practice of filing of false private complaint. The people must be aware that they shall not file a false private complaint into the Court, if they file a complaint into Court they will be penalized.

5. The Court must take all steps, if the witness turned hostile, he must be prosecuted for giving or deposing false evidence before the Court.

Why, I am also adding the point No.5 is that because there may be some offences which are not compoundable one wherein police might have filed charge-sheet, but the matter might have been settled in the P.S. itself. Because of the nature of the offence those offences cannot be compounded in such cases naturally the *defacto*-complainant will turn hostile and in such cases the Court has to take steps for prosecution against such witnesses for deposing false evidence in this Court.

If all the above aspects were being followed it will ultimately give burden to the Court *i.e.* recording of the sworn statements and penalizing the complainant for filing of the false case and prosecuting the hostile witness, these are all additional burden to the Court, but one thing is to be remembered, the Courts are established to do justice to the needy people, who approached and knocked the door steps of the Court. We cannot settle the disputes or we cannot adjudicate their claims without following the procedure established under law. "Justice is not only be done, but it must also seems to have been done." Lastly the Legislatures must think why this problem has come up in my view if the civil cases are being disposed off within the stipulated time then the litigant public will also feels that they can solve their problem under civil law without approaching the other methods. In this regard, I sincerely invite the comments from the entire judicial fraternity.

DOCTRINE OF ELECTION VERSUS FUNDAMENTAL RIGHTS UNDER PART III OF THE CONSTITUTION OF INDIA

By

—VARAHAGIRI PRASADA RAO,
Advocate,
Bobbili, A.P.

1. In legal jurisprudence the doctrine of election often comes to be implemented while interpreting provisions of various statutes. The doctrine of election is a rule of estoppel. It is an obligation imposed upon a party by the Court of equity to choose between two inconsistent or alternative rights or claims, in cases where there is clear intention of the person from whom he derives one that he should not enjoy both and that he, who accepts a benefit under a deed must adopt the whole contents of the instrument. In other words, if a person has two means or remedies open to him under an enactment to achieve a particular relief, he is given the option to pursue one of the two remedies only but not the two remedies simultaneously. The said remedies may be available in the same Act or under different Acts, but if the goal is common under the two different Acts, the beneficiary must have to elect one remedy only at his choice but he cannot take advantage of both the releifs, given to him under the same

Act or different Acts. Out of two parallel remedies, the beneficiary has to elect one only at his choice. This principle can be well explained by way of referring to an example.

Under the provisions contained in the Act known as "Debts Due to Banks and Financial Institutions Act, 1993". Banks and Financial Institutions are entitled to recover money from the borrowers in respect of debts of Rs.ten lakhs and above by way of filing an application under Section 19 of the Act. Equally too, the Banks or Financial Institutions are entitled to recover the same involving their power under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The scheme of the 2002 Act is suggestive of the fact that the proceedings under the Securitization Act are for expeditious recovery of loans from the secured assets without the intervention of the Court or Tribunal. Though the scope and operation of the said two statutes are different, both lead to a common goal *i.e.*, recovery of debts due to the banks and financial institutions. Therefore, out of the two parallel remedies, the banks or the financial institutions have to elect their remedy. That is, the Banks cannot have simultaneous actions under the two Acts. They have to abandon one remedy and pursue the other remedy of its choice.

2. Our Constitution guaranteed to all citizens of India certain fundamental rights, which are declared in Part-III of the Constitution of India, of which Articles 13 and 14 are being referred for the present purpose. Under Article 13(2) of the Constitution, it is said that the State shall not make any law, which takes away or abridges the rights conferred by this part and any law made in contravention of this clause, shall, to the extent of the contravention, be void; Under Article 14 it is said that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. So, if these two Articles are aptly interpreted, it becomes crystal clear that 'any law made by the State shall not deny equality before law to any person, that is, law made by the State shall be administered equally in all respects with reference to the persons to be administered under the said law.

