Government, there is no room for importing the said facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma.
49 So far as the appeals before us are concerned, the High Court which has looked into the relevant record and confidential records has opined that the order of compulsory retirement was based not merely upon the said adverse remarks but other material as well.
Secondly, it has also found that the material placed before them does not justify the conclusion that the said remarks were not recorded duly or properly.
In the circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary.
50 For the above reason, both the appeals are dismissed but in circumstances of the case, we make no order as to costs.
Appeals dismissed.

Kulwant Rai v State of Punjab
Supreme Court of India

7 August 1981
Cr.A.
No.
630 of 1981.
The order of the court was as follows:
1 We have heard Mr.
Ashwani Kumar, learned counsel for the State and Mr.
Mulla, learned counsel for the appellant.
2 We have gone through the judgment of the learned Sessions Judge who has summed up the circumstances in which the offence came to be committed.
The learned Judge found that the accused at the time of the offence was aged about 20 years.
The offence was committed without any premeditation.
The learned Judge also found that there was no prior enmity.
He also recorded that a short quarrel preceded the assault.
All these would not have weighed with us, except the fact that only one blow was given with a dagger and the blow landed in the epigastrium area.
The deceased succumbed to the injury.
The learned Sessions Judge convicted the appellant for an offence under Section 302, Indian Penal Code and sentenced him to suffer imprisonment for life.
3 When the matter was before the High Court it was strenuously urged that in the circumstances of the case Para 1 of S.
300 would not be attracted because it cannot be said that the accused had the intention to commit murder of the deceased.
In fact, that is conceded.
More often, a suggestion is made that the case would be covered by Para 3 of Section 300, Indian Penal Code in that not only the accused intended to inflict that particular injury but the injury intended to be inflicted was by objective medical test found to be sufficient in the ordinary course of nature to cause death.
The question is in the circumstance in which the offence came to be committed, could it ever be said that the accused intended to inflict that injury which proved to be fatal.
To repeat, there was an altercation.
There was no premeditation.

It was something like hit and run.
In such a case, Para 3 of S.
300 would not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted.
In the circumstances herein discussed, it would appear that the accused inflicted an injury which he knew to be likely to cause death and the case would accordingly fall u/s.
304 Part II, Indian Penal Code.
4 We accordingly alter the conviction of the appellant from one u/s.
302 to that u/s.
304 Part II, Indian Penal Code and sentence him to suffer rigorous imprisonment for five years.
The appeal is disposed of accordingly.
Appeal dismissed.

State of Andhra Pradesh v Thadi Narayana
Supreme Court of India

24 July 1961
Criminal Appeal No.
222 of 1959.
Appeal by special leave from the judgment and order dated February 24, 1959, of the Andhra Pradesh High Court, Hyderabad, in Criminal Revision Case No.
636 of 1958.
AND Criminal Appeal No.
112 of 1961.
Appeal by special leave from the Judgment and order dated July 15, 1958, of the Andhra Pradesh High Court in Criminal Appeal No.
237 of 1957.
The Judgment was delivered by : P.
B.
Gajendragadkar, J.
1 The short and interesting question which arises for our decision in the present appeal is in respect of the powers of the High Court in disposing of appeals under s.
423(1) (b) of the Code of Criminal Procedure.
In dealing with an appeal preferred by a convicted person against the order of conviction and sentence imposed on him by the trial court can the High Court in exercise of its appellate powers under s.
423(1)(b) reverse the finding of acquittal recorded by the trial court in favour of the appellant in respect of an offence which is directly not the subject-matter of the appeal ? On this question there has been a difference of opinion amongst our High Courts, and it appears from reported decisions that in the same High Court sometimes conflicting views have been expressed on the point.
2 This question arises in this way.
In the Court of Sessions, Visakhapatnam Division, the respondent Thadi Narayana was charged at the instance of the appellant the State of Andhra Pradesh with having committed offences punishable under s.
302 and s.
392 of the Indian Penal Code.
The case against her was that on December 27, 1956 at about night meal-time at Gangacholapenta she, committed the murder of a minor girl K.
Sriramulamma by stabbing her with a knife and thus rendered herself 'liable to be punished under s.
302.
It was also alleged against her that at the aforesaid time and place and in the course of the same transaction she had robbed the said victim of her four pairs of gold Konakammulu and.
a pair of gold Alakalu and thereby committed 'the offence of robbery under s.
392.
On April 16, 1957 the learned trial judge found that the charges against the respondent under ss.
302 and 392 had not been proved beyond a reasonable doubt, and so he acquitted her of the said offences.
He, however, held that the respondent was shown to have committed an offence under s.

411 and so he convicted her of the said offence and sentenced her to undergo rigorous imprisonment for a period of two years.
3 Against the order of conviction and sentence thus imposed on her the respondent preferred a jail appeal in the High Court of Andhra Pradesh.
This appeal was heard by Sanjeeva Rao Naidu, J.
By his judgment delivered on July 22, 1958 the learned judge expressed his conclusion that he, was satisfied that gross miscarriage of justice had resulted in the case "and the only way to rectify this is to order the retrial of the case on the original charges under ss.
302 and 392 of the Indian Penal Code so that the accused may be properly tried thereon and, if found guilty, convicted for the offence or proved by evidence to have been committed by her." In the result the conviction and sentence of the accused under s.
411 was set aside and the case was remanded to the trial court for retrial on the charges already framed against her.
4 Accordingly when her retrial commenced on November 3, 1958 an application was made on behalf of the respondent before the trial judge (Criminal M.
P.
No.
242 of 1958) in which it was urged that her trial in respect of the offences under ss.302 and 392 was not permissible having regard to the order of acquittal which had been passed in her favour at the original trial.
The validity of the plea ofautrefois acquit thus raised by the respondent was challenged by the appellant, and it was 'urged that by virtue of the order passed by the High Court ordering her retrial the trial court in law was bound to proceed with the retrial.
The trial judge upheld this contention and observed that he was bound to obey the directions given by the High Court and if he were to examine the merits of the contention raised before him by the respondent he would be transgressing his limits, because the determination of the point raised by the respondent would necessarily involve examining the correctness or otherwise of the High Court's order directing a retrial.
The trial court thus rejected the application made by the respondent.
5 Against this order the respondent moved the High Court by her Criminal Revision Application No.
636 of 1958.
The Criminal Revision Application, as placed before a Full Bench because it raised two important questions of law.
These questions were thus framed:
(1)Where an accused is tried by a Sessions Court on charges of murder and robbery, and the Sessions Court acquits the accused of those charges and convicts her only of an offence u/s.
411 I.
P.
C.
and the accused appeals to the High Court against the conviction and sentence but the State Government does not appeal against the acquittal of the accused on charges of murder.
And robbery, is it open to the High Court to set aside the conviction and sentence u/s.
411 I.
P.
C.
and order the accused to be retried on the charges of murder and robbery ?
(2)When in pursuance of the order of the High Court the Sessions Court again frames charges u/ ss.
302 and 392 I.
P.
C.
against the accused, is it or is it not open to the accused to plead the statutory bar of AUTREFOIS ACQUIT' u/s.
403 Cr.
P.C.?
6 The answer given by the Full Bench to the first, question is that except in exercise of the revisional powers under s.
439 of the Code of Criminal Procedure subject to the limitations prescribed therein it is not open to the High Court to order a retrial on the charges on which the accused was acquitted by the trial

court in an appeal by the accused against his conviction, though 'it is empowered to reverse the conviction and order a retrial on that charge alone.
On the second question the Full Bench held that it was open to the accused to plead the bar of autrefois acquit under s.
403 notwithstanding the order of the High Court unless there is an adjudication on the acquittal by the High Court either under s.
423(1) (a) or S.
439 of the Code of Criminal Procedure.
As a result of these answers the revisional application preferred by the respondent was allowed, her plea under s.403 was upheld and it was ordered that the retrial of the respondent for the offences under ss.302 and 392 of the Indian Penal Code cannot be proceeded with., This order was passed on March 11, 1959.
It is against this order that the appellant has come to this Court by special leave.
7 The powers of the appellate court in disposing of appeals are prescribed by s.
423 of the Code.
This section occurs in Chapter XXXI of the Code which deals with appeals, reference and revision.
In the present appeal we ire concerned with the provisions of s.423(1) (b).
However, it is convenient to read s.
423(1) (a) and (b) 423.(1) The Appellate Court shall then send for the record of the case, if such record is not already in Court.
After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 411A, subjection (2) or section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground.
for interfering, dismiss the appeal, or may-
(a)in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made,, or that the accused be retried or committed for trial as the case may be, or find him guilty and pass sentence on him according to law;
(b)in an appeal from conviction, (1) reverse the finding and sentence, and acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduced the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3),.
not so as to enhance the same;
8.
S.
423(1) (a) expressly deals with an appeal from an order of acquittal and it empowers the Appellate Court to.
reverse the order of acquittal and direct that further inquiry be made or that the accused may be tried or committed for trial, as the case may be, or it may find him guilty and pass sentence on him according to law.
In appreciating the powers conferred on the Appellate Court in dealing with an appeal against, an order of acquittal it is necessary to bear in mind that the only forum where an appeal can be preferred against an original or an appellate order of 'acquittal is the High Court, that is to say the powers conferred on the Appellate Court by s.423(1) (a) can be exercised only by the High Court and not by Any other Appellate Court.
Under s.
408 the Court of Sessions is an Appellate Court to which appeals from orders of conviction passed by an Assistant Sessions Judge,, a District Magistrate or any other Magistrate lie, and so the Court of Sessions is An Appellate- Court, but no appeal against an order of acquittal passed by any of the aforesaid authorities can lie to, the Court of Sessions.
All appeals against acquittal whether passed by the trial court or the Appellate Court lie only to the High Court, and so the powers prescribed by s.
423(1) (a) can be exercised only by the High Court.
As we will presently point out this fact has some bearing on the construction of the material words used in s.
423(1) (b) (2).
9.
S.

423(1) (b) (1) in terms deals with an appeal from a conviction, and it empowers the Appellate Court to reverse the findings and sentence and acquit or discharge the accused or order a retrial by a Court of competent jurisdiction subordinate to such Appellate.
Court or committed for trial.
In the context it is obvious that the finding must mean the finding of guilt.
The words "the finding and sentence" are co-related.
They indicate that the finding in question is the cause and the sentence is the consequence; and so what the Appellate Court is empowered to reverse is the finding of guilt and consequently the order as to sentence.
There is no.difficulty in holding that s.
423(1) (b) (1) postulates the presence of an order, of sentence against the accused and it is in that context that it empowers the Appellate Court to reverse, the finding of guilt and sentence and then to pass any one of the appropriate orders: therein specified.
In our opinion s.
423 (1) (b) (1) is, therefore, clearly confined to cases of appeals preferred against orders of conviction and sentence, and the powers exercisable under it are therefore condition- ed by the said consideration.
It is impossible to accede to the argument that the powers conferred by this clause can be exercised for the purpose of reversing an order of acquittal passed in favour of a party in respect of an offence charged in dealing with an appeal preferred-by him against the order of conviction in respect of another offence charged and found proved.
There can thus.
be no doubt that the order passed by Naidu, J.
cannot be justified under this clause.
10 At this stage it would be relevant to point out that Naidu, J.
did not purport to proceed under s.439 in dealing with the respondent's' case when the appeal preferred by her against her conviction was being argued before him.
It is true that the learned judge noticed that the appeal in question was a jail appeal and the, respondent was not defended by a lawyer.
So he ordered Mr.
A.
Gangadhara Rao, an Advocate of' the Court, to appear amicus curiae to argue the pea on behalf of the respondent; but, as the Full Bench has pointed, out, the record clearly shows that neither the respondent nor her pleader was given notice under s' 439(2) of the Code, and even the advocate appointed amicus curiae did not know much less the respondent herself that the learned judge intended to exercise his powers under s.439 against the respondent in respect of the offences under ss.302 and 392 despite the fact that the appellant had not preferred an appeal against the order of acquittal passed in favour of the respondent on those grounds.
Therefore, it is unnecessary for us to consider in this appeal the question about the scope and effect of the provisions of ss.423 and 439 of the Code read together.
The only provision under which the order passed by Naidu J.
is seriously sought to be supported is s.423 (1) (b) (2) and it is to that provision that we must now turn.
11 It is urged by Mr.
Choudhury on behalf of the appellant that in construing the expression "alter the finding" it would be necessary to remember that when the High Court deals with an appeal against conviction the proceedings in the Appellate Court are in substance a continuation of the proceedings in the trial court and so the entire case is in that sense pending before the Appellate Court.
The argument is that in exercising the powers conferred on it by s.423 (1)(b)(2) the High Court is not confined only to the order of conviction which is directly the subject-matter of the appeal but it is possessed of the entire proceedings of the case against, the accused and it is in the light of this fact that the expression "alter the finding" must be construed.
12.
In our opinion, this argument is not well founded.
The scheme of s.
423 itself clearly shows that when appeals against conviction are brought before the Appellate Court by the convicted person it is only with the orders of conviction and matters incidental thereto that fall to be decided by the Appellate Court.

