Sumpurnanand vs State Of U.P. And 2 Others on 26 October, 2018

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Author: Ajay Bhanot

Bench: Ajay Bhanot

HIGH COURT OF JUDICATURE AT ALLAHABAD

A. F. R.

Reserved

Court No. - 16

Case :- WRIT - C No. - 16948 of 2018

Petitioner :- Sumpurnanand

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Brij Raj,Rajiv Chowdhury

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 16950 of 2018

Petitioner :- Manoj Yadav

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Durga Prasad Singh

With

Case :- WRIT - C No. - 17169 of 2018

Petitioner :- Afan Ahamad

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Surendra Kumar,Ajay Kumar Giri

Counsel for Respondent :- C.S.C.,Diwakar Singh

Hon'ble Ajay Bhanot,J.

1. The petitioners in all the companion writ petitions are the sons'/kin of deceased fair price dealers of different village panchayats. They have made claims for appointment as fair price shop dealers' on compassionate grounds.

2. The appointment of fair price shop dealers on compassionate grounds are governed and regulated by the Government Order dated 17.08.2002. Clause 10( ) of the Government Order dated 17.08.2002, prescribes the criteria for appointment of fair price shop dealers on compassionate grounds.

3. The petitioners in their respective writ petitions have assailed the Clause 10( ) of the Government Order dated 17.08.2002.

4. The common question of law raised in WRIT - C No. - 16948 of 2018 (Sumpurnanand Vs. State of U.P. and Others) and companion writ petitions, Writ C No. 16950 of 2018 (Manoj Yadav Vs. State of U.P. and Another) and Writ C No. 17169 of 2018(Afan Ahamad Vs. State of U.P. and Others), is the challenge laid out to the clause 10( ) of the Government Order dated 17.08.2002 only insofar as it makes the good reputation of the deceased fair price shop dealer the precondition for appointment of his kin as a fair price shop dealer on compassionate grounds.

5. The writ petitions have been connected and are being decided by a common judgement.

6. Sri Brij Raj, learned counsel for the petitioner, submits that the precondition in the Government Order dated 17.08.2002 of good reputation of a deceased dealer as a sole basis for appointment of his kin as fair price dealer on compassionate ground is arbitrary and illegal. The criteria has no nexus with the object of making appointment on compassionate grounds. The provision makes the good name of the deceased dealer vulnerable to slander. The provision is violative of Article 14 , 15 and 21 of the Constitution of India. The learned counsel has relied upon on a number of judgments to fortify his submissions. Sri Durga Prasad Singh, learned counsel for the petitioner in Writ C No. 16950 of 2018 (Manoj Yadav Vs. State of U.P. and Another) and Sri Ajay Kumar Giri, learned counsel for the petitioner in Writ C No. 17169 of 2018(Afan Ahamad Vs. State of U.P. and Others) have adopted the arguments of Shri Brij Raj, learned counsel for the petitioner in Writ C No. - 16948 of 2018 (Sumpurnanand Vs. State of U.P. and Others).

7. Shri Siddharth Singh, learned Additional Chief Standing Counsel, assisted by Shri Sanjay Ram Tripathi, learned Standing Counsel on behalf of the State, defended the criteria for appointing fair price shop dealers on compassionate grounds. He submits that making the criteria for appointment is a policy decision of the State. The jurisdiction of courts in such matters is limited and the scope of judicial intervention is restricted.

8. Heard learned counsel for the parties.

9. The offending portion of Government Order dated 17.08.2002 which is assailed in all the writ petitions is reproduced hereunder for ease of reference and is highlighted for sake of clarity:

"10.( ).

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10. The English translation of the word " " occurring in the paragraph 10( ) of the Government Order dated 17.08.2002, is " reputation"(as defined in the Universal's Law Dictionary by Dansingh Suganchand Choudhary and Prof. Praveen Kumar Dansingh Choudhary). Further, the said translation of " " in para 10( ) of the Government Order dated 17.08.2002, as "good reputation" has also been approved by the learned Division Bench of this Court in the case of Meera Pandey Vs. State of U.P., reported at (2013) 2 ADJ 110. This Court interpreted the provision as under:

"We are thus of the view that appointment under paragraph 10 ( ) of the Government Order dated 17.08.2002 would not be covered by the Rule of reservation as it is a special appointment on compassionate ground and only condition which has to be considered is that the deceased-fair price shop dealer had a good reputation and the applicant is the dependant of such deceased-dealer." (emphasis supplied)

11. Similarly, the learned Division Bench of this Court in the case of Shiv Kumar Vs. UP Ziladhikari Chakiya District Chanduali and Others, reported at (2014) (8) ADJ 693, while considering the meaning of the word " " occurring in Clause 10 ( ) of the Government Order dated 17.08.2002, held thus:

> "So far as the second issue of taking a decision in the open meeting of the Gaon Sabha is concerned, we are unable to agree with the proposition of the learned Standing Counsel and the counsel for the contesting respondent that no such meeting is necessary. The reason is that from a bare perusal of Clause 4.4 of the Government Order dated 3rd July, 1990, it is evident that any fair price shop licence would be opened only after a resolution is passed in the open meeting of the Gaon Sabha. It is only on the collective opinion of such a meeting that such allotment can be made. After such a resolution is passed, the same has to be processed through the Tehsil Level Committee for rural areas consisting of the Deputy District Magistrate as its Chairman as defined in Clause 5 of the Government Order dated 17.8.2002. Such an exercise has to be undertaken only when a resolution is passed in the open meeting as indicated in Clause 7. The allotment has to be made as per the terms and conditions contained in Clause 10 of the said government order which also envisages the grant of licence on compassionate basis.
>
> "22. To our mind there is no exception of the abovementioned procedure carved out for consideration of grant of licence on compassionate basis founded on the strength of the reputation of the deceased licence holder. This assessment as to the reputation of the deceased licence holder and his goodwill has to be gathered only from the resolution of the open meeting of the Gaon Sabha. It has to be the collective opinion of the Gaon Sabha, and not the individual opinion of any authority or the Tehsil Level Committee. We are of the considered opinion that even in a matter of an individual consideration of compassionate grant of licence under Clause 10 of the Government Order of 2002, it is necessary to hold an open meeting of the Gaon Sabha. It is only after such a resolution is passed that the same has to be considered by the Tehsil Level Committee and then a decision to be taken by the Deputy District Magistrate."

(emphasis supplied)

12. The clause 10 ( )of the Government Order dated 17.08.2002 was not under challenge in the case of Meera Pandey (supra) or Shiv Kumar (supra).

13. Clearly the Government Order dated 17.08.2002, makes the good reputation of a deceased dealer as the prerequisite for appointment of his kin as fair price shop dealer on compassionate grounds.

14. The consideration of challenge to the offending part of the Government Order dated 17.08.2002 shall proceed in the following sequence. The concept and right of reputation of an individual in our constitutional setting shall be considered first. The concept and constitutional legitimacy of appointments on compassionate grounds will be examined next. The offending provision will then

be tested on the touchstone of Article 14 and Article 15 of the Constitution of India.

15. Physical frame of a person is one proof of life. Reputation for a person is the whole purpose of life. So while the physical frame identifies life, reputation defines it. While physical form is ephemeral, reputation is enduring. Reputation is the residue of life even after physical form ceases. Reputation has wings, it can fly faster than a man can move. Reputation it is said precedes a man. Truly reputation succeeds a man as well.

16. Reputation is the sum of earthly endeavours of one's life and the substance of what remains of life after the physical frame has departed to the yonder worlds. Reputation is not interred with the bones of the dead. Reputation lives on. Reputation makes a person sublime and leaves the lasting imprint of life on the sands of time.

17. The aspiration to a life of good reputation is a goal most worthy of humankind. The endeavour to achieve a good reputation is an act most sacred in human existence. Striving for a life of good repute and to be honourable in the esteem of ones fellow beings, has been a constant refrain in sacred scriptures and a recurring theme in literature. Earliest evidences of recorded human thought and contemporary writings bear testimony to this fact. Reputation has been celebrated in the songs of bards, the speech of philosophers, the verse of writers, the utterances of sages and the call of scriptures. True then true now, across lands and beyond frontiers.

18. Socrates one of the pioneering philosophers of ancient Greece, emphasizing the importance of reputation said:

> "Regard your good name as the richest jewel you can possibly be possessed of - for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again. The way to gain a good reputation is to endeavor to be what you desire to appear."

19 . Aristotle thought alike:

> "Be studious to preserve your reputation: if that be once lost, you are like a cancelled writing--of no value, and at best you do but survive your own funeral".

20. The "Bhagwat Geeta" gave scriptural sanctity to the quest for good reputation and honour.

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> *f* ||34||"
>
> "ak□rti¤ ch□pi bh□t□hi kathayi«hyanti te 'vyay□m sambh□vitasya ch□k□rtir mara‹ □d atirichyate."|34| Translation: Besides, men will ever recount thy ill fame and for one who has been honoured, ill fame is worse than death.

21. Surah 49 Aayaat 11 of the Holy "Quran" reads as follows:

"Let not some men among you laugh at others:

it may be that the (latter) are better than the (former):

Nor let some women laugh at others:

it may be that the (latter) are better than the (former):

nor defame nor be sarcastic to each other nor call each other by (offensive) nicknames: Ill-seeming is a name connoting wickedness (to be used of one) after he has believed: And those who do not desist are (Indeed) doing wrong."

22. The bard of Avon in 'Othello' was at his creative best. William Shakespeare in 'Othello' expressed his thoughts on reputation:

"Good name in man and woman, dear my lord, Is the immediate jewel of their souls.

Who steals my purse steals trash.

Tis something, nothing:

'Twas mine, 'tis his, and has been slave to thousands.

But he that filches from me my good name Robs me of that which not enriches him And makes me poor indeed,"

Reputation was a constant theme in his works.

"The purest treasure mortal times afford Is spotless reputation; that away Men are but gilded loan or painted clay.

A jewel in a ten-times-barr'd-up chest is a bold spirit in a loyal breast.