3. Now, in the above backdrop of legal propositions, it is my endeavour to focus the views of the intelligentia into the sphere where the right opted by a person under the doctrine of election, in its course of implementation, comes into clash of the fundamental right guaranteed under Article 14 of the Constitution to any person. There are innumerable number of such conflicts, which will be experienced by us on so many occasions. In this context, I would like to refer to a case under Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, reported in *Northern India Caterers Private Limited v. State of Punjab*, AIR 1967 SC 1581, consisting of five Judges; the facts of the case are : The State of Punjab leased Mount View Hotel at Chandigarh to North India Caterers Private Limited for a period of six years from 24th September, 1953. The Estate Officer, appointed under Section 3 of the said Act, issued notice to North India Caterers under Section 4 of the said Act, requiring the North India Caterers to show-cause as to why order of eviction should not be made. Section 5 of that Act provided that, after considering the cause and the evidence produced by any person in unauthorised occupation of a public premises and after giving him reasonable opportunity of being heard, if the Estate Officer is satisfied that the public premises are in unauthorized occupation, he may make an order of eviction. This Section 5 of the Act was held by Apex Court in the above referred case to leave it to the arbitrary discretion of the Estate Officer to make an order of eviction

in the case of some of the tenants and not to make the same order in the case of others. It was found by the Apex Court that Section 5 did not lay down any guiding principle or policy under which the Estate Officer had to decide, in which case he should follow one procedure and in which case, he should follow the other procedure. The Supreme Court held therein that the Government had two remedies open to them – one was under the ordinary law and the other, which was a drastic and more prejudicial remedy, under Section 5 of the Act. So the Supreme Court struck down Section 5 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, as it is violative of Article 14 of the Constitution. In the said judgment, it was held that the Government has definitely power to enact a separate law for evicting unauthorised occupants from the Government buildings, so that unauthorised occupants can be quickly evicted by the officers appointed under the said Act as per the provisions contained therein and treating Government buildings as a separate class by themselves, without treating them on par with private buildings, in the interests of general public. It was also pointed out that the classification of tenants in public premises as a separate class of tenants when compared to tenants in private buildings is also within the power of the Government and the Government can definitely enact a separate law governing the rights, duties and obligations of tenants in public premises, without the application of the provisions of any other law relating to eviction of tenants from private buildings; but, amongst the same class of tenants, who are residing in the same public premises and who are to be dealt with under Public Premises Eviction Act, there shall not be any different kind of treatment in between them. It was held that the word "may" in Section 5 of the said Act is mischievous, inasmuch as it depends upon the sweet will and pleasure of the Estate Officer either to take action against a tenant in public premises under Section 5 of the said Act or not. If he does not choose to take action under Section 5 of the Act, it leaves no option for the Estate Officer except to file a regular suit in a civil Court for eviction, which will take considerably long time, the very mischief of which was alone intended to be eradicated by passing the Public Premises Eviction Act. It was also further pointed out that the power given to the Estate Officer will, more often than not, result in abuse of power vested in Estate Officer, as there is every likelihood that the Estate Officer opts to exercise his drastic powers vested in him under Section 5 in respect of such tenants in the public premises towards whom he is personally ill-disposed and files a civil suit in ordinary Courts for eviction of such tenants in the same public premises, in respect of whom he has friendship or affection or who are his yes-men. So observing, the Supreme Court consisting of five Judges struck down Section 5 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. So, the law-point which Supreme Court consisting of Five Judges ruled in AIR 1967 SC 1581 is this *: "The Government had two remedies open to it, one was under the ordinary law and the other was a drastic and a more prejudical remedy under Section 5 of the Act. Consequently, Section 5 of the Act being violative of Article 14 of the Constitution was struck down as unconstitutional*".

The above decision was unanimously approved by a Seven Judge Bench of the Supreme Court in AIR 1972 SC 2205. So, as per the 1972 judgment of the Supreme Court, it is the law of the land that there shall not be any Act which vests certain powers under it in any authority which can be exercised by it in either of two or more ways provided in the said Act at his own will and pleasure, in order to achieve a particular relief.

4. Now, the point, which I want to project is this; "Can an authority or person,

under the guise of exercising his right under an Act or different Acts which is a creature emanating from the doctrine of election seriously interfere with the fundamental right of a person, guaranteed to him under Article 14 of the Constitution ?"