An order of acquittal passed in favour of an accused person can be challenged by an appeal as provided by s.417 of the, Code, and s.423(1) (a) therefore expressly deals with the powers of the High Court in dealing with such appeals against orders of acquittals.
Prima facie,if an order of acquittal is not challenged by an appeal as contemplated by s.417 and if no action is taken by the High Court under s.439 the said order of acquittal becomes final and cannot be impugned indirectly by the State in resisting an appeal filed by a convicted person against his conviction.
In a case where several offences are charged against an accused person the trial is no doubt one; but where the accused person is acquitted of some offences and convicted of others the character of the appellate proceedings and their scope and extent is necessarily determined by the nature of the appeal preferred before the Appellate Court.
If an appeal is preferred against an order of acquittal by the State and no appeal is filed by the convicted person.
against his conviction it is only the order of acquittal which falls to be considered by the Appellate Court and not the order of conviction.
Similarly, if an order of conviction is challenged by the convicted person but the order of acuittal is not challenged by the State then it is only the order of conviction that falls to be considered by the Appellate Court and not the order of acquittal.
Therefore the assumption that the whole case is before the High Court when it entertains an appeal against conviction is not well-founded and as such it cannot be pressed into service in construing the expression "alter the finding".
13 In this connection we ought to recall the fact that it is only the High Court which is authorised to entertain appeals against acquittal under s.417 of the Code.
But the provisions of s.423 (1) (b) are applicable to all the Appellate Courts and so the meaning of the expression "alter the finding" cannot change according as the Appellate Court is the High Court or the Court of Sessions.
It is common ground that the Court of Sessions which is an Appellate Court cannot alter the finding of acquittal in pursuance of the provisions of s.423 (1) (b) (2) but the argument is that the, High Court can.
This argument puts two different interpretations on the same expression "alter the finding" and that would not be a proper mode to adopt in construing the clause.
We are, therefore, inclined to bold that just as the Court of sessions is not entitled to alter the finding of acquittal in exercising its powers under s.
423 (1) (b) (2) so is the High Court not entitled to do it,.
In other words, the expression "alter the finding" has only one meaning, and that is alter the finding of conviction and not the finding of acquittal.
14 Besides, if the expression "alter the finding" was to include the power to reverse the finding of acquittal it is not easy to realise why s.
423 (1) (a) should have been enacted at all.
From the very fact that s.
423 (1) (a) deals independently with the topic of appeals from orders of acquittal, it would be reasonable to infer that the appellate power in respect of the orders of acquittal are dealt with separately and exclusively under s.
423 (1) (a), whereas appellate powers to deal with orders of conviction are dealt with separately and exclusively under s.
423 (1) (b).
The scheme of s.
423, therefore, is inconsistent with the argument that cl.
(2) of S.423 (1) (b) covers orders of acquittal and empowers the Appellate Court to alter the said orders.,
15 As a matter of construction the words ""the, finding" in the expression "alter the finding" must mean the finding of conviction' because the clause begins with "in an appeal from a conviction" and it is obvious that read in the context of the opening words of the clause "'the finding" must mean the finding of conviction and no other.
It is with an appeal from conviction that the'clause deals and it is the finding of conviction or guilt which it empowers the Appellate Court to alter.
The word "alter" must in the context be distinguished from the word "reversed".
Whereas, under s.
423(1)(b)(1) power is conferred on the High Court to reverse the order of conviction the power conferred on the Appellate Court by the expression "'alter the finding" is merely the power to alter.

Reversal of the order implies its obliteration, whereas alteration would imply no more than modification and not its obliteration.
This consideration also shows that what- the expression aims at is the finding of conviction or guilt and not the finding of acquittal or innocence.
16 There is yet another consideration which leads to the same conclusion.
S.
423(1)(b)(2) emphatically refers to the sentence and requires that despite the alteration of the finding the sentence must be maintained.
In other words, the finding and the sentence go together and the clause provides that, even if the finding is altered the sentence may be retained.
Similarly, the sentence may be reduced with or without altering the finding.
The reference to the sentence in both the cases indicates that the finding which can be altered under the clause is a finding which has led to the imposition of sentence on the accused person.
This clause would naturally raise the question as to what are the kinds of cases in which the power can be exercised ? The answer to this question is furnished by the provisions of ss.
236, 237 and 238 Section.
236 deals with cases where separately enacted in order to empower the High Court in the interest of justice to examine the orders of acquittal and if it is satisfied that in any case, the order of acquittal needs to be revised the High Court can exercise its power suo motu.
The legislature has therefore deliberately provided wide powers under s.
439 in the interest of justice, and so it is very unlikely that the' legislature could have intended to confer a similar power on the High Court under s.
423 (1) (b) (2).
17 In this connection we ought to deal with another argument which is sometimes dressed into service in support of the wider construction of the clause 'falter the finding".
It is said that the provisions of s.
439 apply-to cases where there is a complete and express order of acquittal, whereas a.
423 (1) (b) (2) covers cases of implied and partial acquittal.
It is also urged that whereas there is a specific provision made in s.
439 (4) by which the High Court is precluded from converting a finding of acquittal into one of conviction there is no such limitation in s.
423.
Both these arguments do not appear to us to be well- founded.
In regard, to the argument of implied acquittal being open to review by the High Court under s.423 (1) (b) (2) it would be enough to refer to at decision of the Privy Council where this argument has been rejected.
In Kishan Singh v.
The King-Emperor ((1928) 55 I.
A.
390) 1928 Indlaw PC 18 the appellant had been tried by a Sessions Judge under s.
302 on a charge of murder.
He was convicted under S.304 of culpable homicide not amounting to murder.
This conviction was recorded in the, light of the provisions of s.238 (2) of the Code,.
For the offence under s.304 he was sentenced to five years' rigorous imprisonment.
While convicting the appellant under s.
304 the trial court did not record a specific order of acquittal for the offence under s.
302.
The State Government did not appeal but applied for revision on the ground that the appellant should have been convicted of murder and that the sentence was inadequate.
18 The High Court thereupon convicted the appellant of murder and sentenced him to death.
This order of conviction and sentence was successfully challenged by the appellant before the Privy Council.
The Privy Council held that the finding at the trial ought to be regarded as of acquittal on the charge of murder and that consequently s.
439 (4) of the Code precluded the High Court from having jurisdiction upon revision to convict on that charge.
Dealing with the argument that s.
439 (4) should be confined only to cases where there is complete acquittal their Lordships thought it necessary to say that ",if the learned Judges of the High Court of Madras intended to 'hold that the prohibition in s.

439, sub s.
(4) refers only to cases where the trial has ended in a complete acquittal of the accused in respect of all charges or offences, and not to a case such as the present, where the accused has been acquitted of the charge of murder, but convicted of the minor offence of culpable homicide not amounting to murder, their Lordships are unable to agree with that part of their decision.
The words of the sub-section are clear and there can be no doubt as to their meaning.
There is no justification for the qualification which the learned Judges attached to the sub-section." It would thus be clear that any attempt to confine the operation of s.
439 (4) to cases of the so-called complete acquittal cannot be entertained; and so it would be idle to suggest that s.
423 (1) (b) (2) covers cases of implied or partial acquittal a s.
439 deals with cases of express and complete acquittal.' In setting aside the order of conviction for the offence of murder imposed....by the High Court on the appellant the Privy Council observed that the High Court had acted without jurisdiction and so it could not accept the plea that no prejudice had thereby been caused to the appellant,.
This case, therefore, clearly establishes Chat in exercising the powers conferred on it by s.
423 (1) (b) the High Court cannot convert acquittal into conviction that can be done only by adopting the procedure prescribed in s.
439 of the Code.
19 Then, as to the argument based on the specific, provision contained in s.
439(4) it is obvious that no such limitation could have been prescribed in regard to the provisions of s.
423 (1)(b) for the reason that the orders of acquittal are outside the purview of that clause.
Therefore, it would be unreasonable to suggest that because there is no limitation on the power of the High Court as there is in s.
439(4) the High Court can, in dealing with an appeal against conviction, alter the finding of acuittal recorded at the Trial in favour of the accused person.
We must accordingly bold that the Full Bench of the Andhra High Court was right in coming to the conclusion that Naidu, J.
acted without jurisdiction in altering the finding and order of acquittal passed in favour of the respondent in respect of the offences under ss.
302 and 392 when he, was dealing with the appeal preferred by the respondent against her conviction under s.
41 1.
20 In this connection we way incidentally refer to the observations made by Venkatarama Ayyar, J., who spoke for the Court, in Jayaram Vithoba v.
The State of Bombay.
((1955) 2 S C.
R.
1049) 1955 Indlaw SC 74 In dealing with the contention of the accused that the Court had no power under s.423 (1) (b) of the Code of Criminal Procedure to award a sentence under s.
148 in a case the accused was charged under ss.
324 and 148 of the Indian Penal Code., the High Court had observed that they had ample power to transpose the sentence so long as the transposition does not amount to enhancement, and this observation raised a question about the construction of s.
423 (1)(b).
Dealing with the said question, Venkatararia Ayyar, J.
observed there is nothing about the transposition of the sentence under s.
423 (1)(b).
It only provides for altering the finding and maintaining the sentence, and that can apply only to cases where the finding of guilt under one section is altered to a finding of guilt under another.
The section makes a clear distinction between a reversal of a finding and its alteration".
These observations seem to take the same view of the scope and effect of the provisions of s.
423(1)(b) as we are inclined to do.
21 As we have already indicated at the commencement of this judgment;, on the question raised for our decision in the present appeal there has been conflict of judicial opinion.
We do not, however, propose to consider the several decisions to which our attention was drawn because, in our opinion, no useful purpose would be served by examining the facts in all those cases and subjecting to scrutiny the reasons adopted for arriving at different conclusions.

We would, therefore, content ourselves with the broad statement that respondent has relied upon the decisions in Indra Kumar Nath v.
The State (A.
I.
R.
(1954) Cal.
375 1954 Indlaw CAL 168).
The State v.
Amlesh Chandra Ray.
(r.
L.R.
(1953)1 Cal.302), Fulo v.
State ((1956) I.
L.R.
35 Pat.
144) (Full Bench), and Taj Khan v.
Rex (A.
I.
R.
1932 All.
369.) (Ful Bench 1951 Indlaw ALL 171), whereas the appellant has relied upon the decisions in Krishna Dhan Mandal v.
Queen-Empress ((1895) I.L.R.
22 Cal.
377), Queen-Empress v.
Jabanulla (1896 I.L.R.
23 Cal.
975),
22 In Re Illuru Lakshmaih, (A.I.
R.
1952 Mad.
101) Golla Hanumappa v.
Emperor, ((1912) I.L.R.35 Mad.
243) Re K.
Bali Reddi, (1914 I.
L.
R.
37 Mad.
119) In Re Rangiah, (A.
I.
R, 1954 Mys.
122) 1953 Indlaw KAR 37 Baua Singh v.
The Crown ((1942) I.L.R.
23 Lah.
129) (Full Bench) and the majority judgment in Emperor v.
Zamir Qasim (I.L.R.
(1944) All.
403) The minority view expressed by Mulla J.
in Emperor v.
Zamir Qasim(I.L.R.
(1944) All.
403) contain a careful and exhaustive discussion of the topic and the respondent has strongly relied upon it.
23 There is one more point which still remains to be considered and that is the subject-matter of the second issue referred to the Full Bench.
It is urged before us by Mr.
Choudhury on behalf of the State that the Full Bench itself has acted in excess of jurisdiction in entertaining the plea.
arised by the respondent under s.
403, because he contends that the judgment delivered by Naidu J.