Mine honor is my life; both grow in one;

Take honor from me, and my life is done."

23. A mother's feeling for her child is most profound, and her love completely unconditional. Mrs. Mac Arthur spoke to the aspiration of all mothers when she desired the highest repute for her son.

"Do you know that your soul is of my soul such a part That you seem to be fiber and core of my heart?

None other can pain me as you, son, can do;

None other can please me or praise me as you.

Remember the world will be quick with its blame If shadow or shame ever darken your name.

Like mother, like son, is saying so true The world will judge largely of mother by you.

Be this then your task, if task it shall be To force this proud world to do homage to me.

Be sure it will say, when its verdict you've won, She reaps as she sowed: "This man is her son!"

24. The great poet "Maithili Sharan Gupt" summed up the enduring value of reputation in sonorous words:

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25. The quest for and the possession of a good reputation is a universal value in human life. It transcends the barriers of time and does not recognize the boundaries of territory.

26. The endeavour to earn a good reputation drives noble action and curbs evil tendencies in a society. The quest of an individual for good reputation ennobles a society and strengthens the sinews of a nation. Ambition of a individual to win high repute brings collective good.

27. Reputation has been identified with life since the times human thought and feelings and writings and deeds have been archived.

28. The Government Order has now to be tested on the anvil of the provisions of the Constitution of India. It has to be examined whether the provisions of the Government Order are consistent with constitutional values. Constitutional values have to be distilled from constitutional law.

29. The simple words of Article 21 of the Constitution of India, had profound significance in development of constitutional law in India. Article 21 of the Constitution of India states thus:

"Article 21. Protection Of Life And Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law. "

30. The resolve to create the Constitution was the collective will of the people of India. The promise of the Constitution is to every individual citizen of India. Part III of the Constitution is anchored in the individual and revolves around the individual citizens. The simple word "life" in Article 21 of the Constitution of India presented a complex jurisprudential problem to the courts. The simple word

"life" did not disguise for long the profound intent of the constitution framers. The approach of the courts to the provision in the Constitution progressed from tentative to visionary, the interpretation of the provision advanced from literal to prophetic.

31. What was the meaning of life for the people of India on the morrow of our independence? If life meant physical existence and mere survival, Indian people had shown remarkable resilience to live through the vicissitudes of history. The people of India have lived in servitude, survived famines, lived in an iniquitous social order often dominated by prejudice, penury and illiteracy. Trackless centuries are filled with the record of survival of the people of India. Surely life of the Indian people could not remain the same after the dawn of independence of India. Surely the meaning of life for the people of India had to change after the advent of the Republic of India. The founding fathers, had the audacity to dream of transforming the meaning of life for the people of India. The courts in India had the vision and the courage to make the dreams a reality. Life had to embrace all the attributes which made life meaningful and all the pursuits which made life worth living.

32. The probe into the purpose of life has traditionally been the province of the philosophers. The framers of the constitution, brought the word "life" in the ambit of the constitution. Constitutional law put the meaning of life in the domain of the courts. "Life" is very much the concern of the courts. The search for the meaning of life is the business of the courts. Indeed, the discovery of the meaning of life is central to realizing the fundamental rights guaranteed under the Constitution.

33. The enquiry of the courts into the meaning of life was guided by law and logic and controlled by reason and precedent, but bent to no authority save the mandate of the constitution and the conscience of the court. Ultimately, the meaning of life was given by life itself. All facets of life and its realities touched the courts. It was for the courts to touch life in all its facets and to feel its reality. Life reveals its true meaning to those whose thoughts are noble and deeds are righteous and to those who live selflessly.

34. The courts in India, knew early on that understanding the significance of life was the key to providing the security of justice. While interpreting Article 21 of the Constitution of India, the Hon'ble Supreme Court, embraced life in all its breadth and profundity and eschewed a narrow interpretation. The law laid down by the Hon'ble Supreme Court while construing Article 21 of the Constitution of India brought a citizen's reputation within its sweep.

35. A defining moment came when the Hon'ble Supreme Court, liberated life from the fetters of mere physical existence. While examining the meaning of life under Article 21 of the Constitution of India, the Hon'ble Supreme Court added meaning to life in the case of Olga Tellis v. Bombay Municipal Corpn. Reported at (1985) 3 SCC 545 held thus:

> "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume

> the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in Baksey [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois [(1877) 94 US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P. [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329] ."

Article 21 was set on a course of constantly expanding boundaries and the ambit of life was progressively enlarged.

36. Reputation has been identified with life in human thought and literature as we have seen. Reputation is integral to life in human affairs and law as we shall see.

37. The ever enlargening meaning of life and ever deepening understanding of life lie at the core of the jurisprudential philosophy of Article 21 of the Constitution of India. Infact, it is fundamental to realizing the right vested by Article 21.

38. Reputation was brought within the meaning of the word "life" in Article 21 of the Constitution of India by successive pronouncements of the Hon'ble Supreme Court. Thus, the right to reputation became a fundamental right entrenched by Article 21 of the Constitution of India. The legal narrative shall now be fortified by judicial authority in point.

39. The deepened understanding of life led to an enlarged perspective of law. The person's right to reputation was held to be protected by the constitution, when the Hon'ble Supreme Court in Kiran Bedi Vs. Committee of Inquiry, reported at (1989) 1 SCC 494, cited and embraced international legal authority with approval, by holding thus:

> "In Blackstone's Commentary of the Laws of England, Vol. I, 4th Edn., it has been stated at p. 101 that the right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.
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> "In Corpus Juris Secundum, Vol. 77 at p. 268 is to be found the statement of law in the following terms:
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> It is stated in the definition Person, 70 C.J.S. p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his Commentaries classifies and distinguishes those rights which are annexed to the person, jura personarum, and acquired rights in external objects, jura rerum; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of remedies. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. According to Chancellor Kent as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.
>
> The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4, and this right is within the constitutional guaranty of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.
>
> Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right.

> "In D.F. Marion v. Davis [55 ALR 171] , it was held:
>
> "The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property."

40. The Hon'ble Supreme Court in State of Gujarat Vs. High Court of Gujarat, reported at (1998) 7 SCC 392 equated life with honour by opining:

> "In our efforts to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace."

41. The relationship between a person and reputation and the nature of the right to reputation in our constitutional scheme was examined by the Hon'ble Supreme Court in Kishore Samrita Vs. State of U.P. reported at (2013) 2 SCC 398. Upon consideration of past judicial authority in point, the scope of the right to reputation was defined as follows:

> "The term "person" includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation" is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present."

42. This position of law was concurred with and followed in the case of Umesh Kumar Vs. State of Andhara Pradesh, reported at (2013) 10 SCC 591, in these terms:

> "Allegations against any person if found to be false or made forging someone else's signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as "to have a good name; the credit, honour, or character which is derived from a favourable public opinion or esteem and character by report". Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is "not only a salt of life but the purest treasure and the most precious perfume of life".

43. The right to reputation was firmly entrenched in the ambit of Article 21 of the Constitution of India, by the Hon'ble Supreme Court in Om Prakash Chautala Vs. Kanwar Bhan, reported at (2014) 5 SCC 417. The place of a person's reputation in his life was thus stated in Om Prakash Chautala (supra):

> "Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. The memory of nobility no one would like to lose; none would conceive of it being atrophied. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a court deals with a matter that has something likely to affect a person's reputation, the normative principles of law are to be cautiously and carefully adhered to. The advertence has to be sans emotion and sans populist perception, and absolutely in accord with the doctrine of audi alteram partem before anything adverse is said."

44. The right to reputation inheres in the right to life and it has been embedded in Article 21 of the Constitution of India, by consistent judicial authority. Reference can be made with profit to the judgments of the Hon'ble Supreme Court rendered in the case of Port of Bombay Vs. Dilip Kumar Raghuvendranath Nadkarni, reported at (1983)1 SCC 124. In Gian Kaur Vs. State of Punjab, the Hon'ble Supreme Court confirmed that the right to reputation is a natural right.

45. The Hon'ble Supreme Court in Subramanian Swamy Vs. Union of India, reported at (2016) 7 SCC 221, reiterated that the right to reputation as a fundamental right relatable to Article 21 of the Constitution of India. The Hon'ble Supreme Court in Subramanian Swamy (supra) made an exhaustive survey of national and international judicial authority in point.

46. In Subramanian Swamy (supra), the Hon'ble Supreme Court after citing various international covenants which are the sources of international law held as under:

> "Various international covenants have stressed on the significance of reputation and honour in a person's life. The Universal Declaration of Human Rights, 1948 has explicit provisions for both, the right to free speech and right to reputation. Article 12 of the said Declaration provides that:
>
> "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

32.The International Covenant on Civil and Political Rights (Iccpr) contains similar provisions. Article 19 of the Covenant expressly subjects the right of expression to the rights and reputation of others. It reads thus:

> "19. (1) Everyone shall have the right to hold opinions without interference.
>
> (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> (3) The exercise of the rights provided for in Para (2) of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) for respect of the rights or reputations of others;
>
> (b) for the protection of national security or of public order (order public), or of public health or morals."

33. Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provide:

> "8. Right to respect for private and family life.--(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

34. The reference to international covenants has a definitive purpose. They reflect the purpose and concern and recognise reputation as an inseparable right of an individual. They juxtapose the right to freedom of speech and expression and the right of reputation thereby accepting restrictions, albeit as per law and necessity. That apart, they explicate that the individual honour and reputation is of great value to human existence being attached to dignity and all constitute an inalienable part of a complete human being. To put it differently, sans these values, no person or individual can conceive the idea of a real person, for absence of these aspects in life makes a person a non-person and an individual to be an entity only in existence perceived without individuality."

47. The House of Lords in Reynolds Vs. Times Newspapers Ltd. and Others, reported at (1999) 4 ALL ER 609, relying on the vast body of common law, stated, "Historically the common law has set much store by protection of reputation." Finally observing as under:

> "Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognise that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others."