5. But, the Supreme Court of India, consisting of three Judges held in *A.P. State Financial Corporation of India vs. M/s. Gar Re-Rolling Mills*, reported in AIR 1994 SC 2151, while dealing with the provisions of Section 29 and Section 31 of the State Financial Corporation Act, 1951 has held that a State Financial Corporation has two remedies available to it against the defaulting industrial concern and that the choice of availing the remedy is that of State Financial Corporation alone with a rider that the State Financial Corporation cannot simultaneously initiate and take recourse to the remedy available to it under Section 29, unless it gives up, abandons or withdraws the proceedings under Section 31 of the State Financial Corporations Act, 1951. But; the pity is, the earlier two decisions of the Supreme Court to wit, AIR 1967 SC 1581, consisting of Five Judges, and AIR 1972 SC 2205, consisting of seven Judges which are binding on subsequent judgments of the Supreme Court with lesser number of Judges were not cited before the Lordships, three in number, who delivered the judgment in *A.P. State Financial Corporation v. M/s. Gar Re-Rolling Mills*, reported in AIR 1994 SC 2151. In AIR 1989 SC 1933 the Supreme Court comprising of Five Judges held that the decisions given by a Division Bench binds a Division Bench of same or smaller number of Judges, if same point comes for consideration later on.

6. The Andhra Pradesh High Court, following AIR 1994 SC 2151, held in 1996 (3) ALT 629 (DB) and also in other subsequent decisions that a State Financial Corporation has the option to exercise its right either under Section 29 or under the Section 31 of State Financial Corporations Act, 1951. The earlier two apex Court decisions reported in AIR 1967 SC 1581, of five Judges and AIR 1972 SC 2205, of seven Judges, were not brought to the notice of the Honourable Judges, who delivered judgments in 1996 (3) ALT 629 (DB), and the subsequent judgments of A.P. High Court.

7. Now, the proposition of law as ruled by seven Judges of the Supreme Court unanimously, reported in AIR 1972 SC 2205, to wit, that, any provision of an Act enacted by the State, giving two alternative remedies to the authorities named in the said Act, either of which can be resorted to by the said authority indiscriminately, unbridled, without any guidelines and at its own will and sweet pleasure, to achieve a particular relief as required under the said Act, is unconstitutional and void under Article 13 and also inderogation of the fundamental right guaranteed to a person affected under the said Act under Article 14 of the Constitution, was not followed by the Supreme Court itself in subsequent decision reported in 1994 SC 215 of three Judges as the said two decisions stated supra which are binding on the Supreme Court consisting of lesser number of Judges were not brought to the notice of the learned Judges of the Supreme Court in AIR 1994 SC 2151 and consequently, the Supreme Court ruled an altogether diametrically opposite proposition of law, in my humble and honest opinion. The High Courts followed AIR 1994 SC 2151 only as they have also no notice of the earlier Supreme Court decisions stated above.

8. Recently, the vires of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was also questioned in the Supreme Court reported in *Mardia Chemicals Limited etc. etc. v. Union of India and others etc. etc.*, AIR 2004 SC 2371 = 2004 (3) ALD 50 (SC), on the

following grounds, shown in Para 33 at page 61 of 2004 (3) ALD 50.

"(i) Whether it is open to challenge the statute on the ground that it was not necessary to enact it in the prevailing background particularly when another statute was already in operation.

(ii) Whether the provisions contained under Sections 13 and 17 of the Act provide adequate and efficacious mechanism to consider and decide the objections or disputes raised by a borrower against the recovery particularly in view of the bar to approach the civil Court under Section 34 of the Act ?

(iii) Whether the remedy available under Section 17 of the Act is illusory for the reason it is available only after the action is taken under Section 13(4) of the Act and the appeal would be entertainable only on deposit of 75% of the claim raised in the notice of demand ?

(iv) Whether the terms or the existing rights under the contract entered into by two private parties could be amended by the provisions of law providing certain powers in one sided manner in favour of one of the parties to the contract ?

(v) Whether the provisions for sale of the properties without the intervention of the Court under Section 13 of the Act is into the English mortgage and its effect on the scope of the bar of the jurisdiction of the civil Court ?

(vi) Whether the provisions under Sections 13 and 17(2) of the Act are unconstitutional on the basis of the parameters laid down in different decisions of this Court ?