could not be revised by the High Court having regard to the provisions of s.
369 of the Code.
We have already mentioned that this question has also been answered in favour of respondent by the Full Bench.
24 The judgment of the Full, Bench does not show that the effect of the provisions of s.
369 was argued before it.
In substance, however, the Full Bench has held that the.
order passed by Naidu J.
is outside the authority conferred on the High Court under s.
423 (1)(b)(2) and as such can be treated to be without jurisdiction and therefor e a.
nullity.
We do not propose to decide this point in the present appeal, because we have, allowed
25 Mr.
Rama Reddy, who appeared for the'respondent at our instance, to make an application for special leave against the order passed by Naidu J.
Accordingly Mr.
Rama Reddy has made an application, Special Leave Petition (Criminal) No.
476 of 1961, for special leave and has prayed-for excuse of delay made in filing it.
Having regard to the very unusual circumstances in which the present application has been made we feel no difficulty in condoning the delay made by the respondent in filing her application for special leave and granting her special leave to appeal against the order in question.
In fairness we ought to add that Mr.
Choudhury did not resist the respondent's prayer for excuse of delay in the present case.
Since we are now possessed of an appeal, Criminal Appeal No.
112 of 1961, filed by special leave against the judgment and order of Naidu J.
the question as to whether the Full Bench could have considered the validity of the said judgment and order has become a matter of academic importance.
There can be no doubt that in.
the appeal preferred by the respondent against the said order it is certainly open to her to challenge its validity, and as we have come to the conclusion that the order passed by Naidu T.
is without jurisdiction we have no difficulty in allowing the respondent's appeal and setting aside the, said order.
26 In the result Criminal Appeal No.
112 of 1961 preferred by the respondent Thadi Narayana'is allowed and the High"Court's order passed in Criminal Appeal No.
237 of 1957 by which case against her had been sent back for retrial on the original charges against her under ss.
302 and 392 of the Indian Penal Code is set aside.
The conse- quence of this decision is that the order of acquittal passed in her favour by the trial court ill respect of the said offences is restored.
The State has not preferred any appeal against the High Court's decision in Criminal Appeal No.
237 of 1957 where by the conviction of Thadi Narayana in respect of the offence under s.
411 and sentence imposed on her in that behalf have been set aside while ordering her retrial for the major offences under ss.
302 and 392 of the Indian Penal Code ; and so this latter order of acquittal in respect of S.
411 will stand.
In the circumstances of this case this result cannot, be avoided.
Criminal Appeal No.
222 of 1959 preferred by the State against the decision of 'the Full Bench therefore fails and is dismissed.
Criminal Appeal No.
11 2 of 1961 allowed.
Criminal Appeal No.
222 of 1959 dismissed

Kazilhendup Dorji v Central Bureau Of Investigation
Supreme Court of India

29 March 1994
W.P.

(Civil) NO.
313 of 1993
The Judgment was delivered by : S.
C.
Agrawal, J.
1.
This writ petition filed u/art.
32 of the Constitution raises the question whether it is permissible to withdraw the consent given by the State Government u/s.
6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as the 'Act') whereby a member of the Delhi Special Police Establishment (DSPE) was enabled to exercise powers and jurisdiction for the investigation of the specified offences in any area in the State and, if so, what is the effect of such withdrawal of consent on matters pending investigation on the basis of such consent on the date of withdrawal.
2.
The Act was enacted to make provision for the Constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories, for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences.
DSPE constituted under the said Act is now known as the Central Bureau of Investigation (CBI).
Ss.
5 and 6 of the Act read as under:
"5.
(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification u/s.
3.
(2)When by an order under sub-s.
(1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.
(3)Where any such order under sub-s.
(1) is made in relation to any area, then, without prejudice to the provisions of sub- section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer-in- charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.
Nothing contained in S.
5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State."
3.
By his letter dated 20-10-1976, addressed to the Deputy Secretary to the Government of India, Department of Personnel and Administrative Reforms, the Chief Secretary to the Government of Sikkim conveyed the consent of the Government of Sikkim u/s.
6 of the Act to the members of the DSPE in exercising powers and jurisdiction on the whole of the State of Sikkim for the investigation of the offences punishable under various provisions of the Indian Penal Code specified therein as well as offences under the Prevention of Corruption Act, 1947.
Similar consent in respect of offences under other enactments was conveyed by letter of the Chief Secretary, Government of Sikkim, dated 10-7-1979 and the orders of the Government of Sikkim dated 24-12-1983, 28-6-1984 and 10-12-1984.
4.
Respondent 4 was the Chief Minister of Sikkim during the period 1979 to 1984.
He ceased to be the Chief Minister on 11-5-1984.

On 26-5-1984, a case [RC.5/84-CIU(A)] was registered by the CBI for offences punishable u/s.
5(2) read with S.
5(1)(e) of the Prevention of Corruption Act, 1947.
The allegations, in brief, were that Respondent 4, while Acting as the Chief Minister of the State of Sikkim and thus being a public servant, had acquired assets disproportionate to his known sources of income.
On 7-8-1984, another case [RC.8/84-CIU(A)] was registered by CBI for offences punishable under Section 120- B IPC and S.
5(2) read with S.
5(1)(d) of the Prevention of Corruption Act, 1947, against Respondent 4 and others.
The allegations, in brief, were that Respondent 4 and Shri P.K.
Pradhan, the then Secretary Rural Development Department, Government of Sikkim, by corrupt or illegal means or by otherwise abusing their position as public servants in conspiracy with other persons caused pecuniary advantage to the private parties and the corresponding loss to the Government of Sikkim and further that these persons entered into a criminal conspiracy with other private persons and awarded contracts to the tune of Rs 1,62,31,630 to the private parties for implementing Rural Water Supply Scheme under the Minimum Needs Programme during 1983-84 on higher rates and had ignored the recommendations of the concerned Rural Development Department officials on this point.
After registering these two cases CBI started investigation and while the matters were under investigation Respondent 4 again became the Chief Minister of Sikkim in March 1985.
By notification dated 7-1-1987, when Respondent 4 was the Chief Minister of Sikkim, it was notified that all consents of or on behalf of the State Government under letters dated 20-10-1976 and 10-7-1979 and orders dated 24-12-1983, 28-6-1984 and 10-12- 1984 for investigation of offences by CBI u/s.
6 of the Act, are withdrawn and stand cancelled with immediate effect.
In spite of requests made by officials of the Government of India in their letters dated 17-10-1988, 12-12-1988 and 10-2-1989 and the Ministers of State in the Ministry of Personnel, Public Grievances and Pensions in letters dated 9-3-1989 and 16-9-1992, the Government of Sikkim did not agree to permit investigation by CBI in respect of cases under the Prevention of Corruption Act and declined to give consent for such investigation.
As a consequence of the notification dated 7-1-1987, CBI suspended further action in the aforementioned two cases registered against Respondent 4.
The petitioner, who happens to be a former Chief Minister of Sikkim, has filed this writ petition, by way of public interest litigation, wherein he has sought various reliefs including the quashing of the notification dated 7-1-1987.
The petitioner has submitted that there is no provision under the Act which empowers the State Government to withdraw the consent which has been accorded and that impugned notification dated 7-1-1987, withdrawing the consent is in violation of the provisions of the Act.
5.
In the counter-affidavit of Shri Parag Prakash, Deputy Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, filed on behalf of Respondent 2, Union of India, it has been stated that after due investigation in case No.
RC.5/84-CIU(A) the CBI had come to the conclusion that Respondent 4 had acquired assets worth Rs 16,49,434 which were disproportionate to his known sources of income and that a prima facie case for offences punishable u/ss.
5(2) read with S.
5(1)(e) of the Prevention of Corruption Act was made out against him and that similarly after investigation of case No.
RC.8/84- CIU(A) the CBI had come to the conclusion that a prima facie case for the offences punishable under Section 120-B IPC and S.
5(2) read with S.
5(1)(d) of the Prevention of Corruption Act was made out against Respondent 4 and Shri P.K.
Pradhan, the then Secretary Rural Development Department, Government of Sikkim, and fifteen others for having caused pecuniary advantage to the private parties to the tune of Rs 3,07,230.
It has been further stated in the said affidavit that before the CBI could file charge-sheet as provided u/s.
173 CrPC in either of the aforesaid two cases in the court of law, the State of Sikkim, by its notification dated 7-1-1987, withdrew the consent earlier accorded by it to the members of the Special Police Establishment for investigation of offences in the State of Sikkim as provided u/s.

6 of the Act and that in spite of various communications sent by Government of India to the Government of Sikkim requesting for restoration of the consent u/s.
6 of the Act, the State Government had declined to give consent as requested.
It has been further stated in the said affidavit that the withdrawal of the consent by the State Government through notification dated 7-1-1987, has caused grave injustice to the investigation of the aforesaid two cases registered by CBI because for want of said consent the reports u/s.
173 CrPC could not be filed in the court of law.
It has also been stated that the law, once set in motion by registering criminal cases, ought not be permitted to be stalled and the case must be allowed to reach its logical conclusion and that criminal justice requires that the investigating agency should be allowed to bring the result of investigation to the court of law by filing reports u/s.
173 CrPC as required under law, notwithstanding the withdrawal of consent during pendency of investigation.
It is also stated in the said affidavit that notification dated 7-1-1987, through which the consent was withdrawn, is prejudicial to the fair and free investigation by CBI and thus illegal and not tenable under the law and further that there is no provision in law for withdrawal of consent once accorded and that, in any case, in respect of cases already taken up for investigation or trial on the basis of a valid consent legally accorded by the State Government, there is no scope of withdrawing it in between and that notification dated 7-1-1987, deserves to be quashed in totality and certainly in respect of the cases already taken taken up for investigation by CBI.
6.
A counter-affidavit has been filed by Shri K.A.
Varadan, Chief Secretary, State of Sikkim, on behalf of Respondent 3, the State of Sikkim, but the said affidavit is confined to the question whether a meeting of the Cabinet was held on 19-5-1984 wherein, as asserted in the writ petition by the petitioner, it was decided that since Respondent 4 had acquired assets by illegal means the Central Government be requested to require CBI to institute complaints/file case against Respondent 4.
In the said affidavit no reference has been made to the order dated 7-1-1987, whereby the consent granted u/s.
6 of the Act was withdrawn as well as the legality of the said action.
7.
Respondent 4 has also filed a counter-affidavit wherein he has alleged that the writ petition was politically motivated and further that the registration of cases by CBI against him was vitiated by mala fides and is part of a campaign of character assassination against him.
In his counter-affidavit Respondent 4 has disputed that a meeting of the Cabinet was held on 19-5-1984, or a decision was taken empowering CBI to investigate the allegations of corruption against Respondent 4 and that the sanction to investigate offences by CBI u/s.
6 of the Act was illegally granted which had been properly withdrawn.
Along with the said counter-affidavit Respondent 4 has placed on record (as Annexure VI) the notings in the file containing the opinions of the then Advocate General as well as the Chairman of the State Law Commission expressing the view that the consent given u/s.
6 could be rescinded u/s.
21 of the General Clauses Act, 1897.
8.
S.
21 of the General Clauses Act, 1897 is in following terms:
"21.
Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.- Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued."
9.
Shri Ram Jethmalani, the learned Senior Counsel appearing for the petitioner, has urged that S.
21 of the General Clauses Act has no application to a consent given u/s.
6 of the Act inasmuch as S.
21 of the General Clauses Act postulates conferment of the power to issue notifications, orders, rules, or bye-laws by any Central Act or Regulation and that S.
6 of the Act does not confer a power to issue a notification or order and that the consent given u/s.