48. The US Supreme Court understood the primacy of reputation as a cherished value in free society governed by law and underscored the need to give the affected person a chance to defend herself, in the case of Wisconsin Vs. Constantineau, reported at (1971) SCCOnlineUSSC12. The US Supreme Court in Wisconsin (supra) observed as follows:

> "Where a person's good name, reputation, honour, or integrity is at stake because of what the Government is doing to him, notice and an opportunity to be heard are essential. "Posting" under the Wisconsin Act may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a

> degrading one. Under the Wisconsin Act, a resident of Hartford is given no process at all. This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented."

49. The US Supreme Court took view consistent with the above authority in Rosemblatt Vs. Baer, reported at (1966) SCC Online USSC 22, as under:

> "The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being--a concept at the root of any decent system of ordered liberty."

50. The above judicial authorities and articles of international conventions establish that there is consensus in comparative international jurisprudence and covenants of international law that the right to reputation of an individual is of paramount importance in the comity of civilized nations.

51. It is necessary to know the attributes of reputation to further understand the scope of the right of reputation.

52. Reputation is how others view you. Reputation is the perception that others have of one's character and deeds. This perception may not always be true and at times not be a correct portrayal of the person. But it is believed that one's deeds speak louder than other peoples words and ones character shines through all illusions.

53. Further reputation is shaped over a long time. These factors lend objectivity to the judgement of the society. A person's honurable past is considered a reliable guide to his future action. It may not be a perfect or a flawless standard, but there is no better alternative. These perspectives make reputation a good standard for judging a person. These beliefs are based on human experience. Thus despite lack of hundred percent accuracy, reputation is accepted as the true measure of the person in society. Such has been the acceptability of this measure, that reputation has always been a cherished value in society. The search for a good reputation is a quest for winning the esteem of ones fellow beings through ones deeds and character. A person's standing in the society is ruled by his reputation. Society judges a man's worth from his reputation.

54. The importance of reputation is in marked contrast to the fragility of its existence. Reputation is built by deeds but can be wounded by words. Reputation is made by character but can be marred by calumny. Good reputation is created by strenuous and honest efforts but can be undermined by motivated and false propaganda. This disinformation becomes persuasive by persistence.

55. Opinion can be formed on the basis of disinformation with ease and without effort. Search for truth requires sustained effort and objective thought. Falsehoods planted by such disinformation are fatal to a person's reputation. Such is the delicate texture of reputation.

56. Reputation is built over long years even a life time, but can be destroyed in little time or even a moment.

57. In the marketplace of public opinion, reputation is often about perception. This perception of the public may not be congruent to the truth. The endeavour of the process of law is to protect the public perception from falsehoods by protecting truth from false perception. The process of law gives truth the chance to survive. Truth exists while perception is created. The survival of truth in the crucible of public opinion is not assured nor is it self guaranteeing. Truth has to jostle for space and survival in the battle for public perception, along with other ideas and even imposters like myth and innuendo, lies and illusions, half truths even outright falsehoods. At times myth and innuendo, even lies and illusions so also half truths and falsehoods have an enticing appeal. They persuade by persistence.

58. Another element truth has to battle is false propaganda. False propaganda and disinformation are often backed by organization and resources. They are handy tools in the hands of the unscrupulous and powerful enemies of truth. False propaganda and disinformation are relentless in the pursuit of acquiring the mindspace of public perception and remorseless in elbowing out truth from public mind. Such has been the efficacy of these methods that one master propagandist confidently but cynically observed, "a lie told a thousand times becomes the truth." In such situations, the environment of public perception is not very discerning. A despondent Rudyard Kipling wrote, "If you can bear to hear the truth you have spoken, twisted by knaves to make a trap for fools." If human civilization has to flourish, human affairs have to be fortified by truth. The triumph of truth should not only be an article of faith but a constant in conduct. Truth should not only triumph in the worlds beyond but has to prevail in daily affairs of human life.

59. The process of law makes the tryst of truth with human affairs. By its inexorable search for true facts and its ceaseless endeavour to establish the true facts the process of law comes nearest to truth and even merges in truth. It is absolutely critical or rather decisive that all facts and views are in the public domain for the tryst of truth with human affairs to happen.

60. Suppression of any fact or exclusion of viewpoints would be fatal to the quest of truth. Truth will come out only if the picture is completed by the aggregation of all facts and views.

61. If the person whose reputation is under attack or duress, is unable or incapacitated to present his version of the truth and his understanding of the facts or is otherwise prevented from giving his defence, the picture will not be complete. Truth will not be able to make it claim to public perception. Indeed in such an event truth will be the first casualty. The public perception of the individual, which infact is the reputation of latter, will be formed by half truths and not the whole truth. Perception formed without the benefit of complete facts and without the effort of full thought is not opinion but prejudice.

62. Objectivity in public perception ensures credibility of reputation as a standard to judge a person. Objectivity in public perception is possible only if all facts and opinions are in public domain and part of public debate. A person whose reputation is in issue or is called into question has in his

personal knowledge facts and in his personal understanding a version of events which are critical to the issue. Such knowledge provides key links in the chain of facts. Giving an opportunity to these persons to tender a defence of their reputation hence serves two purposes. Firstly, as discussed earlier it effectuates the right to reputation of the concerned individual. Secondly, it assists the cause of formation of public opinion in a fair manner and on an objective basis.

63. If the process of formation of public opinion or public perception has credibility the concept of reputation as a measure of a person's standing or worth in the eyes of the society will have reliability. The process of formation of public opinion or creation of public perception is vital to upholding the idea of reputation as reliable measure of an individual's standing. Indeed this process is pivotal to upholding the rule of law itself.

64. Grant of opportunity to such persons to defend their reputation creates conditions which are conducive to forming a public perception on an objective basis. Public opinion or public perception thus formed assists in upholding the rule of law and the rights of individual citizens in a constitutional order. The charter of rights of reputation is complete only if it encompasses the right to defend one's reputation. The right to defend one's reputation is the bulwark of the right to reputation.

65. The right to defend one's reputation is inalienable from the right to reputation. Infact, the right to defend one's reputation is the tree, while the right to reputation is the shadow. Without the tree there is no shadow. If we value the right to reputation, we have to treasure the right of its defence. If the right to reputation is placed on a high pedestal, we have to exalt the right to defend it. If the right to defend one's reputation is not treasured the right of reputation will lose its value. If the right of defence of reputation is not exalted, the right of reputation will be diminished.

66. Right of reputation is thus embedded in Article 21 of the Constitution of India. Right of reputation would be devoid of substance without the ability to protect it. The right to defend one's reputation against attack fortifies the right of reputation.

67. When a person's reputation is under attack or called in question, he has a right to defend it. Such person is entitled to put his version of events or an account of his deeds, to win the esteem of his fellow men or appeal to their sense of it. This is the essence of the right to defend one's reputation. The right to reputation is inherent in Article 21 of the Constitution of India. The right to defend one's reputation inheres in the right to reputation.

68. The enduring value of a constitution lies not in the way it serves the strong but how it protects the weak. The architects of the Indian Constitution ordained the constitution to empower the weak and the marginalized and to fortify the minorities. The judges of the Indian courts interpreted the constitution to exalt the weak and the marginalized to curb the excesses of the strong and celebrate the rights of those in minority, of view or persuasion. The tradition of Indian courts is old and the catalogue of the judgements is long.

69. A system of law is to be judged not merely by the manner it treats the living, but also by the regard, it gives to the dead. Reputation is indivisible. Indivisibility is an essential attribute of reputation. There is no distinction between the reputation of the dead and the living. This is the quintessence of the concept of reputation. Any bifurcation like the reputation of the dead and the reputation of the living would deprive reputation of its content and deny it any meaning. Death shows the insignificance of life. Reputation testifies to the significance of life. If the reputation of the dead is not protected, the reputation of the living is not safe. If the reputation of the dead is not valued, the reputation of the living has little worth.

70. The dead tell no tales, in legalese they tender no defence. Law recognizes the final word of death and respects the lasting reputation of the dead.

71. Death does not cheat justice, it transcends it. The concept of abatement of legal proceedings against the dead in administration of law, affirms this truth.

72. The silent orders of Providence to cease a person from human existence are followed by the express orders of courts to abate legal proceedings against the deceased. Law does not pursue its writ beyond the grave. No taint to a dead person's reputation can be caused by the process of law. No taint to a dead person's reputation can be countenanced by the courts of law.

73. All legal proceedings civil and criminal abate against the dead. Civil proceedings where the rights of the dead are engaged, can be prosecuted by the legal heirs of the deceased. Criminal proceedings have consequences to the reputation of the dead, cease against the deceased, after his death.

74. The incapacity of the dead does not make them vulnerable to the living. The constitution is the guardian of the dead, the law is their counsellor and the courts the sentinel of their rights.

75. The dead may be considered irrelevant by the living at times. But the dead are not abandoned by law and never bereft of constitutional protection.

76. The silence of the dead does not stifle their voice, nor does it extinguish their rights. The dead have their rights, no less tangible than the living. The law asserts their rights, courts exalt their rights. The right to reputation is one such right.

77. The offending portion of the Government Order dated 17.08.2002 impugned in the instant writ petition contemplates calling an open meeting of the village panchayat to resolve on the issue of the reputation of a dead person, the deceased dealer. Such meeting would have a single point agenda to consider the reputation of the deceased dealer. The result of meeting would decide the claim of the kin of the deceased dealer for appointment on compassionate grounds.

78. The procedure may appear simple but the reality is complex.

79. The agenda of the open meeting would be to consider the reputation of the deceased dealer. The intent of some members of the village panchayat would be to defeat the claims of the kin of the

deceased dealer for various reasons. The incompatibility between the agenda and the intent would cause loss of objectivity. The result of the vote would depend not on the merit of the reputation but on the interests of the factions. The persons interested in defeating the claim of the kin of the deceased dealer, can achieve their intent only by sullying the reputation of the deceased. The only manner of defeating the claim of the kin of the deceased dealer is by bringing the village panchayat to resolve against the reputation of the deceased. In such case, the expression of views of people on a deceased dealer's reputation may be free and open, but their opinion will not be honest. The criteria of assessing the reputation of a deceased dealer is in such situation indeterminable and in this context serves no purpose.