(vii) Whether the Principle of lander's liability has been absolutely ignored while enacting the Act and its effect ?"

It is evident from the above points for consideration by the Apex Court that the Constitutional vice under Articles 13(2) and 14 were not at all considered and the law as laid down by the Supreme Court in AIR 1967 SC 1580 and AIR 1972 SC 2205 were not at all cited for consideration, much less were considered by the Supreme Court, as could be seen from the citations which are 38 in number. I once again reiterate my humble opinion that none of the above cited 38 decisions is an authority for the proposition either way, to wit, whether or not an Act, which gives two remedies to the Government or any public authority under the Act to achieve a particular goal and if permitted to endeavour itself in either of the two remedies at its option under the doctrine of election, is Constitutional and not hit under Articles 13(2) and 14 of the Constitution of India. On the other hand, the positive rule of law, as laid down by the Supreme Court of 5 Judges in AIR 1967 SC 1581 and 7 Judges in AIR 1972 SC 2203 was not followed as they are not noticed by them, which is binding on the Judges, who are three in number delivering judgment in AIR 2004 SC 2371 = 2004 (3) ALD 50 (SC). So, I venture to state with all honesty and sincerity that the judgment reported in AIR 2004 SC 2371 = 2004 (3) ALD 50 (SC), is *per incuriam*, not on the ground that a new argument, to wit, that the provisions of securitisation Act especially Sections 13 and 34 are void, as they are in conflict of Articles 13(2) and 14 on different grounds but on the ground that earlier decisions of Supreme Court Benches consisting of more number of Judges reported in AIR 1967 SC 1581 and AIR 1972 SC 2205, which are binding on the Judges three in number who delivered the judgment reported in 2004 (3) ALD 50 (SC), were not brought to their notice and had the said two decisions

been brought to the notice of the three Judges in AIR 2004 SC 237(2), they would not have given a judgment as reported in AIR 2004 SC 2371.

9. *In my honest opinion, the law laid down by Supreme Court in AIR 1994 SC 2151, consisting of three Judges and followed by A.P. High Court in 1996 (3) ALT 629 (DB), and other later decisions following AIR 1994 SC 2151, to wit, that the State Finance Corporation can proceed either under Section 29 or under Section 31 of State Financial Corporations Act, 1951, at its choice for the sole purpose of realising its loan amounts from the borrowers, without there being any guidelines, of course, with a rider that it cannot proceed simultaneously under the said two sections and that it must pursue that procedure only which it started and should not opt to the other procedure, unless it abandons the procedure, which it has started, is per incuriam in view of the earlier Supreme Court decisions reported in AIR 1967 SC 1581, consisting of five Judges and AIR 1972 SC 2205, consisting of seven Judges, which are binding on the Supreme Court itself as per doctrine of precedents, as the said two decisions rule in unequivocal and crystal clear terms that a law which gives two or more remedies to the State for attaining a common goal, with unbridled an unguided powers leading to arbitrary exercise of power indiscriminately, must be held to be against Article 13(2) of the Constitution and hence void.*

10. In 2004, the President was pleased to promulgate an ordinance called 'The Enforcement of Security Interest and Recovery of Debt Laws (Amendment) Ordinance, 2004 (No.5 of 2004) with effect from 11.11.2004.

11. The important amendments made to Securitization Act 2002, for the present purpose are :

(a) New sub-section (ha) is inserted in Section 2 of the Parent Act.

(ha) "debt" shall have the same meaning assigned to it in clause (g) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is as follows :

> "Section 2(g) : "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or financial institution or by a consortium of banks of financial institutions during the course of any business activity undertaken by the bank or the financial institution or consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured or assigned or whether payable by a decree or order of a civil Court or any Arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on the date of the application."

Section 1(4) of Debt Recovery Act, 1993 is as follows :

> "The provisions of this Act shall not apply where the amount of debt due to any Bank or Financial Institution or to a consortium of banks or financial institutions is less than ten lakhs rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify."

12. From a conspicuous reading of the above three definitions, it is clear that the debt for the recovery of which Banks and Financial Institutions can exercise their rights under Section 13 of Securitisation Act includes any amount, whether less or more than ten lakh rupees. A difficulty was experienced as to whether the Banks can invoke their rights under Section 13 of Securitisation Act, even if the debt is more than ten lakhs and even if the Banks had already filed cases in Debt Recovery Tribunal.