6 cannot be regarded as a notification or order.
In this context, Shri Jethmalani has contrasted the provisions of S.
6 with S.
3 of the Act which prescribes that the "the Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment".
Shri Jethmalani has pointed out that the original consent dated 20-10-1976, was contained in the letter of the Chief Secretary and was not in the form of a notification and so also was the consent contained in the letter dated 10-7-1979.
Shri Jethmalani has also contended that even if S.
21 of the General Clauses Act is held to be applicable so as to permit withdrawal of consent given under Section 6, such withdrawal of consent cannot be related to an investigation which has started on the basis of consent granted earlier and that once the investigation has started Chapter XII of CrPC comes into play and the statutory powers vested in the CBI under the provisions of the Code have to be exercised and the exercise of said powers is not affected by a subsequent withdrawal of the consent.
Shri Jethmalani has further contended that since the impugned notification for withdrawal of the consent was one in which Respondent 4 had a vital interest, the decision for such withdrawal should have been taken by the Governor in exercise of his personal discretion and not on the advice of the Council of Ministers and that in the present case the impugned notification was issued on the basis of advice of the Council of Ministers headed by Respondent 4, who was the Chief Minister at that time.
10.
The learned Additional Solicitor General, appearing for Respondents I and 2, has also assailed the validity of the impugned notification and has urged that no action of any authority can be permitted to impede the course of criminal justice and that but for the impugned notification withdrawing the consent the CBI would have discharged its statutory obligations in the matter of investigation and prosecution of the accused persons.
11.
Shri Hegde, the learned Senior Counsel appearing for the State of Sikkim,has assailed the validity of S.
6 of the Act on the ground that DSPE isa police force of the Union Territory and Parliament does not have the legislative competence to make a law providing for extension of powers and jurisdiction of members of a police force belonging to a Union Territory to any area outside the Union Territory.
12.
Shri Parasaran, the learned Senior Counsel appearing for Respondent 4, has submitted that the writ petition is an abuse of the process of the court inasmuch as it is politically motivated and, in this context, he has invited our attention to the order passed by this Court on 5-5-1993, wherein it has been stated:
" Shri Jain strongly urged that the petitioner who was instrumental in the admission of Sikkim as a State in the Indian Union, is greatly exercised and troubled over the inaction of the CBI in investigating into certain charges against Respondent 4.
It would appear that in 1987 there was a purported revocation of the sanction.
If the revocation is valid, we are afraid, re-agitation of the matter at this distance of time by the petitioner would not be proper and would earn the criticism of amounting to an abuse of the process.
But, Shri Jain would say that there is no power of revocation and the CBI must proceed on the assumption that none exists."
13.
Shri Parasaran has also urged that there is inordinate delay in filing of the writ petition inasmuch as the FIR was registered as far back as in 1984 and the notification withdrawing the consent was issued in 1987 but the writ petition was filed in 1993, nearly six years after the passing of the impugned notification.
14.
The contention urged by Shri Hegde about the legislative competence of Parliament to enact Ss.
5 and 6 of the Act stands concluded by the decision of the Constitution Bench of this Court in Advance Insurance Co.
Ltd.
v.

Gurudasmal (1970) 1 SCC 633 : (1970) 3 SCR 881 1970 Indlaw SC 91 wherein the expression "State" in Entry 80 of List 1 in the Seventh Schedule to the Constitution has been construed to include "Union Territory" in view of the definition of "State" contained in S.
3(58) of the General Clauses Act and it has been held that members of police force belonging to the Union Territory can have their powers and jurisdiction extended to another State provided the Government of that State consents.
15.
The submission of Shri Parasaran that the filing of the writ petition amounts to abuse of the process of court also does not merit acceptance.
The counter-affidavit filed on behalf of Respondent 2, Union of India, shows that after due investigation of both the cases it has been found that prima facie case for offences u/s.
5(2) read with S.
5(1)(e) of the Prevention of Corruption Act, 1947 and offences under Section 120-B read with S.
5(2) and S.
5(1)(d) is made out and that if the impugned notification had not been issued the charge-sheet u/s.
173 CrPC would have been filed by CBI.
In these circumstances, merely because the petitioner happens to be a political rival of Respondent 4 it cannot be said that filing of this writ petition amounts to abuse of process of the court.
The order of this Court dated 5-5-1993, only means that if the revocation is found to be valid re-agitation of the matter at this distance of time by the petitioner would not be proper and would earn the criticism of amounting to an abuse of the process.
By the same order the Court after noticing the contention of Shri R.K.
Jain that there was no power of revocation and that CBI must proceed on the assumption that none exists, decided to issue notice to CBI in the first instance and on 1-10-1993, after examining the affidavit filed by Shri Ram Deo Pandey, Superintendent of Police, CBI, directed that notice be issued to other respondents.
The order of this Court dated 5-5-1993, therefore, does not lend support to the contention that the filing of the writ petition amounts to abuse of the process.
16.
As regards delay in filing of writ petition we find that after the issuance of the impugned notification in 1987, efforts were made by the Central Government during the period from 1988 to 1992 to persuade the Government of Sikkim to accord the necessary consent and when the said attempts failed, the petitioner moved this Court in 1993.
Having regard to the seriousness of the allegations of corruption that have been made against a person holding the high public office of Chief Minister in the State which have cast a cloud on his integrity, it is of utmost importance that the truth of these allegations is judicially determined.
Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a 1 cloud.
It would also be in the interest of Respondent 4 to have his honour vindicated by establishing that the allegations are not true.
The cause of justice would, therefore, be better served by permitting the petitioner to agitate the issues raised by him in the writ petition than by non-suiting him on the ground of laches.
17.
Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that S.
21 of the General Clauses Act does not confer a power to issue an order having retrospective operation.
[See Strawboard Manufacturing Co.
Ltd.
v.
Gutta Mill Workers' Union 1952 Indlaw SC 80 .] Therefore, even if we proceed on the basis that S.
21 of the General Clauses Act is applicable to an order passed u/s.
6 of the Act, an order revoking an order giving consent u/s.
6 of the Act can have only prospective operation and would not affect matters in which Action has been initiated prior to the issuance of the order of revocation.
The impugned notification dated 7-1-1987, has to be construed in this light.
If thus construed it would mean that investigation which was commenced by CBI prior to withdrawal of consent under the impugned notification dated 7-1-1987, had to be completed and it was not affected by the said withdrawal of consent.

In other words, the CBI was competent to complete the investigation in the cases registered by it against Respondent 4 and other persons and submit the report u/s.
173 CrPC in the competent court.
On that view of the matter, it is not necessary to go into the question whether the provisions of S.
21 of the General Clauses Act can be invoked in relation to consent given u/s.
6 of the Act.
18.
The writ petition is, therefore, allowed and it is declared that the notification dated 7-1-1987, withdrawing the consent given by the Government of Sikkim under letters dated October 20, 1976, and 10-7-1979 and orders dated 24-12-1983, 28-6-1984, and 10-12-1984, u/s.
6 of the Act, operates only prospectively and the said withdrawal would not apply to cases which were pending investigation on the date of issuance of the said notification.
The notification dated 7-1-1987, does not preclude the CBI from submitting the report in the competent court u/s.
173 CrPC on the basis of the investigation conducted by it in RC.5/84-CIU(A) and RC.8/84-CIU(A).
No order as to costs.

Kuldeep Singh v Commissioner of Police and Others
Supreme Court of India

17 December 1998
C.A.
No.
6359-6361/1998
The Judgment was delivered by: S.
Saghir Ahmad, J.
1.
Leave granted.
2.
The appellant, a constable in the Delhi Police was dismissed, after a regular departmental enquiry, from service, by order dated 03.05.1991, passed by Dy Commissioner of Police, South District, New Delhi, which was upheld in appeal by Addl.
Commissioner of Police by his order dated 22.07.1991.
The appellant then approached the Central Administrative Tribunal, Principal Bench, New Delhi and the Tribunal, by the impugned judgment dated 28th February, 1997, dismissed the Claim Petition.
3.
A writ Petition filed before the Delhi High Court against this judgment was dismissed on 19.09.1997 as not maintainable as the judgment passed by the Tribunal was given before the date on which the decision of this Court was rendered in L.Chandra Kumar Vs.
Union of India & Others, AIR 1997 SC 1125, (1997) 3 SCC 261 1997 Indlaw SC 2816, in which it was held that a writ petition against the order passed by the Tribunal, constituted under the Administrative Tribunal Act, 1985, would be maintainable (prospectively) before a High Court.
The Review Application filed against the judgment of the Tribunal was dismissed on 26.05.1997.
Learned counsel for the appellant has contended that the findings recorded by the Enquiry Officer cannot be sustained as the enquiry itself was held in utter violation of the principles of natural justice.
It is also contended that there was no evidence worth the name to sustain the charge framed against the appellant and therefore, the findings are perverse particularly as no reasonable person could have come to these findings on the basis of the evidence brought on record.
4.
Learned counsel appearing on behalf of Union of India has, on the other hand, contended that the enquiry was held in consonance with the principles of natural justice and during the course of the enquiry, full opportunity was given to the appellant to defend himself.
As far the evidence is concerned, it is contended that though it is true that none of the complainant was examined but on account of Rule 16(3) of the Delhi Police Rules, 1980, it was not required to produce the complainant in person as the Rule itself contemplated that in the absence of a witness whose presence could not be procured without undue delay, inconvenience

or expense, his statement, already made on an earlier occasion, could be placed on record in the departmental enquiry and the matter could be decided on that basis.
It was under this Rule that the previous joint statement of the complainants was brought on record without examining any of them.
Learned counsel for the respondents contended that the scope of judicial review in disciplinary proceedings is extremely narrow and limited.
The court cannot, it is contended, re-examine or re-appraise the evidence and substitute its own conclusion in place of the conclusions arrived at by the Enquiry Officer or the disciplinary authority on that evidence.
5.
It is no doubt true that the High Court u/art.
226 or this Court u/art.
32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course.
The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority.
But this does not mean that in no circumstance can the Court interfere.
The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.
6.
In Nand Kishore vs.
State of Bihar, AIR 1978 SC 1277 = (1978) 3 SCC 366 = 1978 (3) SCR 708 1978 Indlaw SC 172, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries.
If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.
7.
The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence.
This principle was laid down by this Court in State of Andhra Pradesh vs.
Sree Rama Rao.
1964 2 LLJ 150 = AIR 1963 SC 1723 = 1964 (3) SCR 25 1963 Indlaw SC 183, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry.
This decision was followed in Central Bank of India vs.
Prakash Chand Jain, 1969 2 LLJ 377 (SC) = AIR 1969 SC 983 1968 Indlaw SC 209 and Bharat Iron Works vs.
Bhagubhai Balubhai Patel & Ors.
1976 Labour & Industrial Cases 4 (SC) = AIR 1976 SC 98 = 1976 (2) SCR 280 = (1976) 1 SCC 518 1975 Indlaw SC 381.
In Rajinder Kumar Kindra vs.
Delhi Administration through Secretary (Labour) and Others.
AIR 1984 SC 1805 = 1985 (1) SCR 866 = (1984) 4 SCC 635 1984 Indlaw SC 210 , it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse.
It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.
8.
Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

9.
A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not.
If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.
10.
In the light of the above principles, let us scrutinise the case in hand.
11.
The charge framed against the appellant in the instant case is as under:-
"You, Constable Kuldeep Singh No.2138/SD.
are hereby charged that while posted at P.P.
Amar Colony on 22.2.1990.
You kept illegally Rs.200/out of Rs.
1000/- given by the factory owner, Smt.
Meena Mishra running her factory at A-25, Garhi Lajpat Nagar for the payment of her laborers, Shri Radhey Shyam S/O Shri Phool Vash.
Shri Rapal Singh S/O Shri Brahma Nand and Shri Shiv Kumar S/O Shri Ganga Ram.
All these three laborers had made a complaint that Smt.
Meena Mishra had stopped their payment or Rs.
2200/- for three months.
The above act your part amounts to grave misconduct and unbecoming of a police officers which renders you, constable Kuldeep Singh No.
2138/SD, liable for punishment u/s 21 of Delhi Police Act, 1978.
Sd/- Shakti Singh
SHAKTI SINGH
Inspector,
Enquiry Officer,
DE Cell, Vigilance, Delhi."
12.
The list of witnesses who were proposed to be examined at the domestic enquiry, as set out in the charge-sheet, was:-
13.
The list of documents, indicated in the charge-sheet, was:-
List of documents.
1.Copy of report of SHO/Lajpat Nagar, dated 5.3.1990 against Constable Kuldeep Singh No.2138/SD.
2.Copy of Laborers Statement.
SO/DE Cell."
14.
The charge against the appellant thus was that on 22.2.1990, three laborers namely, Radhey Shyam, Rajpal Singh and Shiv Kumar who were working in the factory of Smt.
Meena Mishra at A-25, Garhi, Lajpat Nagar, and had not been paid their salary by the factory owner had approached the appellant who was posted at Police Post, Amar Colony, attached to P.S.
Lajpat Nagar, New Delhi, for his help in the matter.
The appellant along with the aforesaid laborers went to the factory owner who gave Rs.
1000/- to the appellant for payment to the three laborers but the appellant did not pay the whole of the amount to them and instead gave them only Rs.
800/-, keeping an amount of Rs.
200/- in his own pocket.
15.
In order to prove this charge, the Department examined Inspector D.D.
Sharma, SHO, P.S.
Lajpat Nagar; and Smt.
Meena Mishra.
Their statements have been reproduced in copious details in the findings submitted by the Enquiry Officer, a copy of which has been placed on the record.