80. The impugned Government Order dated 17.08.2002 puts the reputation of the dead to the test in an open meeting of the village panchayat. The procedure in the Government Order implicitly permits the reputation of the dead to be slandered and scandalized in an open meeting of the village panchayat. Death disarms a person of his ability to defend his reputation. The dead cannot defend their reputation against attack.

81. The offending part of the impugned Government Order dated 17.08.2002 is arbitrary. The said offending part of the GO dated 17.08.2002 assailed in the instant writ petitions is in flagrant violation of Article 14 and Article 21 of Constitution of India.

82. India is an ancient civilization but a young nation. Old social values and prejudices are embedded in the current social unconscious. Primordial social norms are evidenced in the present social notions. Many ancient customs are patriarchal in philosophy. Some customs would have the offices of shebait and Khadims to be hereditary. Accomplishments of the forefathers created a presumption of merit in favour of the descendants. Such customs are reflected in social idioms. As goes an old village saying:

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Meaning: A son prospers on the good deeds of the father.

83. Such customs were manifested in government policy. Even in modern India many offices were hereditary. These social customs crystallized into habitual thought and extant attitudes, which were asserted in the form of claims based on heredity and descent.

84. For instance, the system of hereditary priesthood and hereditary priestly offices, have a long historical tradition. These rights have been recognized by the courts. The Hon'ble Supreme Court in Raj Kali Kuer Vs. Ram Ratan, reported at AIR1955 SC 493 examined the claim of a woman to a priestly office on the foot of heredity. The Hon'ble Supreme Court acknowledged and upheld concept of hereditary priestly offices with the following observations:

> "In early Hindu society a priestly office could have relation only to the performance of various kinds of Vedic rituals and sacrifices either of a daily and routine nature or of a periodical and special nature. In theory a Brahmin is to perform such functions for

himself by himself, while persons of other classes should get them done through qualified Brahmins. On principle a priest in the Hindu concept is chosen as such with reference to his personal qualities and competence. The system of hereditary priesthood, however, with the possibility of persons not fully competent, succeeding to or occupying such an office, appears to have come into vogue from fairly early times. It appears, however, that from the very nature of the situation, the temporary discharge of the priestly function by a substitute in the place of the hereditary priest was a matter of inevitable necessity since the HinduShastras recognised temporary and casual disqualifications like that of birth and death pollution. But there does not appear to be any indication in the early books of any general practice about the functions of priestly office being discharged by proxies. In comparatively later days, however, there is clear indication of such a practice. In Saraswati's Hindu Law of Endowments at p. 56, it is stated that in thePadma Purana and other treatises incapacitated persons are directed to have the worship performed through Brahmins. This statement is with reference to the performance of service of an idol and has presumably reference to the incapacity of persons occupying a priestly office. In Colebrooke's translation of the Digest of Hindu Law on Contracts and Successions with a commentary by Jagannatha Tercapanchanana (4th Edn., published by Higginbotham & Co., Madras, 1874), Vol. I, Book II, Chapter III, Section 2, pp. 360 to 381 deal with the topic of partnership among priests jointly officiating at holy rites. A perusal thereof and particularly of placita 28 to 44 containing citations from various Smrutis with Jagannatha's commentary thereon, clearly indicate that the institution of hereditary priestship, became established by that date and that the performance of such priestly functions by substitutes had definitely come into vogue. Various rules are propounded as to the sharing of remuneration between the substitute priest and the hereditary priest when the former happens to perform the functions in the place of the latter. It is to be noticed that these passages from Jagannatha's Digest refer in terms only to priestly office by way of officiating at holy rites i.e. sacrifices and other Vedic or Shastric functions but do not in terms refer to the discharge of a priest's duties in relation to the worship of an idol in a temple. This is all the more remarkable because by the date of Jagannatha's Digest the institution of worship of consecrated idols in temples had become long since fairly established. The probable explanation is that Jagannatha's Digest is a commentary on selected texts mostly of the various Smrutis from which he quotes and that in the days of theSmrutis the temple worship does not appear to have come sufficiently into vogue. The historical origin and growth of temple worship has been fully dealt with inSaraswati's Hindu Law of Endowments and has been also noticed in the referring judgment in Annaya Tantri v. Ammaka Hengsu [AlR 1919 Madras 598 (FB)] . It is pointed out therein that according to Hindu sentiment the performance of the duties of an archaka or pujari for an idol has been considered sinful and it required inducements by way of liberal grants of land and promise of substantial perquisites to attract competent persons for the office of pujari or archaka. This, in course of time and with the change in social conditions and economic values, rendered the offices of panda and pujari in almost all the

> famous shrines in India, a lucrative affair, and has enabled the hereditary priests to get the functions discharged by paid substitutes and themselves enjoy a substantial margin of income. Here just in the same way as the patronage of the kings or the society may have been a great incentive to the development of the system of discharge of hereditary priestly functions by substitutes in relation to sacrificial and Vedic religious rites, the phenomenal development and worship of idols in temples and the substantial emoluments which in course of time rendered the discharge of priestly office lucrative must have brought into vogue the employment of substitutes for performance of the duties of the priests not only for sacrificial or other religious rites but also for temple worship. Whether and how far this practice is permitted by theShastras is not the question before us. But it cannot be denied and is indeed a matter of common knowledge, that at the present day, hereditary priestly offices are, as often as not, performed by proxies, the choice of proxy being, of course, limited to a small circle permitted by usage. The question for consideration of the courts is, whether, in this state of things, a female is to be excluded from succession to the hereditary office of pujari on account of her well-recognised personal disqualification to officiate as such pujari for the Shastrically installed and consecrated idols in the temples and whether she is to be denied the capacity to retain the property by getting the priestly duties efficiently discharged through a competent substitute. The only basis for the alleged denial is a passage fromJagannatha's Digest which is as follows: (Vide Vol. 1, p. 379, commentary under placitum 43).
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> "Wives and others, disqualified by sex for the performance of holy rites, cannot appoint a substitute; as defiled person cannot perform a solemn act ordained by the Vedas, therefore wives have no property in the office of priest."

Now apart from the question whether this passage can be taken to be sufficiently authoritative, there has been some difference of opinion as to the correct import thereof. In Sundarambal Ammal v. Yogavanagurukkal [AIR 1915 Madras 561] this passage has been relied upon by Justice Sadasiva Aiyar as showing that women are incompetent to discharge the functions of a priest even through a substitute and that, therefore, they have no right of succession to the office. The learned Judges of the High Court in the present case have also relied on it. In Annaya Tantri v.Ammaka Hengsu [AlR 1919 Madras 598 (FB)] Justice Seshagiri Aiyar in his referring judgment has referred to this passage and was of the opinion that it does not express a specific view. In Ganapathi Iyer on Hindu and Mahomedan Endowments (2nd Edn.) the learned author while commenting on this very passage says as follows at p. 453 of his book:

> "Jagannatha there considers the question whether wives and others have a title to the succession to this priestly office. As usual with the discussions of Jagannatha it is difficult to say what his final opinion is. But we should certainly think that Jagannatha's opinion is that women can inherit doing the duties through a substitute, but enjoying the emoluments attached to that office".

It appears on a careful consideration of the disputed passage with reference to its context, that this view of the learned author is correct. In any case the passage cannot be definitely relied upon as an authority for the contrary view. The discussion in connection with which this passage occurs in the commentary is under Placitum No. 43 in Section II of Chapter III, Book II, which is a text from Narada relating to hereditary priests. The statement relied on occurs at a place where there is an attempt to reconcile the disqualification of the female to discharge the functions of a hereditary priest, and the recognition of her right to succeed to all property including a hereditary office. The relevant portions of the discussion are herein below set out:

> "It is doubted whether wives and others have a title to this succession, although the partition, founded on the admission of a right vesting in agraharicas and other officiating priests, ought to be similar to the partition of inheritance in general. As the wife's title to succession, on failure of heirs in the male line as far as the great-grandson, will be declared under the head of inheritance, what should reverse her title in this instance? It should not be argued, that the wife can have no right to the village, because as a woman, she is disqualified for the performance of holy rites, and because the wives of agraharicas and others are totally incapable of receiving tila delivered as a gift to priests. The tila may be received, and the rites be performed, through the intervention of a substitute. Let it not be argued, that, were it so, a property in the sacrificial fee and regular dues would vest in the substitute. The wife may have the benefit of property acquired by the substitute, as a sacrificer has the benefit of rites performed by an officiating priest. However, there is this difference: the sacrificer acquires merit from rites performed by an officiating priest, and none is ever acquired by the intermediate performer of the rites; but if the duty of the officiating priest be performed by a substitute, property in the sacrificial fee is at first vested in the substitute, and through him, in the widow entitled thereto. It is alleged, that there is no authority for this construction.
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> The text which ordains that "a person unable to act shall appoint another to act for him", is the foundation of this construction: but the property of an outcaste, or other person disqualified for solemn rites, is absolutely lost, in the same manner with his right to the paternal gold, silver, and the like. This will be explained in the fifth book on inheritance. Wives and others, disqualified by sex for the performance of holy rites, cannot appoint a substitute: as a defiled person cannot perform a solemn act ordained by the Vedas: therefore wives have no property in the office of priest."

At the end of the discussion there is the following significant passage:

> "Therefore the difficulty is thus reconciled; women are entitled to that only for which they are qualified. In regard to the assertion, that women, being disqualified, cannot appoint a substitute, this must be understood: being disqualified for solemn acts ordained by the Vedas, they cannot appoint a substitute for such acts; but, qualified for worldly acts, nothing prevents their appointment of a substitute for temporal affairs: and the right should devolve on the next in succession, under the text quoted

> in another place (Book 5, V. 477) and because women are dependent on men. Grain and similar property may be consumed by a woman entitled to the succession; but gold, silver, and the like, should be preserved: if she cannot guard it, let it be entrusted to her husband's heir, as will be mentioned under the title of inheritance. Here, since a woman cannot preserve the office, it should be executed by her husband's daughter's son, or other heir: but the produce should be enjoyed by the woman. However, should the daughter's son be at variance with his maternal grandmother, it may be executed by another person: he is not entitled to his maternal grandfather's property, if that grandfather leave a wife: and should the maternal grandmother litigate, it must be amicably adjusted."