So, the Ordinance No.5 of 2004, inserted a proviso to Section 19 according to which the Bank or Financial Institution may, with the permission of the Debt Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the date of promulgation of the said ordinance, for the purpose of taking action under the Securitisation Act, if no such action had been taken earlier. So, the Banks can, after the passing of the said ordinance, withdraw pending suits in Tribunal and proceed themselves under Section 13 of Securitisation Act.

13. Another decision of Punjab and Haryana High Court was reported in AIR 2006 P&H 107, after the passing of the Amendment Act to Securitisation Act in 2004. It was held by the said High Court that the Banks have got right under the doctrine of election to choose their remedy either to proceed under the RDB Act or to withdraw such proceedings from Debts Recovery Tribunal to enable them to initiate action under the Securitisation Act following AIR 1994 SC 2151, of three Judges; or the Banks may not so opt and that once, the Bank decides to proceed under the Securitisation Act, the said Act imposes an obligation on the Bank under the newly inserted proviso in 2004 to Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to withdraw the case filed by the Bank before the Debt Recovery Tribunal and that such an exercise of power by the Banks is purely at the discretion of the Bank. It further held that, though it was discretionary for the Bank to proceed under the Securitisation Act, if the Bank chooses to take recourse to the Securitisation Act, it is mandatory for the Bank to withdraw its application before the Debt Recovery Tribunal. In this judgment also AIR 1994 SC 2151, of three Judges was only referred and there is no reference to AIR 1967 SC 1581 and AIR 1972 SC 2205. Finally, it was held by Punjab and Haryana High Court in AIR 2006 P&H 107 at Para 40 at Page 122 as follows :

> "40. Thus, we conclude that the Bank or Financial Institution has to elect its remedy to either proceed under the RDB Act or to withdraw such proceeding to enable them to initiate action under the Securitisation Act, 2002."

13. So, as matters stand today, the law position, in respect of two remedies being open to Government or any public authority in any Act to achieve a common object, is that the Government or the Authority can exercise any of the two remedies at its sweet will and pleasure under the umbrella of exercising its power as per doctrine of election, even though such arbitrary exercise of power is in direct conflict of Article 14 of the Constitution. I do affirm that this pronouncement of law by the Supreme Court as is held in AIR 1994 SC 2151 (Three Judges), AIR 2004 SC 2377 (Three Judges) is clearly *per incuriam* in the teeth of the law laid down by Supreme Court itself previously in AIR 1967 SC 1581 (Five Judges) and AIR 1972 SC 2205 (seven Judges) quite contrary to them, to wit, that where an Act gives two remedies to an authority to achieve a particular goal and the choice is also given to the authority itself, it is clearly a case of abuse of powers and against the spirit of Article 14 of the Constitution and hence such Act must be held to be unconstitutional under Article 13(2) and hence void.

14. Yet another painful circumstance is, in AIR 2006 P&H 107, the learned Judges referred to AIR 1994 SC 2151 of three Judges, which is itself *per incuriam* in the eye of law as it was held contrary to the Constitutional Bench decisions consisting of five and seven Judges of Supreme Court, referred to above.

15. I understand the doctrine of election as one which gives option to one

to exercise any one of the two or more remedies open to him in any law at his discretion and sweet will and pleasure to achieve a common goal but not at the altar of a fundamental right of another. It has got to be understood that anybody, whether he is a private citizen or Government can exercise his or its rights of option so long as such exercise does not directly come into clash with the exercise of the rights of others, that too fundamental rights.