Smt.
Meena Mishra stated that the three persons, namely, Rajpal Singh, Radhey Shyam and Shiv Kumar, were working in her factory, to whom she had made payment separately and individually.
She stated.
that she had paid Rs.
563/- to Rajpal; Rs.211/- to Shiv Kumar and another sum of Rs.
808/- jointly to Radhey Shyam and Rajpal.
She stated that she had not paid Rs.
1000/- to Kuldeep Sing (appellant) on 22.2.1990, as she had asked the three laborers to come after a few days and it was then that the whole of the amount described above which was due from her was paid to them.
16.
Inspector D.D.
Sharma, who was, at the relevant time.
posted as S.H.O.
P.S.
Lajpat Nagar, New Delhi.
stated that he had received a complaint from Radhey Shyam, Rajpal Singh and Shiv Kumar.
They were summoned to the Police Post, Amar Colony where the contents of the complaint were verified from them and their statement was recorded.
No other witness was examined on behalf of the Department, not even the complainants, Rajpal Singh and Radhey Shyam, though their names were mentioned in the charge-sheet for being examined as witnesses against the appellant.
17.
The appellant examined one of the complainants, namely, Shiv Kumar in defence who supported the appellant that Smt.
Meena Mishra had not made any payment on 22.2.1990 but had called him and two other complainants, namely, Radhey Shyam and Rajpal Singh after few days and when they went again to her, she made the full payment.
18.
The appellant also examined constable Shoukat Ali who was posted, at the relevant time, at Police Post Amar Colony.
He stated that Radhey Shyam, Shiv Kumar and Rajpal Singh had come to the Police Post to make a complaint against Smt.
Meena Mishra that she had not paid them their salary.
This constable directed them to meet the Emergency Officer, ASI Bhopal Singh who sent the appellant with them to Smt.
Meena Mishra.
The appellant came back and informed ASI Bhopal Singh that Smt.
Meena Mishra had agreed to pay the amount due from her to these three persons after a few days.
19.
ASI Jagdish Prasad and ASI Bhopal Singh, who were also examined in defence, corroborated the above statement of constable Shoukat Ali.
20.
ASI Bhopal Singh further stated that the appellant was deputed by him to go to Smt.
Meena Mishra with the complainants and the the appellant, on his return from the factory, told him that Smt.
Meena Mishra had agreed to make payment to the three laborers a few days later.
The witness, however, stated that all the three laborers had come to Police Post, Amar Colony of P.S.
Lajpat Nagar on 22.2.1990 where their statement was recorded by ASI Jagdish Prasad on the dictation of SHO D.D.
Sharma.
This statement was placed on the record before the Enquiry Officer.
This was the entire evidence produced at the domestic enquiry.
21.
What immediately strikes the mind is that Smt.
Meena Mishra, who is alleged to have paid the amount of Rs.

1000/- to the appellant, stated in clear terms as a witness for the Department, that she had not made any payment to the appellant.
This payment is not proved in any other manner as none of the three recipients of the above amount, who were the complainants, has been produced at the departmental enquiry, though two of them, namely, Radhey Shyam and Rajpal Singh were proposed to be examined.
22.
Non-production of the complainants is sought to be justified with reference to Rule 16(3) of the Delhi Police Rules, 1980.
Rule 18(3) is an under:-
"If the accused police officer does not admit the misconduct, the E.O.
shall proceed to record evidence in support of the accusation as is available and necessary to support the charge.
As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and corssexamine them.
The E.O.
is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer be procured without undue delay, inconvenience or expense necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial.
The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and shall be given an opportunity to take notes, Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned.
The accused shall be bound to answer any questions which the E.O.
may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record."
23.
This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to crossexamine them.
In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent.
If such statement was recorded by the Magistrate and attested by him then also it could be brought or record.
The further requirement is that the statement either should have been signed by the person concerned, namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial.
The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.
24.
Rule 16(3) is almost akin to Ss.
32 and 33 of the Evidence Act.
Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the condition-precedent" for the exercise of jurisdiction for this purpose.
In the absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised.
25.
Rajpal Singh and Radhey Shyam, who were the original complainants along with Shiv Kumar, were not examined and the Enquiry Officer, regarding their absence, has stated in his report as under:-
"The two prosecution witnessess Rajpal Singh and Radhya Shyam have not attended to proceeding.
They have not been found residing in their vill.

now and it had come to notice that the defaulter has managed their disappearance and has settled them some where in Devli Khanpur and also has arranged their employment but the addresses of those PWs are not known.
Such is the act of the defaulter to create his defence and is an attempt to hide his misconduct.
Though their complaint Ex.
PW-1/A has been exhibited and has been taken on file to ascertain the facts and for natural justice."
26.
This will show that the blame for the non-availability of these two witnesses has been laid on the appellant who was already under suspension and it is not understandable as to how and on what basis or on what material, the Enquiry Officer came to the conclusion that the appellant was responsible for their disappearance or had procured employment for them in Devli Khanpur.
If it was known to the Enquiry Officer that they were available in Devli Khanpur, was any attempt made to contact them at Devli Khanpur or to bring them to the enquiry proceedings from that place, is not indicated by the Enquiry Officer in his report making it obvious that the factors necessary for the exercise of jurisdiction under Rule 16(3) were not present and it was not open to the Enquiry Officer to have taken recourse to this Rule to bring on record the previous statement of the complainants which allegedly was recorded by Inspector D.D.
Sharma.
Moreover, the so-called previous statement itself of the complainants appears to be a highly suspicious document for the reason that S.H.O., D.D.
Sharma had stated before the Enquiry Officer that he had received a complaint of Radhey Shyam, Rajpal Sing and Shiv Kumar whereupon all the three persons were summoned by him and after verifying the facts from those complainants had recorded their statement which he had dictated to ASI Jagdish Prasad.
There were, therefore, two documents:
(i) The original complaint made by the aforesaid three persons:
(ii) The statement of these persons, recorded by ASI Jagdish Prasad, at the dictation of S.H.O., D.D.
Sharma, after verifying the facts, set out in the complaint, from these persons.
(1) The original complaint was not placed on the record and it was the statement, recorded by S.H.O., D.D.
Sharma, which was produced before the Enquiry Officer.
The absence of original complaint, therefore, indicates that there was, in fact, no complaint in existence which further supports the statement of Department's own witness Smt.
Meena Mishra that no payment was made by her on 22.02.1990.
Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Art.
311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent.
Reasonable opportunity contemplated by Art.
311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them.
Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness.
27.
In State of Mysore vs.
Shiv Basappa 1963(2) SCR 943 = AIR 1963 SC 375 1962 Indlaw SC 139, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record.
That statement was put to the witness who acknowledged having made that statement.
The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.
28.
In Kasoram Cotton Mills Ltd.

vs.
Gangadhar 1964(2) SCR 809 = AIR 1964 SC 708 1963 Indlaw SC 49 AND State of U.P.
vs.
Om Prakash Gupta, AIR 1970 SC 679 1969 Indlaw SC 448, the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.
29.
Having regard to the law as set out above, and also having regard to the fact that the factors set out in Rule 16(3) of theDelhi Police (F & A) Rules, 1980, did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the Enquiry Officer was not right in bringing on record the so-called previous statement of witnesses Radhey Shyam and Rajpal Singh.
30.
It will be noticed that there were three complainants but only two, namely, Radhey Shyam and Rajpal Singh were proposed to be examined.
Why was not the third complainant, Shiv Kumar, proposed to be examined? The reason becomes obvious from the fact that when he was examined as a Defence witness, he fully supported the appellant by stating that no payment was made by Smt.
Meena Mishra on that date.
But he was held by the Enquiry Officer to be an impostor on the ground that he had not proved himself to be actual Shiv Kumar.
The Enquiry Officer has observed as under:-
"DW 1, Sh.
Shiv Kumar is a prepared witness and has not proved himself to be actual Shiv Kumar.
This DW 1 has denied that he had visited the police station and had never met with SHO.
Moreover he has denied to have signed EX PW-A/A.
He had not made any complaint to the SHO.
His version has been contradicted by ASI Jagdish Prasad, DW-4 the writer of this complaint Ex PW-1/A.
Both these defaulter himself.
So the statement of DW-1, Shiv Kumar has not been relied upon because he is not actual Shiv Kumar who is a complainant in this case and is a false person who has been produce by the defaulter."
31.
The reasons why he has been held to be an impostor or a false person have not been indicated.
The finding in this regard is wholly arbitrary and perverse.
32.
The findings recorded by the Enquiry Officer, have also been upheld by the Deputy Commissioner of Police, South District, New Delhi who had passed the order on 3rd of May, 1991 by which the appellant was dismissed from service.
The Addl.
Commissioner of Police, before whom the appeal was filed by the appellant, also agreed with the findings recorded by the Enquiry Officer as also the Deputy Commissioner and dismissed the appeal on 22.07.1991.
33.
From the findings recorded separately by the Deputy Commissioner of Police, it would appear that there is a voucher indicating payment of Rs.
1000/- to Rajpal Singh, one of the labourers, on 8th of February, 1990.
This document was not mentioned in the chargesheet in which only two documents were proposed to be relied upon against the appellant, namely, copy of the report of S.H.O., Lajpat Nagar dated 5th of March, 1990 against the appellant and the copy of the labourers' statement.
This document has, therefore, to be excluded from consideration as it could not have been relied upon or even referred to by the Dy.
Commissioner of Police.
Moreover, according to the charge framed against the appellant, payment was made on 22.2.90 and not on 08.02.90 as indicated in the voucher and, therefore, voucher, for this reason also, has to be excluded.
34.
To sum up, the charge against the appellant consisted of two components, namely :
(a) On 22.2.90 Smt.

Meena Mishra paid Rs.
1000/- to the appellant for being paid to the three labourers.
(b) Appellant paid Rs.
800/- to labourers and kept Rs.
200/- with himself.
35.
Smt.
Meena Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day.
The labourers to whom the payment is said to have been made have not been produced at the domestic enquiry.
Their so-called previous statement could not have been brought on record under Rule 16(3).
As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.
36.
The Enquiry Officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "Reasonable Opportunity", contemplated by Art.
311(2) of theConstitution.
The "Bias" in favour of the Department had so badly affected the Enquiry Officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department.
Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the Enquiry Officer to prove the charge framed against the appellant.
He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".
37.
For the reasons stated above, the appeals are allowed.
The judgment and order dated 28th February, 1997, passed by the Central Administrative Tribunal, is set aside.
38.
The order dated 3rd of May, 1991, passed by Deputy Commissioner of Police by which the appellant was dismissed from service as also the order passed in appeal by Addl.
Commissioner of Police are quashed and the respondents are directed to reinstate the appellant with all consequential benefits including all the arrears of pay up-to-date which shall be paid within three months from today.
There will, however, be no order as to costs.
Appeals allowed

State of Andhra Pradesh v Rayavarapu Punnayya and Another
Supreme Court of India

15 September 1976
Criminal Appeal No.
214 of 1971.
(Appeal by Special Leave from the judgment and Order dated 27-7.
1970 of the Andhra Pradesh High.
Court in Criminal Appeals Nos.
26 and 27/69).
The Judgment was delivered by : Ranjit Singh Sarkaria, J.
1 This appeal by special leave is directed against a judgment of the High Court of Andhra Pradesh.
It arises out of these facts.
2 In Rompicherla village, there were factions belonging to three major communities viz., Reddys, Kammas and Bhatrajus.
Rayavarapu (Respondent No.