The concluding portion seems rather to indicate that the more categorical passage underlined above and relied upon is in the nature of an objection which is being answered and that the final conclusion is the recognition of a right to succeed by getting the duties of the office performed by the next male in succession. The learned Judges of the High Court have in fact noticed this concluding passage but have missed its correct import."

> "It is desirable now to consider how this question stands with reference to the decided cases in the various High Courts. A fairly substantial number of cases appear in the reports of the Madras High Court. One of the earliest decisions is that of the Madras Sadar Diwani Adalat in Seshu Ammal v. Soundaraja Aiyar [(1853) MSDA 261] wherein it was held, following the opinion of the Sadar Court Pandits, that a woman was disqualified by reason of her sex from inheriting the office ofAcharyapurusha but the same Pandits opinion distinctly recognises that religious offices like those of an archaka or pujari can be held by a female, by her getting the duties thereof performed through a competent male substitute. In Tangirala Chiranjivi v. Rama Manikya Rao Rajaya Lakshmamma [AIR 1915 Madras 505 (1)] it was stated that there was no basis for the assumption that a minor, a female, or a person unlearned in the Vedas, will lose the right to service in the temple and that the onus will be on the person who alleges the disqualification to prove it. The learned Judges categorically asserted (apparently as being a matter within general knowledge and experience) that "service in temples is being performed by proxies". In Ramasundaram Pillai v. Savundaratha Ammal [AIR 1915 Madras 725] the learned Judges say as follows:
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> "It is undeniable that this and other High Courts have innumerous cases acted on the assumption (which was not questioned) that women could hold religious offices and get the duties performed by proxy."

They further say "It may be that the parties concerned are so accustomed to the idea of female office-holders with proxies that it has usually not occurred to them to question the legality of such a state of affairs and that in the absence of contest, the courts have somewhat too readily assumed it to be legal without requiring proof of a valid custom in support of it."

In Rajeswari Ammal v. Subramania Archaka [AIR 1917 Madras 963 (2)] the learned Judges state as follows:

> "We are of the opinion that a female is not, under Hindu law or custom, disqualified from succeeding to a hereditary religious office and getting such duties as she may be disqualified by reason of her sex from performing, performed by proxy."

The only dissentient view against this current of authority in the Madras High Court was that of Justice Sadasiva Aiyar in Sundarambal Ammal v. Yogavanagurukkal[AIR 1915 Madras 561] . He expressed a strong opinion that the practice of allowing the priestly office to be performed by a substitute excepting for merely temporary occasions or casual purposes, is wholly opposed to public policy and that it should not be recognised. In a later judgment in Annaya Tantri v. Ammaka Hengsu [AlR 1919 Madras 598 (FB)] relating to the same topic he (Justice Sadasiva Aiyar) stated as follows:

> "It is notorious that the deputy is usually chosen on the principle of a Dutch auction. The man who agrees to allow the widow to retain the largest portion of the emoluments of the office and to receive the least as his own remuneration is given the place of the deputy."

The learned Judge pointed out that "such a practice was mischievous and that even if it was sanctioned by usage it ought not to be recognised by courts."

There is certainly force in this comment. But in a matter of this kind where there is no express prohibition in the texts for the performance of the duties of the pujari is' office by the appointment of substitutes and where such an office has developed into a hereditary right of property, the consideration of public policy cannot be insisted on to the extent of negativing the right itself. In such a situation what has to be equally emphasised is the duty-aspect of the office and to insist, on the superior authorities in charge of the temple exercising vigilantly their responsibility by controlling the then incumbent of the priestly office in the exercise of his rights (or by other persons having interest taking appropriate steps through court), when it is found that the services are not being properly or efficiently performed. In view of the peculiar nature of such offices as combining in them both the element of property and the element of duty, it cannot be doubted that superior authorities in charge of the institutions or other persons interested have this right which may be enforced by appropriate legal means. In Raja Peary Mohan Mukherji v. Manohar Mukherji [48 IA 258] the Privy Council has recognised that notwithstanding the personal interest of a shebait in respect of his office, the performance of the duties thereof has got to be safeguarded and that he can be removed where he has put himself in a position in which the obligation of his office can no longer be faithfully discharged."

85. The idea of India as a nation is founded on the ideals of Indian civilization. While tradition can be enriching, history can be a baggage. With the advent of independence came political freedom. With the promulgation of the constitution came intellectual emancipation. The dreams of the founding fathers was to rid the nation of the prejudice of our ancestors. The architects of the

Constitution created an egalitarian constitution in a hierarchical society. The "self evident truth of equality of men" found expression in Article 14 of the Constitution of India.

86. The arguments raised by Shri Brij Raj, learned counsel are a familiar discourse in the evolution of constitutional law in India. The dilemma of a hierarchical society with an egalitarian constitution. The diverging pulls in an ancient society with a modern constitution . The conflict of government policy with constitutional values.

87. Rights flowing from hereditary offices and entitlements claimed on the foot of heredity are products of medieval times and feudal societies. They have no place in a nation ruled by law. They are an anachronism in our country governed as it is by a written constitution.

88. Dr. S. Radhakrishnan, well versed in our national heritage and conscious of our current discontents said "We have to carry on the fight against the inequalities imposed on us by force of custom or the authority of the past."

89. The creation or existence of hereditary public offices and claims to public largesse based on heredity, were rejected by the Hon'ble Supreme Court on the anvil of Article 16 of the Constitution of India.

90. Section 6 of the Madras Hereditary Village Offices Act, 1895, read as follows:

> "6.(1) In any local area in which this Act is in force the Board of Revenue may, subject to rules made in this behalf under Section 20, group or amalgamate any two or more villages or portions thereof so as to form a single new village or divide any village into two or more villages and, thereupon, all hereditary village offices (of the classes defined in Section 3, clause (1), of this Act) in the villages or portions of villages or village grouped, amalgamated or divided as aforesaid, shall cease to exist and new offices, which shall also be hereditary shall be created for the new village or villages. In choosing persons to fill such new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished."

91. One Dasaratha Rama Rao's application for appointment as Village Munsif was rejected on the ground that in view of the provisions of the Act, the son of the last office had to be preferred over Dasratha Rama Rao. The controversy reached the Hon'ble Supreme Court. The Hon'ble Supreme Court in Dasratha Rama Rao Vs. State of Andhra Pradesh reported at AIR1961 SC 564, considered the provision in the light of the constitutional regime against discrimination, and laid down the law in the terms stated hereunder:

> "Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds -- religion, race, caste, sex, place of birth or any of them. It is

available to citizens only, but is not restricted to any employment or office under the State. Article 16, clause (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Article 15 does not mention "descent" as one of the prohibited grounds of discrimination, whereas Article 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Article 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Services or to provisions in the earlier Constitution Acts relating to the same subject. These Service provisions do not enshrine any fundamental right of citizens; they relate to recruitment, conditions and tenure of service of persons, citizens or otherwise, appointed to a Civil Service or to posts in connection with the affairs of the Union or any State. The word "State", be it noted, has a different connotation in Part III relating to Fundamental Rights: it includes the Government and Parliament of India, the Government and Legislature of each of the States and all local or other authorities within the territory of India, etc. Therefore, the scope and ambit of the Service provisions are to a large extent distinct and different from the scope and ambit of the fundamental right guaranteeing to all citizens an equality of opportunity in matters of public employment. The preamble to the Constitution states that one of its objects is to secure to all citizens equality of status and opportunity; Article 16 gives equality of opportunity in matters of public employment. We think that it would be wrong in principle to cut down the amplitude of a fundamental right by reference to provisions which have an altogether different scope and purpose. Article 13 of the Constitution lays down inter alia that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are inconsistent with fundamental rights, shall to the extent of the inconsistency be void. In that Article "law" includes custom or usage having the force of law. Therefore, even if there was a custom which has been recognised by law with regard to a hereditary village office, that custom must yield to a fundamental right. Our attention has also been drawn to clause (4) of Article 16 which enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. The argument is that this clause refers to appointments or posts and further talks of inadequate representation in the services, and the learned Advocate-General has sought to restrict the scope of clauses (1) and (2) of Article 16 by reason of the provisions in clause (4). We are not concerned in this case with the true scope and effect of clause (4) and we express no opinion with regard to it. All that we say is that the expression "office under the State" in clauses (1) and (2) of Article 16 must be given its natural meaning.

"We are unable, therefore, to accept the argument of the learned Advocate-General that the expression "office under the State" in Article 16 has a restricted connotation and does not include a village office like that of the Village Munsif. In M. Ramappa v. Sangappa [(1959) SCR 1167] the question arose whether certain village offices governed by the Mysore Villages Offices Act, 1908, were offices of profit under the Government of any State within the meaning of Article 191 of the Constitution. This Court held that the offices were offices of profit under the Government and said:

"An office has to be held under someone for it is impossible to conceive of an office held under no one. The appointment being by the Government, the office to which it is made must be held under it, for there is no one else under whom it can be held. The learned Advocate said that the office was held under the village community. But such a thing is an impossibility for village communities have since a very long time, ceased to have any corporate existence."