1 herein) was the leader of Kamma faction, while Chopparapu Subbareddi was the leader of the Reddys.
In politics, the Reddys were supporting the Congress Party, while Kammas were supporters of Swatantra Party.
There was bad blood between the two factions which.
were proceeded against under s.
107, Cr.
P.C.
In the Panchyat elections of 1954, a clash took place between the two parties.
A member of the Kamma faction was murdered.
Consequently, nine persons belonging to the Reddy faction were prosecuted for that murder.
Other incidents also' took place in which these warring factions were involved.
So much so, a punitive police force was stationed in this village to keep the peace during the period from March 1966 to September 1967.
Sarikonda Kotamraju, the deceased person in the instant case, was the leader of Bhatrajus.
In order to devise protective measures against the onslaughts of their opponents, the Bhatrajus held a meeting at the house of the deceased, wherein they resolved to defend themselves against the aggressive actions of the respondents and their party-men.
PW 1, a member of Bhatrajus faction has a cattle shed.
The passage to this cattle-shed was blocked by the other party.
The deceased took PW 1 to Police Station Nekarikal and got a report lodged there.
On July 22, 1968, the Sub-Inspector of Police came to the village and inspected the disputed wail in the presence of the parties.
The Sub-Inspector went away directing both the parties to come to the Police Station on the following morning so that a compromise might be effected.
3 Another case arising out of a report made to the police by one Kallam Kotireddi against Accused 2 and 3 and another in respect of offences under ss.
324, 323 and 325, Penal Code was pending before a Magistrate at Narasaraopet and the next date for hearing fixed in that case was July 23, 1968.
4 On the morning of July 23, 1968, at about 6-30 a.m., PWs 1, 2 and the deceased boarded Bus No.
AP 22607 at Rompicherla for going to Nekarikal.
Some minutes later, Accused 1 to 5 (hereinafter referred to as A1, A2, A3, A4 and A5) also got into the same bus.
The accused had obtained tickets for proceeding to Narasaraopet.
When the bus stopped at Nekarikal Cross Roads, at about 7-30 a.m., the deceased and his companions alighted for going to the Police Station.
The five accused also got down.
The deceased and PW 1 went towards a Choultry run by PW 4, While PW 2 went to the roadside to ease himself.
A1 and A2 went towards the Coffee Hotel situate near the Choultry.
From there, they picked up heavy sticks and went after the deceased into the Choultry.
On seeing the accused.
P W 1 ran away towards a hut nearby.
The deceased stood up.
5 He was an old man of 55 years.
He was not allowed to run.
Despite the entreaties made by the deceased with folded hands, A-1 and A-2 indiscriminately pounded the legs and arms of the deceased.
One of the by standers, PW 6, asked the assailants as to why they were mercilessly beating a human being, as if he were a buffalo.
The assailants angrily retorted that the witness was nobody to question them and continued the beating till the deceased became unconscious.The accused then threw their sticks at the spot, boarded another vehicle, and went away.
The.
occurrence was witnessed by PWs 1 to 7.
The victim was removed by PW 8 to Narasaraopet Hospital in a temporary.
There, at about 8.45 a.m., Doctor Konda Reddy examined him and found 19 injuries, out of which, no less than 9 were (internally) found to be grievous.
They were:

Dislocation of distal end of proximal phalanx of left middle finger.
Fracture of right radius in its middle.
Dislocation of lower end of right ulna.
Fracture of lower end of right femur.
Fracture of medial malleolus of right tibia.
Fracture.
of lower 1/3 of right fibula.
Dislocation of lower end of left ulna.
Fracture of upper end of left tibia.
Fracture of right patella.
6 Finding the condition of the injured serious, the Doctor sent information to the Judicial Magistrate for getting his dying declaration -recorded.
On Dr.
K.
Reddy's advice, the deceased was immediately removed to the Guntur Hospital where he was examined and given medical aid by Dr.
Sastri.
His dying declaration, Ex.
P-5, was also recorded there by a Magistrate (PW 10) at about 8.05 p.m.
The deceased, however, succumbed to his injuries at about 4.40 a.m.
on July 24, 1968, despite medical aid.
7 The autopsy was conducted by Dr.
P.S.
Sarojini (PW 12) in whose opinion, the injuries found on the deceased were cumulatively sufficient to cause death in the ordinary course of nature.
The cause of death, according to the Doctor, was shock and haemorrhage resulting from multiple injuries.
8 The trial Judge convicted A-1 and A-2 under s.
302 as well as under s.
302 read with s.
34, Penal Code and sentenced each of them to imprisonment for life.
9 On appeal by the convicts, the High Court altered their conviction to one under s.
304, Pt.
II, Penal Code and reduced their sentence to 'five years rigorous imprisonment, each.
10 Aggrieved by the judgment of the High Court, the State has come in appeal to this Court after obtaining special leave.
11 A-1, Rayavarappu Punnayya (Respondent 1) has, as reported by his Counsel, died during the pendency of this appeal.
This information is not contradicted by the Counsel appearing for the State.
This appeal therefore, in so far as it relates to A, abates.
The appeal' against A-2 (Respondent 2), however, survives for decision.
'The principal question that falls to be considered in this appeal is, whether the offence disclosed by the facts and circumstances established by the prosecution against the respondent, is 'murder' or 'culpable homicide not amounting to murder'.
12 In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie.
All 'murder' is 'culpable homicide' but not vice-versa.
Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide not amounting to.
murder'.
For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degress of culpable homicide.
The first is, what may be called, culpable homicide of the first degree.
This is the gravest form of culpable homicide which is defined in s.
300 as 'murder'.
The second may be termed as 'culpable homicide of the second degree'.
This is punishable under the 1st part of s.
304.
Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades.

Culpable homicide of this degree is punishable under the second Part of s.
304.
13 The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century.
The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutae abstractions.
The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of ss.
299 and 300.
The following comparative table will be helpful in appreciating the points of distinction between the two offences.
14 Cl.
(b) of s.
299 corresponds with cls.
(2) and (3) of s.
300.
The distinguishing feature of the mens rea requisite under cl.
(2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that' such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition.
It is noteworthy that the 'intention to cause death' is not an essential requirement of el.
(2).
Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause.
This aspect of cl.
(2) is borne out by illustration (b) appended to s.
300.
15 Cl.
(b) of s.
299 does not postulate any such knowledge on the part of the offender.
Instances of cases falling under cl.
(2) of s.
300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the he,art, as the case may be.
If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to.
cause death or bodily injury sufficient 'in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.
16 In cl.
(3) of s.
300, instead of the words 'likely to cause death' occurring in the corresponding el.
(b) of s.
299, the words "sufficient in the ordinary course of nature" have been used.
Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death.
The distinction is fine but real, and, if overlooked, may result 'in miscarriage of justice.
The difference between cl.
(b) of s.
299 and cl.
(3) of s.
300 is one of the degree of probability of death resulting from the intended bodily injury.
To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree.
The word "likely" in cl.
(b) of s.
299 conveys the sense of 'probable' as distinguished from a mere possibility.

The words "bodily injury...
sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature.
17 For cases to fall within cl.
(3), it is not necessary that the offender intended to cause death, So long as death ensues from the intentional.
bodily injury or injuries sufficient to cause death in the ordinary course of nature.
Rajwant and anr.
v.
State of Kerala, A.I.R.
1966 S.C.
1874 is an apt illustration of this point.
18 In Virsa Singh v.
The State of Punjab, [1958] S.C.R.
1495 1958 Indlaw SC 82 Vivian Bose j.
speaking for this Court, explained the meaning' and scope of Cl.
(3), thus (at p.
1500):
"The prosecution must prove the following facts before it can bring a case under s.
300, 3rdly'.
First, it must establish, quite objectively, that a bodily injury is present;.
secondly the nature of the injury must be proved.
These are purely objective investigations.
It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.
Once these three elements are proved to be present, the enquiry proceeds further, and, fourthly it must be ,proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature.
This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."
19 Thus according to the rule laid down in Virsa Singh's case 1958 Indlaw SC 82 (supra) even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder.
Illustration (c) appended to s.
300 clearly brings out this point.
20 Cl.
(c) of s.
299 and cl.
(4) of s.
300 both require knowledge of the probability of the causing death.
It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses.
It will be sufficient to say that cl.
(4) of s.
300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general--as distinguished from a particular person or persons---being caused from his imminently dangerous act, approximates to a practical certainty.
Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.
21 From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not.
amounting to murder,' on ,the facts of a case, it will' be convenient for it to approach the problem in three stages.
The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another.
Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in s.

299.
If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of s.
300, Penal Code is reached.
This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in s.
300.
If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of s.
304, depending.
respectively, on whether the second or the third Clause of s.
299 is applicable.
If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in s.
300, the offence would still be 'culpable homicide not amounting to murder' punishable under the First Part of s.
304, Penal Code.
22 The above are only broad guidelines and not cast-iron imperatives.
In most cases, their observance will facilitate the task of the court.
But sometimes the facts are so inter-twined and the second and the third stages so telescoped into each other, that it may not be convenient, to give a separate treatment to the matters involved in the second and third stages.
23 Now let us consider the problem before us in the light of the above enunciation.
24 It is not disputed that the death of the deceased was caused by the accused, there being a direct causal connection between the beating administered by A-1 and A-2 to the deceased and his death.
The accused confined the beating to.
the legs and arms of the deceased, and therefore, it can be said that they perhaps had no "intention to cause death" within the contemplation cl.
(a) of s.
299 or cl.
(1) of s.
300.
It is nobody's case that the instant case falls within el.
(4) of s.
300.
This clause, as already noticed, is designed for that class of cases where the act of the offender is not directed against any particular individual but there is in his act that recklessness and risk of imminent danger, knowingly and unjustifiably incurred, which is directed against the man in general, and places the lives of many in jeopardy.
Indeed, in all fairness, Counsel for the appellant has not contended that the case would fall under el.
(4) of s.
300.
His sole contention is that even if the accused had no intention to cause death, the facts established fully bring the case within the purview of cl.
(3) of s.
300 and as such the offence committed is murder and nothing less.
In support of this contention reference has been made to Andhra v.
State of Rajasthan, A.I.R.
1966 S.C.
148 1965 Indlaw SC 489 and Rajwant Singh v.
State of Kerala (supra).
25 As against this, Counsel for the respondent submits that since the accused selected only non-vital parts of the body of the deceased, for inflicting the injuries, they could not be attributed the mens rea requisite for bringing the case under cl.
(3) of s.
300; at the most, it could be said that they had knowledge that the injuries inflicted by them were likely to cause death and as such the case falls within the third clause of s.

299, and the offence committed was only "culpable homicide not amounting to murder", punishable under s.
304, Part 11.
Counsel has thus tried to support the reasoning of the High Court.
26 The trial Court, 'as 'already noticed, had convicted the respondent of the offence of murder.
It applied the rule in Virsa Singh's case 1958 Indlaw SC 82 (supra).
and the ratio of Anda v.
State 1965 Indlaw SC 489 and held that the case was clearly covered by clause
27 Thirdly of s.
300.
The High Court has disagreed with the trail Court and held that the offence was not murder but one under s.
304, Pt.
II.
The High Court reached this conclusion on the following reasoning:
"(a) "There was no premeditation in the attack.
It was almost an impulsive act".
(b) "Though there were 21 injuries, they were all on the arms and legs and not on the head or other vital parts the body."
(c) "There was no compound fracture to result in heavy haemorrhage; there must have been some bleeding".
(which) "according to PWI might have stopped with in about half an hour to one hour."
(d) "Death that had occurred 21 hours later, could have been only due to shock and not due to haemorrhage also, as stated by PW 12...
who conducted the autopsy.
This reference is strengthened by the evidence of PW 26 who says that the patient was under shock and he was treating him for shock by sending fluids through his vein.
From the injuries inflicted the accused therefore could not have intended to cause death."
(e) "A1 and A2 had beaten the deceased with heavy sticks.
These beatings had resulted in fracture of the right radius, right femur, right tibia, right fibula, right patalla and left tibia and dislocation of...
, therefore considerable force must have been used while inflicting the blows.
Accused 1 and 2 should have therefore inflicted these injuries with the knowledge that they are likely, by so beating, to cause the death of the deceased, though they might not have had the knowledge that they were so imminently dangerous that in all probability their acts would result in such injuries as are likely to cause the death.
The offence ...is therefore culpable homicide falling under s.
299, I.P.C.
punishable under s.
304 Part II and not murder."
28 With respect we are unable to appreciate and accept this reasoning.
With respect, to be inconsistent, erroneous and largely speculative, it appears to us.
29 To say that the attack was not premeditated or pre-planned is not only factually incorrect but also at war with High Court's own finding that the injuries were caused to the deceased in furtherance of the common intention of A-1 and A-2 and therefore, s.
34, I.P.C.
was applicable.
Further, the finding that there was no compound fracture, no heavy haemorrhage and the cause of the death was shock, only, is not in accord with the evidence on the record.
The best person to speak about haemorrhage and the cause of the death was Dr.
P.S.
Sarojini (PW 12) who had conducted the autopsy.
She testified that ,the cause of death of the deceased was "shock and haemorrhage due to multiple injuries".
This categorical opinion of the Doctor was not assailed in cross-examination.
In the post-mortem examination report Ex.
P-8, the Doctor noted that the heart of the deceased was found full of clotted blood.
Again in injury No.
6, which also was an internal fracture, the bone was visible through the wound.
Dr.