"Learned Counsel for Respondent 4 has relied on the decision of this Court inAngurbala Mullick v. Debabrata Mullick [(1951) SCR 1125] where it was held that in the conception of shebaiti under Hindu law, both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. He has argued that on the same analogy the office of a village Munsif must be held to be an office cum property. We do not think that the analogy holds. As this Court pointed out inKalipada Chakraborti v. Palani Bala Devi [(1953) SCR 503] shebaitship is property of a peculiar and anomalous character and it is difficult to say that it comes under the category of immovable property as it is known to law. As to the office of a Village Munsif under the Act, the provisions of the Act itself and a long line of decisions make it quite clear that what go with the office are its emoluments, whether in the shape of land, assignment of revenue, agricultural produce, money, salary or any other kind of remuneration. These emoluments are granted or continued in respect of, or annexed to, the office by the State. This is made clear by Section 4 of the Act. Apart from the office there is no right to the emoluments. In other words, when a person is appointed to be a "Village Munsif" it is an appointment to an office by the State to be remunerated either by the use of land or by money, salary, etc.; it is not the case of a grant of land burdened with service, a distinction which was explained by the Privy Council in Lakhamgouda Basavprabhu Sardesai v. Baswantrao [AIR 1931 PC 157] . In Venkata v. Rama [ILR 8 Mad 249] where the question for decision was the effect of the enfranchisement of lands forming the emoluments of the hereditary village office of Karnam, it was pointed out:

"Emoluments for the discharge of the duties of the office were provided either in the shape of land exempt from revenue or subject to a lighter assessment, or of fees in grain or cash, or of both land and fees.

> When the emoluments consisted of land, the land did not became the family property of the person appointed to the office, whether in virtue of an hereditary claim to the office or otherwise. It was an appanage of the office inalienable by the office holder and designed to be the emolument of the officer into whose hands soever the office might pass. If the Revenue Authorities thought fit to disregard the claim of a person who asserted an hereditary right to the office and conferred it on a stranger, the person appointed to the office at once become entitled to the lands which constituted its emolument."

The same view was re-affirmed in Musti Venkata Jagannada Sharma v. Musti Veerabhadrayya [AIR 1922 PC 96] where the history of the office of Karnam was examined and it was observed that the "Karnam of the village occupies his office not by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is a member of a particular family". This latter decision was considered by a Full Bench of the Madras High Court in Manubolu Ranga Reddi v. Maram Reddi Dasaradharami Reddi [ILR 1938 Mad 249] and it was pointed out that their Lordships of the Privy Council, though they indicated the nature of the right which the Karnam had, did not consider the question whether on the creation of an office under Section 6(1), the members of the family of the last holder of the abolished office had the right to compel the Collector to carry out the duty cast upon him by the section. It was held that Section 6(1) creates a right in the family which can be enforced by suit. Learned Counsel for Respondent 4 has relied on this decision. It is worthy of note, however, that the decision was given on the footing that Section 6(1) was valid and mandatory in character. No question arose or could at that time arise of the contravention of a fundamental right guaranteed by the Constitution, by the hereditary principle embodied in Section 6(1) of the Act. The decision proceeded on the footing that the Act recognised a "right vested in a family" to the office in question and contained provisions to enforce that right. It did not proceed upon the footing that the family had a right to the property in the shape of emoluments, independent or irrespective of the office. In other words, the decision cannot be relied upon in support of the contention that a hereditary village office is like a shebaiti, that is, office cum property. That was not the ratio of the decision. The ratio simply was this that the Act had recognised the right vested in a family to the office in question. That decision cannot assist Respondent 4 in support of his contention that Article 16, clauses (1) and (2), do not apply to the office, even though the office is an office under the State. In Ramachandurani Purshotham v. Ramachandurani Venkatappa [AIR 1952 Mad 150] the question was whether the office of Karnam was "property" within the meaning of Article 19(1)(f) of the Constitution. It was held that it was not property within the meaning of that Article. The same view was expressed in Pasala Rama Rao v. Board of Revenue [AIR 1954 Mad 483] where it was observed that the right to succeed to a hereditary office was not property and the relation back of an adopted son's rights was only with regard to property. This view was not accepted in Chandra Chowdary v. Board of Revenue [AIR 1959 Andhra Pradesh 343] where it was observed that the fact that the adoption was posthumous did not make any difference and the adoption being to the last office holder, the adopted son must be deemed to have been in existence at the time of the death of the male holder and had the right to succeed to the office. It was further observed that the office of a Village Munsif was "property" so as to attract the operation of the rule that the adoption related back to the date of the death of the last male holder. We are not concerned in this case with the doctrine of relation

back in the matter of a posthumous adoption. The simple question before us is whether the office, though it is an office under the State, is of such a nature that clauses (1) and (2) of Article 16 of the Constitution are not attracted to it. We are of the view that there is nothing in the nature of the office which takes it out of the ambit of clauses (1) and (2) of Article 16 of the Constitution. An office has its emoluments, and it would be wrong to hold that though the office is an office under the State, it is not within the ambit of Article 16 because at a time prior to the Constitution, the law recognised a custom by which there was a preferential right to the office in the members of a particular family. The real question is -- is that custom which is recognised and regulated by the Act consistent with the fundamental right guaranteed by Article 16? We do not agree with learned Counsel for Respondent 4 that the family had any pre-existing right to property in the shape of the emoluments of the office, independent or irrespective of the office. If there was no such pre-existing right to property apart from the office, then the answer must clearly be that Article 16 applies and Section 6(1) of the Act insofar as it makes a discrimination on the ground of descent only, is violative of the fundamental right of the petitioner.

> "There can be no doubt that Section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the persons to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Article 16(2) of the Constitution."

92. The concept of compassionate appointments has its origin in service law. The constitutionality of compassionate appointments was called in question in courts. Compassionate appointments were questioned as they were claimed on the basis of heredity. Compassionate appointments scraped through the test of constitutionality, by a slender margin. Judicial authority justified the classification of the kin of a deceased employee into a single class. The members of this class faced present or imminent financial penury on the death of the earning member. It would be apposite to reinforce the narrative with good authority.

93. The purpose of compassionate appointments provides their justification. The death of a bread winner forces the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created to enable the bereaved family to tide over the immediate financial crisis.

94. The Hon'ble the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana, reported at (1994) 4 SCC 138, explained the purpose of compassionate in following terms:

> "2.The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other

> procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

95. The Hon'ble the Supreme Court in Haryana SEB Vs. Hakim Singh, reported at (1997) 8 SCC 85, cautioned that compassionate appointment were not an alternative mode of recruitment to public employment, by laying down the law thus:

> "The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again

that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

96. The Hon'ble the Supreme Court set its face against appointments based on descent in the case of Bhawani Prasad Sonkar Vs Union of India and Others, reported at (2011) 4 SCC 209. The Hon'ble the Supreme Court in Bhawani Prasad Sonkar (supra), spoke as follows:

"Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve."

"In Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] , while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2) "2. ... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made

in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

"Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

97. A similar stand against impermissibility of appointments based on descent was taken at an earlier point in time in the case of V. Sivamurthy Vs. State of Andhra Pradesh, reported at (2008) 13 SCC 730, hereunder:

"18. (a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies."

98. The criteria of financial hardship faced by the family of the deceased caused by his death, provides a thin membrane of legitimacy to compassionate appointments. A reading of these authorities show that shorn of this thin cover of legitimacy or if any other criteria is employed to make compassionate appointments, the appointments would become vulnerable to a constitutional challenge. Appointments based on descent or claims of appointment which rest on heredity, invite

the wrath of Article 16 of the Constitution of India.

99. The judicial authority on compassionate ground appointments quoted above is relevant to the controversy and can be applied with profit. Of course, compassionate ground appointments were tested on the anvil of Article 16.

100. The most significant ambition of the founding fathers was expressed in most simple words. The terse words of Article 14 of the Constitution of India, translated the historical quest for equality into a perpetual promise of equality. The promise is redeemed by the courts on demand by the citizens. The courts have avoided a doctrinaire interpretation but have also eschewed an abstruse approach to the provision. The courts evolved judicially manageable standards while construing Article 14.

101. Article 14 of the Constitution of India vests the inalienable right of equality and makes the immutable promise of securing equal protection of laws. Rightly called the "fundamental charter of equality," it reads thus:

> "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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

102. Article 14 prohibits hostile discrimination but does not prevent valid classification. Valid classification to achieve a lawful object has sanction of the constitution and approval of the courts. Classification has to be based on intelligible differentia and should subserve the object for which it was created.

103. The criteria for valid classification has been well settled. The judicial authority on the point is long and consistent. The Hon'ble Supreme Court, in the case of Deepak Sibal Vs. Punjab University, reported at (1989) 2 SCC 145, reiterated the settled position of long when it held:

> "It is now well settled that Article 14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question."

104. The Hon'ble Supreme Court in the case of EP Royappa Vs. State of Tamil Nadu, reported at (1974)4 SCC 3, introduced another facet to Article 14 of the Constitution of India. Arbitrary action by the State was encompassed in the sweep of Article 14. The validity of arbitrary action of the state from then on was tested on the anvil of Article 14. The following exposition of law laid down in EP Royappa (supra) endures to this date.

"The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

105. The test of validity of State action laid down in EP Royappa (supra) was refined in the case of Shayara Bano Vs. Union of India, reported at (2017) 9 SCC 1.

106. In the case of Shyara Bano (supra) the Hon'ble Supreme Court, adopted the definition of 'arbitrarily' as laid down in Sharma Transport Vs. State of Andhra Pradesh, reported at (2002) 2 SCC 188:

> "25....The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

107. Equality has a surreal quality. Equality cannot be closeted only in judicial formula of legal precedents. Nor can it be only encased in the certitudes of judicial authority.

108. Equality as an idea has to be dynamic to remain relevant. The virtue of consistency in judicial authority brings certainty to law. But the comfort of certainty may cause stagnation in law. In current times the management of the pace of change is a challenge to the legislature and the courts alike.

109. The settled judicial authority was creating a judicial stasis. Settled law serves little purpose if it stagnates legal thought. Stagnant legal thought cannot deliver justice on demand by the citizens. The danger lies not so much in inadequacy but in complacency. The need to ensure continuity was equalled by the imperative to bring change, in the scope of Article 14 was felt by the Hon'ble Supreme Court in Navtej Singh Johar v. Union of India reported at 2018 SCC OnLine SC 1350.

110. The judgment of the Hon'ble D. Y. Chandrachud, J. in the case of Navtej Singh Johar v. Union of India reported at 2018 SCC OnLine SC 1350 ushered in the third dimension to Article 14, by holding thus:

> "Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula: the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism lies in its inability to lay threadbare the values which guide the process of judging constitutional rights. Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values - of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in state action. As our constitutional jurisprudence has evolved towards recognizing the substantive content of liberty and equality, the core of Article 14 has emerged out of the shadows of classification. Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavor and in every facet of human existence.

111. Traditional boundaries of Article 14 were breached. The arc of equality was put on a career of expanding horizons.

112. Coming back to the offending criteria in the impugned Government Order which by providing for appointment on the basis of the good reputation of the deceased father or kin of the appointee, removes the thin cover of legitimacy of a compassionate appointment. Bereft of this cover of legitimacy, the appointment under the impugned Government Order fails the test of constitutionality.

113. The claim for appointment under Government Order rests on heredity, in view of the offending criteria. The grant of fair price shop dealer under Government Order is based on descent and the dealership becomes a hereditary business.

114. Appointment of a fair price shop dealer has to be made on the basis of merit. It is the prerogative of the state to define merit. It is the province of the state to determine the criteria of merit. But both the definition and criteria of merit have to conform to the provisions of the constitution.

115. In our constitutional scheme, merit cannot be assumed from the accident of birth, it has to be achieved by the dint of industry. Equally merit cannot be assumed from the nobility of descent, it has to be acquired by the force of character. Our constitution opens the pursuit of dreams to all citizens by providing equal opportunity to all citizens to realize them. Disability resulting from birth and gains accruing from descent negate the concept of equality and create discrimination. A noble parentage may be a cause of personal pride but cannot be a source of constitutional privileges or benefits from the state. Nor can any claim for state largesse rest on the accidental privilege of ancestory.

116. The new order was proclaimed by the Poet Maithili Sharan Gupt, in verse:

" ¢ ¶ † ° ¶ □
• □ , ¢ ° ,

› □ › † □ ¢ › ¢
› † „ • , ¢ "

117. Acquisitions of intellect and industry, excellence of character and creativity constitute the basis of merit and the foundation of a claim for state largesse in a society ruled by law. However, the offending Government Order only entitles the kin of a deceased dealer who had a good reputation to be appointed fair price shop dealer on compassionate grounds.

118. There is yet another side to the controversy. The case of a deceased dealer who purportedly does not enjoy a good reputation. The kin of such dealer are denied appointment under the impugned Government Order on the footing of the poor reputation of the deceased. This is a disability resulting from descent. The faults of the dead cannot rule the fate of the living. Past sins of the dead ancestors cannot blight the future of the living descendants. Condemning succeeding generations for the sins of ancestors is not consistent with the rule of law and does not conform to any standard

of justice. The universal idea of justice was cast in the poetic lament:

" ” » † , ...‰ • ¢ ?"

For a man's crime you punish his sons Is that the standard of justice?

119. The criteria of making an appointment of a dealer on the basis of the reputation of a deceased kin has no nexus with the object of appointment on compassionate grounds. The classification of candidates on the basis of good and bad reputation of their deceased kin is unreasonable and bears no connect with the object of compassionate appointments. Such classification does not subserve the purpose of compassionate appointments. On the contrary it creates a discriminatory regime. The classification fails the test of valid classification under Article 14 of the Constitution of India.

120. The criteria for appointment of fair price shop dealers on compassionate grounds prescribed in the impugned Government Order is arbitrary and flagrantly violates Article 14 of the Constitution of India.

121. Fair Price Shop dealer is appointed by the State. After the name of the dealer is approved, a contract is executed between the State and the dealer. The fair price shop dealer functions as a licensee of the State Government. A fair price shop dealer is a pivot in the public distribution system. Essential commodities are distributed to the ration card holders through the agency of the fair price shop dealer. The benefits under the National Food Security Act are transmitted to eligible persons and rights of card holders under the Act are brought to eligible persons to a fruition through the medium of the fair price shop dealer. The fair price shop dealer performs a vital public function.

122. The grant of contract of fair price shop dealership is an act of distribution of State largesse. Grant of State largesse through contracts, licenses and the like is amenable to the discipline of Article 14 of the Constitution of India and subject to judicial review by courts.

123. The grant of public contracts or distribution of public largesse by the State is in the oversight of Article 14. Good judicial authority has consistently held that arbitrary criteria for grant of public largesse will be invalidated on the anvil of Article 14.

124. The consistency in judicial authority has accorded clarity to law. At this stage it would be apposite to notice the judicial authority in point.

125. The Hon'ble Supreme Court in the case of Rishi Kiran Logistics Pvt. Ltd Vs. Board of Trustees of Kandla Port Trust and others reported at (2015) 13 SCC 233, reaffirmed the well settled position of law on the position by relying on past authority. The relevant parts of the judgement are extracted hereunder:

> "A lucid enunciation on the scope of judicial review of administrative action, that too in tender matters can be found in Tata Cellular v. Union of India [(1994) 6 SCC 651] , where following discussion is worthy of extraction: (SCC pp. 675-78 & 680, paras 70,

74, 77 & 81) "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

(1) Whether a decision-making authority exceeded its powers?

(2) committed an error of law, (3) committed a breach of the rules of natural justice, (4) reached a decision which no reasonable tribunal would have reached, or (5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secy. of State for Home Deptt., ex p Brind [(1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] , Lord Diplock refers specifically to one development,

namely, the possible recognition of the principle of proportionality [Ed.: This opinion of Lord Diplock was given in Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374, at p. 410 (HL) and referred to in R. v. Secy. of State for Home Deptt., ex p Brind, (1991) 1 AC 696, at pp. 741-42 (HL).] . In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention'.

81. Two other facets of irrationality may be mentioned:

> (1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secy. of State for Environment [(1980) 41 P & CR 255] , the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.
>
> (2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. v.Barnet London Borough Council, ex p Johnson [(1989) 88 LGR 73 (DC)] the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

(emphasis in original)

126. The offending criteria for appointment of a fair price shop dealer on compassionate grounds, is an arbitrary exercise of power for grant of public largesse and in the teeth of the law laid down by the Hon'ble Supreme Court in the case of Rishi Kiran Logistics Pvt. Ltd. (supra).

127. Articles 14, 15 and 16 are the triad of the promise of equality and the pledge of non discrimination. The articles reflect different aspects of equality. The protection against discrimination is also a facet of equality. On occasions all facets of equality and non discrimination get integrated and are indivisible.

128. Article 15, in particular creates a prohibition against discrimination the Constitution. Article 15 is extracted hereinunder for ease of reference.

> "15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any

disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public (3) Nothing in this article shall prevent the State from making any special provision for women and children (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes"

129. Article 16 has relevance to the discussion and is hence reproduced as follows:

"16. Equality of opportunity in matters of public employment (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

130. The ambit of protection of Article 15 is wide, but apparently not wide enough. Article 16 relates to appointments to the state offices, and related matters. Article 15 has a more general applicability.

131. Article 16 prohibits discrimination based on "descent". The word "descent" is absent in Article 15. Instead the wording of Article 15 restrains discrimination "only on the basis of" the "place of birth".

132. Does this mean that Article 15 permits discrimination based on descent? Certainly not. Such a formalistic interpretation, as we shall now, has been rejected by the courts.

133. The interpretation of Article 15 of the Constitution of India in Navtej Singh Johar (supra) is instructive. The Hon'ble Supreme Court eschewed a formalistic interpretation of the provision. The

following exposition of law in regard to Article 15 by Hon'ble Dr. D.Y. Chandrachud, J. in Navtej Singh Johar (supra), where the phraseology was widely construed and the provision was broadly interpreted is relevant. This interpretational method shall rule the fate of this case:

> "When the constitutionality of a law is challenged on the ground that it violates the guarantees in Part III of the Constitution, what is determinative is its effect on the infringement of fundamental rights.184 This affords the guaranteed freedoms their true potential against a claim by the state that the infringement of the right was not the object of the provision. It is not the object of the law which impairs the rights of the citizens. Nor is the form of the action taken determinative of the protection that can be claimed. It is the effect of the law upon the fundamental right which calls the courts to step in and remedy the violation. The individual is aggrieved because the law hurts. The hurt to the individual is measured by the violation of a protected right. Hence, while assessing whether a law infringes a fundamental right, it is not the intention of the lawmaker that is determinative, but whether the effect or operation of the law infringes fundamental rights.
>
> Article 15 of the Constitution reads thus:
>
> "15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

(Emphasis supplied) Article 15 prohibits the State from discriminating on grounds only of sex. Early judicial pronouncements adjudged whether discrimination aimed only at sex is covered by Article 15 or whether the guarantee is attracted even to a discrimination on the basis of sex and some other grounds (''Sex plus'). The argument was that since Article 15 prohibited discrimination on only specified grounds, discrimination resulting from a specified ground coupled with other considerations is not prohibited. The view was that if the discrimination is justified on the grounds of sex and another factor, it would not be covered by the prohibition in Article 15"

> "One of the earliest cases decided in 1951 was by the Calcutta High Court in Sri. Sri Mahadev Jiew v. Dr. B.B. Sen185. Under Order XXV, R. 1 of the Code of Civil Procedure, men could be made liable for paying a security cost if they did not possess sufficient movable property in India only if they were residing outside India. However, women were responsible for paying such security, regardless of whether or not they were residing in India. In other words, the law drew a distinction between resident males who did not have sufficient immovable property, and resident females who did not have sufficient immovable property. Upholding the provision, the Calcutta High Court held:
>
> "31. Article 15(1) of the Constitution pro-vides, inter alia, -- The State shall not discriminate against any citizen on grounds only of sex. The word ''only' in this Article is of great importance and significance which should not be missed. The impugned law must be shown to discriminate because of sex alone. If other factors in

> addition to sex come into play in making the discriminatory law, then such discrimination does not, in my judgment, come within the provision of Article 15(1) of the Constitution."