D.A.
Sastri, PW 26, had testified that he was treating Kotamraju injured of shock, not only by sending fluids through his vein, but also blood.
30 This part of his statement wherein he spoke about the giving of blood transfusion to the deceased, appears to have been overlooked by the High Court.
Dr.
Kondareddy, PW 11, who was the first Medical Officer to examine -the injuries of the deceased, had noted that there was bleeding and swelling around injury No.
6 which was located on the left leg 3 inches above the ankle.
Dr.
Sarojini, PW 12, found fracture of the left tibia underneath this injury.
There could therefore, be no doubt that this was a compound fracture.
P.W.
11 found bleeding from the other abraded injuries, also.
He however found the condition of the injured grave and immediately sent an information to the Magistrate for recording his dying declaration.
PW 11 also advised immediate removal of the deceased to the bigger Hospital at Guntur.
There, also, Dr.
Sastri finding that life in the patient was ebbing fast, took immediate two-fold action.
31 First, he put the patient on blood transfusion.
Second, he sent an intimation for recording his dying declaration.
A Magistrate (PW 10) came there and recorded the statement.
32 These are all tell-tale circumstances which unerring by show that there was substantial haemorrhage from some of the injuries involving compound fractures.
This being the case, there was absolutely no reason to doubt the sworn word of the Doctor, (PW 12) that the cause of the death was shock and haemorrhage.
33 Although the learned Judges of the High Court have not specifically referred to the quotation from page 289, of Modi's book on Medical Jurisprudence and Toxicology (1961 Edn.) which was put to Dr.
Sarojini in cross-examination, they appear to have derived support from the same for the argument that fractures of such bones "are not ordinarily dangerous"; therefore, the accused could not have intended cause death but had only knowledge that they were likely by such beating to cause the death of the deceased.
34 It will be worthwhile to extract that quotation from Mody, as a reference to the same was made by Mr.
Subba Rao before us, also.
35 According to Mody: "Fractures are not ordinarily dangerous unless they are compound, when death may occur from ,loss of blood, if a big vessel is wounded by the split end of a fractured bone."
36 It may be noted, in the first place, that this opinion of the learned author is couched in too general and wide language.
Fractures of some vital bones, such as those of the skull and the vertebral column are generally known to be dangerous to life.
Secondly, even this general statement has been qualified by the learned author, by saying that compound fractures involving haemorrhage, are ordinarily dangerous.
We have seen, that some of the fractures underneath the injuries of the deceased, were compound fractures accompanied by substantial haemorrhage.
In the face of this finding, Mody's opinion, far from advancing the contention of the defence, discounts it.
37 The High Court has held that the accused had no intention to cause death because they deliberately avoided to hit any vital part of the body, and confined the beating to the legs and arms of the deceased.
There is much that can be said in support of this particular finding.
But that finding assuming it to be correct does not necessarily take the case out of the definition of 'murder'.
The crux of the matter is, whether the facts established bring the case within Clause Thirdly of s. 300.
This question further narrows down into a consideration of the two-fold issue :.
(i) Whether the bodily injuries found on the deceased were intentionally inflicted by the accused ?
(ii) If so, were they sufficient to cause death in the ordinary course of nature ?

38 If both these elements are satisfactorily established, the offence will be 'murder', irrespective of the fact whether an intention on the part of the accused to cause death, had or had not been proved.
39 In the instant case, the existence of both these elements was clearly established by the prosecution.
There was bitter hostility between the warring factions to which the accused and the deceased belonged.
Criminal litigation was going on between these factions since long.
Both the factions had been proceeded against under s.
107, Cr.
P.C.
The accused had therefore a motive to beat the deceased.
40 The attack was premeditated and pre-planned, although the interval between the conception and execution of the plan was not very long.
The accused had purchased tickets for going further to Narasaraopet, but on seeing the deceased, their bete noir, alighting at Nekarikal, they designedly got down there and trailed him.
They selected heavy sticks about 3 inches in diameter, each, and with those lethal weapons, despite the entreaties of the deceased, mercilessly pounded his legs and arms causing no less than 19 or 20 injuries, smashing at least seven bones.
mostly major bones, and dislocating two more.
The beating was administered in a brutal and reckless manner.
It was pressed home with an unusually fierce, cruel and sadistic determination.
When the human conscience of one of the shocked bystanders spontaneously cried out in protest as to why the accused were beating a human being as if he were a buffalo, the only echo it could draw from the assailants, a minacious retort, who callously continued their malevolent action, and did not stop the beating till the deceased became unconscious.
May be, the intention of the accused was to cause death and they stopped the beating under the impression that the deceased was dead.
But this lone circumstance cannot take this possible inference to the plane of positive proof.
Nevertheless, the formidable weapons used by the accused in the beating, the savage manner of its execution, the helpless state of the unarmed victim, the intensity of the violence caused, the callous conduct of the accused in persisting in the assault even against the protest of feeling bystanders all, viewed against the background of previous animosity between the parties, irresistibly lead to the conclusion that the injuries caused by the accused to the deceased were intentionally inflicted, and were not accidental.
Thus the presence of the first element of Clause Thirdly of s.
300 had been cogently and convincingly established.
41 This takes us to the second element of Cl.
(3).
Dr.
Sarojini, PW 12, testified that the injuries of the deceased were cumulatively sufficient in the ordinary course of nature to cause death.
In her opinion--which we have found to be entirely trustworthy the cause of the death was shock and haemorrhage due to the multiple injuries.
Dr.
Sarojini had conducted the post-mortem examination of the deadbody of the deceased.
She had dissected the body and examined the injuries to the internal organs.
She was therefore the best informed expert who could opine with authority as to the cause of the death and as to the sufficiency or otherwise of the injuries from which the death ensued.
Dr.
Sarojini's evidence on this point stood on a better footing than that of the Doctors (PWs.
11 and 26) who had externally examined the deceased in his life-time.
Despite this position, the High Court has not specifically considered the evidence of Dr.
Sarojini with regard to the sufficiency of the injuries to cause death in the ordinary course of nature.
There is no reason why Dr.
Sarojini's evidence with regard to the second element of Cl.
(3) of s.
300 be not accepted.
Dr.

Sarojini's evidence satisfactorily establishes the presence of the second element of this clause.
42 There is therefore, no escape from the conclusion, that the offence committed by the accused was 'murder', notwithstanding the fact that the intention of the accused to cause death has not been shown beyond doubt.
43 In Anda v.
State of Rajasthan 1965 Indlaw SC 489 (supra), this Court had to deal with a very similar situation.
In that case, several accused beat the victim with sticks after dragging him into a house and caused multiple injuries including 16 lacerated wounds on the arms and legs, a hematoma on the forhead and a bruise on the chest.
Under these injuries to the arms and legs lay fractures of the right and left ulnas, second and third metacarpal bones on the right hand and second metacarpal bone of the left hand, compound fractures of the right tibia and right fibula.
There was loss of blood from the injuries.
The Medical Officer who conducted the autopsy opined that the cause of the death was shock and syncope due to multiple injuries; that all the injuries collectively could be sufficient to cause death in the ordinary course of nature, but individually none of them was so sufficient.
44 Question arose whether in such a case when no significant injury had been inflicted on a vital art of the body, and the weapons used were ordinary lathis, and the accused could not be said to have the intention of causing death, the offence would be 'murder' or merely 'culpable homicide not amounting to murder'.
This Court speaking through Hidayatullah J.
(as he then was), after explaining the comparative scope of and the distinction between ss.
299 and 300, answered the question in these terms:
"The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous.
Only lathis were used.
It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of s.
300.
At the same time, it is obvious that his hands and legs were smashed and numerous bruises and lacerated wounds were caused.
The number of injuries shows that every one joined in beating him.
It is also clear that the assailants aimed at breaking his arms and legs.
Looking at the injuries caused to Bherun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause death in the ordinary course of nature, even if it cannot be said that his death was intended.
This is sufficient to bring the, case within 3rdly of s.
300."
45 The ratio of Anda v.
State of Rajasthan 1965 Indlaw SC 489 (supra) applies in full force to the facts of the present case.
Here, a direct causal connection between the act of the accused and the death was established.
The injuries were the direct cause of the death.
No secondary factor such as gangrene, tetanus etc., supervened.
There was no doubt whatever that the beating was premeditated and calculated.
Just as in Anda's case, here also, the aim of the asailants was to smash the arms and legs of the deceased, and they succeeded in that design.
causing no less than 19 injuries, including fractures of most of the bones of the legs and the arms.
46 While in Anda's case, the sticks used by the assailants were not specially dangerous, in the instant case they were unusually heavy, lethal weapons.
All these acts of the accused were pre-planned and intentional, which, considered objectively in the light of the medical evidence.
were sufficient in the ordinary course of nature to cause death.
The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of Clause 3rdly of s.
300.
The expression "bodily injury" in Clause 3rdly includes also its plural, so that the clause would cover a case where all the injuries intentionally, caused by the accused are cumulatively sufficient

to cause the death in the ordinary course of nature, even if none of those injuries individually measures upto such sufficiency.
The sufficiency spoken of in this clause.
as a
47.
ready noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fail under Clause 3rdly of s.
300.
All the conditions which are a pre-requisite for the applicability of this clause have been established and the offence committed by the accused in the instant case was 'murder'.
48 For all the foregoing reasons, we are of opinion that the High Court was in error in altering the conviction of the accused-respondent from one under s.
302, 302/34, to that under s.
304, Part II, Penal Code.
Accordingly we allow this appeal and restore the order of the trial Court convicting the accused (Respondent 2 herein) for the offence of murder, with a sentence of imprisonment for life.
Respondent 2, if he is not already in jail shall be arrested and committed to prison to serve out the sentence inflicted on him.

State of Madhya Pradesh v Kashiram and Others
Supreme Court of India

2 February 2009
Criminal Appeal No.
191 of 2009 (Arising out of SLP (Crl.) No.
1507 of 2007)
The Judgment was delivered by : Dr.
Arijit Pasayat, J.
Leave granted.
1 Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court.
The respondents faced trial for alleged commission of offences punishable under Section 307 read with Sections 149 and 148 of the Indian Penal Code, 1860 (in short the "IPC").
Learned Additional Sessions Judge, Shihore, found the accused respondents guilty and sentenced each to undergo rigorous imprisonment for five years with fine and 6 months rigorous imprisonment for the other two offences.
By the impugned judgment the High Court held that the appropriate conviction would be under Section 326 read with Section 149 IPC.
Custodial sentence was reduced to the period already undergone, while the fine amount of Rs.500/- was enhanced to Rs.20,000/-.
Prosecution version as unfolded during trial is as follows:
2.
On 21.7.1987 at about 4 O'clock in the evening the complainant- victim Jai Singh (PW5) was at the grass field for the purpose of grazing the cattle.
The wife of respondent Lila Kishan and wife of Bapulal came there to collect some leaves in the field.
Thereafter on account of some earlier enmity the respondents armed with rifle, sticks and axe came there and the accused Lilakishan, Bapu and Kashiram caught hold of the said victim while other accused Jagannath and Amar Singh tied his hands and legs by turban and accused Laakhan with the help of clothes pressed his mouth.
Thereafter, his legs were caught by the respondents Bapu and Lila Kishan, while Kashiram chopped off the lower part of the left leg.
Gangaram stood there with rifle.
The victim sustained injuries on his back, right eye and left leg.
After the incident the accused persons ran away from the spot.
However, the victim reached the field of Chain Singh and mentioned the incident to him.
Umrao Singh and Roop Singh took him to his home.
They called the watchman and mentioned him the incident.
Due to heavy rain, Jai Singh lodged the report to Police, Ahmadpur on 22.7.1988 at 6.40.