(Emphasis supplied) This interpretation was upheld by this Court in Air India v. Nergesh Meerza ("Nergesh Meerza").186 Regulations 46 and 47 of the Air India Employees' Service Regulations were challenged for causing a disparity between the pay and promotional opportunities of men and women in-flight cabin crew. Under Regulation 46, while the retirement age for male Flight Pursers was fifty eight, Air Hostesses were required to retire at thirty five, or on marriage (if they married within four years of joining service), or on their first pregnancy, whichever occurred earlier. This period could be extended in the absolute discretion of the Managing Director. Even though the two cadres were constituted on the grounds of sex, the Court upheld the Regulations in part and opined:

> "68. Even otherwise, what Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations."

(Emphasis supplied) "This formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. For it would allow the State to claim that the discrimination was based on sex and another ground (''Sex plus') and hence outside the ambit of Article 15. Latent in the argument of the discrimination, are stereotypical notions of the differences between men and women which are then used to justify the discrimination. This narrow view of Article 15 strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context. For example, a rule that people over six feet would not be employed in the army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex and height. Such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination, which intersects varied identities and characteristics."

(emphasis supplied) "A divergent note was struck by this Court in Anuj Garg v. Hotel Association of India187. Section 30 of the Punjab Excise Act, 1914 prohibited the employment of women (and men under 25 years) in premises where liquor or other intoxicating drugs were consumed by the public. Striking down the law as suffering from "incurable fixations of stereotype morality and conception of sexual role", the Court held:

> "42... one issue of immediate relevance in such cases is the effect of the traditional cultural norms as also the state of general ambience in the society which women have to face while opting for an employment which is otherwise completely innocuous for the male counterpart..."

> "43...It is state's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the

> profession they choose to follow. Any other policy inference (such as the one embodied under section 30) from societal conditions would be oppressive on the women and against the privacy rights."

(Emphasis supplied) The Court recognized that traditional cultural norms stereotype gender roles. These stereotypes are premised on assumptions about socially ascribed roles of gender which discriminate against women. The Court held that "insofar as governmental policy is based on the aforesaid cultural norms, it is constitutionally invalid." In the same line, the Court also cited with approval, the judgments of the US Supreme Court in Frontiero v. Richardson188, and United States v. Virginia189, and Justice Marshall's dissent in Dothard v. Rawlinson190, The Court grounded the anti-stereotyping principle as firmly rooted in the prohibition under Article 15.

In National Legal Services Authority v. Union of India ("NALSA")191, while dealing with the rights of transgender persons under the Constitution, this Court opined:

> "66. Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of ''sex' Under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity."

(Emphasis supplied) This approach, in my view, is correct.

In Nergesh Meerza, this Court held that where persons of a particular class, in view of the "special attributes, qualities" are treated differently in ''public interest', such a classification would not be discriminatory. The Court opined that since the modes of recruitment, promotional avenues and other matters were different for Air Hostesses, they constituted a class separate from male Flight Pursers. This, despite noting that "a perusal of the job functions which have been detailed in the affidavit, clearly shows that the functions of the two, though obviously different overlap on some points but the difference, if any, is one of degree rather than of kind."

> "The Court did not embark on the preliminary enquiry as to whether the initial classification between the two cadres, being grounded in sex, was violative of the constitutional guarantee against discrimination. Referring specifically to the three significant disabilities that the Regulations imposed on Air Hostesses, the Court held that "there can be no doubt that these peculiar conditions do form part of the Regulations governing Air Hostesses but once we have held that Air Hostesses form a separate category with different and separate incidents the circumstances pointed out

by the petitioners cannot amount to discrimination so as to violate Article 14 of the Constitution on this ground."

"The basis of the classification was that only men could become male Flight Pursers and only women could become Air Hostesses. The very constitution of the cadre was based on sex. What this meant was, that to pass the non-discrimination test found in Article 15, the State merely had to create two separate classes based on sex and constitute two separate cadres. That would not be discriminatory.

The Court went a step ahead and opined:

"80...Thus, the Regulation permits an AH to marry at the age of 23 if she has joined the service at the age of 19 which is by all standards a very sound and salutary provision. Apart from improving the health of the employee, it helps a good in the promotion and boosting up of our family planning programme. Secondly, if a woman marries near about the age of 20 to 23 years, she becomes fully mature and there is every chance of such a marriage proving a success, all things being equal. Thirdly, it has been rightly pointed out to us by the Corporation that if the bar of marriage within four years of service is removed then the Corporation will have to incur huge expenditure in recruiting additional AHs either on a temporary or on ad hoc basis to replace the working AHs if they conceive and any period short of four years would be too little a time for the Corporation to phase out such an ambitious plan."

(Emphasis supplied) "A strong stereotype underlines the judgment. The Court did not recognize that men were not subject to the same standards with respect to marriage. It holds that the burdens of health and family planning rest solely on women. This perpetuates the notion that the obligations of raising family are those solely of the woman. In dealing with the provision for termination of service on the first pregnancy, the Court opined that a substituted provision for termination on the third pregnancy would be in the "larger interest of the health of the Air Hostesses concerned as also for the good upbringing of the children." Here again, the Court's view rested on a stereotype. The patronizing attitude towards the role of women compounds the difficulty in accepting the logic ofNergesh Meerza. This approach, in my view, is patently incorrect.

"A discriminatory act will be tested against constitutional values. A discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex. If certain characteristics grounded in stereotypes, are to be associated with entire classes of people constituted as groups by any of the grounds prohibited in Article 15(1), that cannot establish a permissible reason to discriminate. Such a discrimination will be in violation of the constitutional guarantee against discrimination in Article 15(1). That such a discrimination is a result of grounds rooted in sex and other

considerations, can no longer be held to be a position supported by the intersectional understanding of how discrimination operates. This infuses Article 15 with true rigour to give it a complete constitutional dimension in prohibiting discrimination.

The approach adopted the Court in Nergesh Meerza, is incorrect.

(emphasis supplied) A provision challenged as being ultra vires the prohibition of discrimination on the grounds only of sex under Article 15(1) is to be assessed not by the objects of the state in enacting it, but by the effect that the provision has on affected individuals and on their fundamental rights. Any ground of discrimination, direct or indirect, which is founded on a particular understanding of the role of the sex, would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex."

(emphasis supplied)

134. The phrase "place of birth" in Article 15, has to be understood, to guide a decision in this case. The word "place" has multiple meanings and varied usage in the English language. One such usage and meaning described in the Oxford Thesaurus is "status, position, standing, rank, niche." The interpretation of the word "place" in Article 15 is not restricted to one of the literal meanings namely "particular position or area or a location."

135. Article 15 creates a regime prohibiting discrimination. The scope of Article 15 cannot be curtailed by a restrictive interpretation of the word "place" in the provision. The phrase "place of birth" occurring in Article 15 also connotes the status or position or rank or niche or standing in which a citizen is born. Essentially, it means that status and the like of the parents of the citizen, when one is born. In other words the phrase "place of birth" is a species of the word "descent".

136. Any basis of discrimination, direct, implied or consequential, made on the foot of the circumstances of a person's birth or status of a person's lineage would be unconstitutional. Such discrimination would be indistinguishable from the discrimination which is prohibited by Article 15 on the grounds of "place of birth."

137. It has been found in the earlier parts of the narrative that essentially the offending criteria in the Government Order dated 17.08.2002 for appointment of fair price shop dealer on compassionate grounds is based on heredity. It converts public largesse into a hereditary claim. The offending criteria is violative of Article 15 of the Constitution of India as it discriminates on the basis of place of birth.

138. The provision 10 ( ) in the Government Order dated 17.08.2002 is violative of Articles 14, 15 and 21 of the constitution of India.

139. The provision of 10 ( ) of the Government Order dated 17.08.2002 cannot stand and is quashed.

140. The matter is remitted back to the the Government/Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow for fresh consideration. The State Government has vast latitude in framing policy decisions. The criteria for appointment of a fair price shop dealer on compassionate grounds falls within the realm of policy. It is for the State Government to determine the criteria and the process for appointment of fair price shop dealers on compassionate grounds.

141. A writ of mandamus is issued commanding the State Government/Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow, to execute the following directions:

> I. The State Government/Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow shall frame fresh criteria for appointment of kin of a deceased fair shop dealer as fair price shop dealer on compassionate grounds, consistent with the observations made in the judgement.
>
> II. The State Government/Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow shall ensure that no regular appointment of fair price shop dealers shall be made in village panchayats where the applications for appointment as fair price dealer on compassionate grounds of the kin of a deceased fair price shop dealer are pending or where such kin are entitled for such dealership on compassionate grounds. The regular appointments of fair price shop dealer in such cases shall be held in abeyance, till the criteria for appointment of fair price shop dealers on compassionate grounds is finalized.
>
> III. The State Government/Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow shall ensure that the rights of the petitioners for appointment as fair price dealers on compassionate grounds are not prejudiced in any manner, till the criteria for appointment of fair price shop dealers on compassionate grounds is finalized.
>
> IV. After the finalization of the criteria for appointment of the kin of a deceased dealer as fair price shop dealer on compassionate grounds, the appointments of the eligible kin of a deceased-dealer shall be made.
>
> V. The case of the petitioners for appointment as fair price shop dealers on compassionate grounds shall be considered afresh after the finalization of the said criteria for appointment of fair price shop dealers on compassionate grounds.
>
> VI. The entire exercise mentioned in the preceding directions shall be completed within four months.
>
> VII. The Chief Standing Counsel shall communicate a copy of this order to the Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow for compliance.

VIII. In case, the Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow is not the competent authority to execute the above said directions, the Principal Secretary (Food and Civil Supplies), Government of Uttar Pradesh, Lucknow shall forthwith transmit this order to the competent authority in the State Government to execute the said directions.

142. The writ petitions are allowed.

Order Date :- 26/10/2018 Dhananjai