On registering the offence, the victim was referred to hospital.
The M.L.C.
Report was prepared.
He was admitted in the hospital and remained under treatment.
On completion of the investigation, the accused persons were charge sheeted under Sections 147, 148, 149 and 326 and 307 IPC.
The Trial court believed the evidence of the victim PW 5 and also the other evidences brought on record and recorded conviction and imposed sentences as aforestated.
The accused persons preferred an appeal before the High Court where the basic stand was that offence under Section 307 IPC is not made out.
The High Court held that there was no material on record to show that the injury was sufficient to cause death in the ordinary course of nature.
It was observed that chopping of the leg from the body cannot be treated sufficient to cause death.
As noted above with the aforesaid observation the conviction and the sentence were altered.
3 In support of the appeal learned counsel for the appellant-State submitted that the High Court has completely overlooked the gruesome nature of the offence.
It has also overlooked the evidence of PW1, the Doctor that the injury could have caused death.
4 Learned counsel for the respondent on the other hand supported the judgment of the High Court.
With dismay we observe that the High Court has completely overlooked the evidence on record and the impugned judgment shows total non-application of mind.
The High Court observed that the doctor has not stated that the injury was sufficient to cause death in the ordinary course of nature.
PW 1 had noted that 1/3 of the leg was chopped off below the knee.
He had categorically stated that the injury could have caused death.
The Doctor (PW14) i.e.
the Radiologist clearly stated that the aforesaid chopping of the leg was grievous in nature.
With some strange logic the High Court observed that merely on the testimony of PW1 it cannot be assumed that the injury was sufficient to cause death in ordinary course of nature.
5 The evidence of PW5 the victim clearly shows the gruesome nature of the attack and the intention of the accused persons.
According to him, accused Ram Singh and Bapulal caught hold of him.
He was laid down on the ground and the accused Krishan Lal chopped out the left foot and Ram Singh caught hold of his left leg and Bapulal caught hold of his right leg, Arjun caught hold of his leg and Krishan Lal kept his legs on his left hand and put clothes in his mouth and caught hold of his head.
Leela Krishan said that his foot jaw has been chopped off and the heels should also be chopped out.
Accused Suraj Singh kept his leg on a log of wood and Leela Krishan chopped out his feet by axe from above the ankle.
The trial court noticed that the leg was chopped out between the knee and the ankle.
Krishan Lal asked Ram Singh to keep the chopped pieces of the leg in the bag and Ram Singh picked up the pieces of legs and kept them in the bag.
Though accused Arjun Singh asked that both his eyes should be taken out, accused Ganga Ram told him that chopping of his one leg was sufficient to cause his death.
Section 307 relates to attempt to murder.
It reads as follows:
"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."
6 To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted.
Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds.
The Section makes a distinction between an act of the accused and its result, if any.

Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section.
It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted.
What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.
An attempt in order to be criminal need not be the penultimate act.
It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
7 It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof.
It is not essential that bodily injury capable of causing death should have been inflicted.
The Section makes a distinction between the act of the accused and its result, if any.
The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.
Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.
8 This position was highlighted in State of Maharashtra v.
Balram Bama Patil and Ors.
(1983 (2) SCC 28 1983 Indlaw SC 414), Girija Shanker v.
State of Uttar Pradesh (2004 (3) SCC 793 2004 Indlaw SC 78), R.
Parkash v.
State of Karnataka (JT 2004 (2) SC 3482004 Indlaw SC 117) and State of Madhya Pradesh v.
Saleem @ Chamaru & Anr.
[2005 (5) SCC 554 2005 Indlaw SC 413].
9 Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case.
The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC.
The determinative question is intention or knowledge, as the case may be, and not nature of the injury.
10 Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats.
It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.
This position was illuminatingly stated by this Court in Sevaka Perumal etc.
v.
State of Tamil Naidu (AIR 1991 SC 1463 1991 Indlaw SC 683).
11 After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court.
Such act of balancing is indeed a difficult task.
It has been very aptly indicated in Dennis Councle MCGDautha v.
State of Callifornia: 402 US 183: 28 L.D.
2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime.
In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.
12 The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence.
It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.
13 Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise.
The social impact of the crime, e.g.

where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment.
Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.
14 The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong.
The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".
15 It also baffles us as to how the High Court uniformly directed reduction of sentence to the period already undergone.
The various periods of custody suffered by the respondents during trial are as follows:
16 Thereafter the High Court directed suspension of sentence.
By then they had suffered custody for about 3 months 15 days more.
There was no similarity in the period of sentence already suffered by the accused persons when the High Court passed the impugned judgment.
17 Looked at from any angle the judgment of the High Court is clearly unsustainable, deserves to be set aside which we direct.
The judgment of the trial court stands restored so far as conviction as well as the sentences are concerned.
The appeal is allowed.
Appeal allowed

Surjit Singh v State Of Punjab And Others
Supreme Court of India

31 January 1996
C.A.
No.
2489 of 1996
The Judgment was delivered by: M.
M.
Punchhi, J.
Leave granted.
1 Is the hypothetical claim of the appellant for medical reimbursement valid in the facts and circumstances of thiscase is the straight question which falls for determination in this appeal.
2 The appellant, Surjit Singh (now retired) while postedas a Deputy Superintendent Police, Anandpur Sahib, Distt.
Roper, Punjab, developed a heart-condition on 22-12- 1987 and that very day went on a short leave extending it uptill 10-1-1988, on medical grounds.
It remains unclarified on the record of this case as to what steps the appellant took thereafter to meet his ailment.
However, six months later he obtained leave from his superiors from 15-6-1988 to 8-9-1988 and went to England to visit his son.
It is the case of the appellant that while in England, he fell ill due to his heart problem and as an emergency case, was admitted in Dudley Road, Hospital Brimingham.
After diagnosis he was suggested treatment at a named alternate place.
Thus to save himself the appellant, got himself admitted and operated upon in Humana Hospital, Wellington, London for aBye-Pass Surgery.
He claims to have been hospitalised from 25-7-88 to 4-8-88.
A sum of Rs.3 lacs allegedly was spent on his treatment at London, borne by his son.
3 On return to India, the appellant on 6-11-1988 submitted a Bill for medical reimbursement claiming that very sum, in the office of the Senior Superintendent of Police, Ropar which was

forwarded to the Director General of Police, Punjab, Chandigarh and the Home Department of the State of Punjab.
Some correspondence took place between the appellant and the department.
As per office requirements some more certificates were sent by the appellant in support of his case.
Vide letter dated 21-1-93, the Department however expressed its inability to sanction the bill for medical reimbursement.
4.
This led to the appellant moving the High Court of Punjab and Haryana at Chandigarh in writ jurisdiction.
As required by the High Court, the State responded by filing its counter affidavit.
At the time of hearing the Assistant Advocate General for the State of Punjab made a statement to the effect that the State was ready to pay to the appellent the expenses incurred for Bye- pass Surgery and Angiography on the rates prevalent in theAll India Institute of Medical Sciences, New Delhi (for short 'AIIMS').
Applying that yardstick, as suggested, a sum of Rs.30,000/- on account of Bye-Pass Surgery and a sum of Rs.10,000/- for Angiography was thus ordered by the High Court to be paid to the appellant within six weeks.
The writ petition on 18-4-1995 was disposed of on such terms.
The said sum, as claimed by the State stands paid to the appellant.
5 The appellant challenging the orders of the High Court disposing of the writ petition in such manner now pitches before us his claim to payment on the basis of rates prevalent in the Escorts Heart Institute and Research Centre (for short Escorts'), reducing his high claim to the expenses incurred for medical treatment in London.
There is an inkling to that effect in the appellant's rejoinder affidavit in the High Court but it appears that this aspect of the matter was not dilated upon.
The claim for such adoption of rates is now made in reiteration.
6 The parties counsel agree that there is a policy regarding reimbursement of medical expenses framed by the State on 25-1-1991, which has duly been circulated in all the wings/offices of the State.
It's operative portion, so far relevant, is reproduced below :
"Subject : Re-imbursement of medical expenses - policy regarding Sir/Madam, In supersession of Punjab Gover nment letter No.7/7/85- 3HBV/13855 dated 27-5-1987, the resident of India is placed to lay down the following policy for reimbursement of medical expenses incurred on medical treatment taken abroad and in hospitals other than the hospitals of the Govt.
of Punjab (Both outside and in the State of : Punjab):
(i) All categories of employees whether retired or serving of All India Service/State Govt.
Judges of Punjab and Haryana High Court/M.L.As/Ex M.L.
As will be governed by this policy.
(ii) The person who is in need of medical treatment outside India or in any hospital other than the Govt.
of Punjab (both outside and in the State of Punjab) as the case may be may make an application for getting treatment in these hospitals directly to the Director Health and Family welfare 2 months advance, duly recommended by the C.M.O./Medical Supdt.
indicating that the treatment for the disease mentioned is not available in the Hospital of the Govt.
of Punjab.
In case of emergency duly authenticated by C.M.O./Medical Supdt.
the application can be made 15 days in advance.
(iii) Director, Health and Family Welfare, Punjab will place the application of the concerned employee before the Medical Board within 15 days on the receipt of application.
In case of emergency, if immediate meeting of Medical Board, cannot be convened, such application may be circulated to all the members of the Medical Board and decision taken thereof.
(iv) The Medical Board shall consist of the following officers:
(i) Director, Health and Family Welfare, Punjab - Chairman
(ii) Director, Education, Punjab Research and Medical - Member
(iii) Specialist of the desired line of treatment from PG1 Chandigarh or AIIMS, New Delhi - Member
(iv) Senior most specialist from Medical Colleges, Patiala, Amritsar and Faridkot - Member
(v) Dy.
Director/Asstt.
Director, I/c of P.M.H.

Branches office of the Director Health and Family Welfare - Member Secy"
(vi) xxxx
(vii) xxxx
(viii) xxxx
(ix) xxxx
(xi) xxxx
(xii) The Health Deptt.
in
consultation with Director Research & Medical Education will prepare a list of diseases for which specialised treatment is not available in Punjab Govt.
Hospitals and indicate the Institutions/Hospitals/Clinics of repute where necessary treatment is available.
This list will, however, be subject to variation in future.
7 On 8-10-1991, the above policy has further been explained in so far as the choice of the hospitals is concerned:
"Policy for reimbursement of medical expenses incurred on medical treatment taken abroad and in hospitals other than those of the Government of Punjab, both within and outside he State was laid down.
However, as per the 12th item of hese instructions, a list of those diseases for which specialised treatment was not available in the Government hospitals was to be prepared in addition to identifying medical institutions/hospitals/clinics of repute where such specialised treatment was available."
8 The Government has now prepared a list of those diseases for which the specialised treatment is not available in Punjab Government hospitals but is available in certain identified private hospitals, both within and outside the State.
It has, therefore, been decided to recognise these hospitals for the treatment of the disease mentioned against them in the enclosed list for Punjab Government employees/pensioners and their dependents.
The terms and conditions contained in letter under reference will remain applicable, Government can, however, revise the list, in future.
9 Therefore it has been decided to recognise those hospitals for the treatment of diseases mentioned against them in the enclosed list issued with the concurrence of the Finance Department dated 11-9-1991 which is as under: Open Heart Surgery: Escorts Heart Institute, New Delhi; Christian Medical Colloge, Ludhiana; Appollo Hospital, Madras.
10 The purport of the above policy is that the Escorts stands duly recognised by the State for treatment of its employees for open heart surgery, apart from the other two institutions i.e. Christian Medical College, Ludhiana and Appollo Hospital, Madras.
The Finance Deptt's concurrence signifies its willingness to entertainment reimbursement bills in variables depending on where treatment is received.
11 There has been a factual dispute as to whether the appellant went to the Dudley Road Hospital, Brimingham as an emergency case and whether he was operated upon in Humana Hospital, Wellington, London in that condition.
Except for the bare word of the appellant, no documentary evidence in support or such plea had been tendered by him before the High Court, or even before us to show that his was a case of emergency requiring instant operation and treatment.
The State of Punjab on the other hand has countered before the High Court, as also here, that the case of the appellant was not that of an emergency but a planned visit to England to have himself medically treated under the care of his son, without submitting himself as per policy, for examination before the Medical Board.
This plea of the appellant may have been required to be examined in thorough detail had he stuck to his original claim for medical expenses incurred in England.