16. The impact of the decisions referred to above which are given in quite ignorance of earlier binding decisions of the Supreme Court would be like this :

Suppose there are two loanees A and B who borrowed a loan of twenty lakhs of rupees each from a Bank in 1995. Suppose neither of them paid anything to the Bank. So both of them are NPA's. The Bank therefore files cases in the Debt Recovery Court against both. During the pendency of the said cases before the DRT, the Securitisation Act, 2002 was enacted and the Amendment Act of 2004 was also enacted. Now, under first proviso to Section 19 of Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 a right is given to the Bank to exercise its option to proceed under the Securitisation Act in respect of recovery of amounts in such pending cases, only after withdrawing the pending case in the Debt Recovery Tribunal. The relief given to the Bank under Securitisation Act is very drastic and quick and spontaneous, as the Bank can itself straight away proceed under Section 13(4) of the Securitisation Act 2002 and take possession of the securities or sell or lease or do in any manner which it likes, to recover its loan amount. But, the DRT cannot give such quick relief to the Bank. So, apparently, the logic behind this kind of exercise of right appears apparently to be laudable and in the interest of general public also; but, the moot question is, "will the Bank take same steps against A and B in the above example under 1st proviso to Section 19 of Debt Recovery Act, 1993 ?" Definitely not. Bank may have soft corner with A. So, there is every chance, which cannot be brushed aside by any reasonable man, that the Bank will not withdraw the case filed by it in DRT, which is pending, so that A can be much benefitted by the pendency of the proceeding in DRT and face the debacles in Courts for some decades. On the other hand, suppose the Bank is seriously ill-disposed towards B, which is not uncommon. Then, immediately, the Bank will definitely file a petition in the pending case of B in DRT, requesting the said Tribunal to accord permission to it to withdraw the said case against B. The Tribunal more often than not, will definitely accord permission to the Bank to withdraw the said pending case against B. Then immediately the next day the Bank will proceed under Section 13 of Securitisation Act, 2002 against B and sell the securities of B and, his guarantors. The Tribunal cannot refuse permission to the Bank to withdraw the case pending against B in the said Tribunal and it is not the concern of the Tribunal to ask the Bank as to why it did not withdraw the pending case against A also. Here A and B both are NPAs. Cases are filed against them both. Securitisation Act says that action against NPAs can be taken under Section 13. Such a power is vested in the Bank itself. There is no other guideline for the Bank under the Securitisation Act as to in which NPA cases it should proceed under Securitisation Act and in which NPA cases, it can allow the cases to be continued in the Tribunals. So, the discretion given to the Bank in this regard is unbridled and unguided and as such the Bank exercises such right, abusing its powers ill-motivated and according to its own pleasure. This is exactly what was discussed in AIR 1967 SC 1581 (five Judges) and AIR 1972 SC 2205, and ultimately it was laid down in these two decisions that,

where two remedies are given to Government to achieve a goal in any Act, such Act must be held to be void under Article 13(2) and hit the fundamental right of a citizen under Article 14 of the Constitution. But to our misfortune, these two decisions were not brought to the notice of the Honourable Judges in later decisions of the Supreme Court and High Courts.

17. The doctrine of election will have definitely its roll, in cases where the right of choice exercised by the person, who is given two remedies to achieve a particular goal, does not hit the fundamental right of another. To understand it bell, book and candle, an illustrative example may be seen. Suppose a worker is removed from service by the employer. Now-a-days, there are any number of labour laws which give certain rights under them to the worker. In the instant case, the worker can approach the Labour Court or any authority under the Shops Act or a Civil Court for appropriate reliefs. Out of these options, the worker may opt to file a suit in a civil Court. He is at liberty to do so; or he can file a case in Labour Court or the Authority under the Shops Act. By exercise of such option of rights given to the worker, if the worker exercises any mode of right to get his employment, the employer is not prejudiced by such course of action by the worker. Thus by the right exercised by the worker invoking the doctrine of election, the opponent is not prejudiced in any manner. Under such circumstances only the said doctrine of election could be exercised legally and not in cases where such exercise results in prejudice to the constitutional rights of others AIR 1982 (NOC) 261.

18. I conclude that the doctrine of election is not any fundamental right given to anybody including the Government. It can be exercised so by anybody, including the Government and other Authorities, so long as such choice of right or rights does not come into clash with the rights of others, that too, when such exercise of statutory powers has its roots in abusive exercise of power of the Government, or the concerned Authority and results in detriment to the exercise of fundamental rights of others.

———————

"Religion concerns the spirit in man whereby he is able to recognise what is truth and what is justice; whereas law is only the application, however imperfectly, of truth and justice in our everday affairs."— Lord Denning, The changing law, 1953, p.122

"The effects of penal laws, in matters of religion, are never confined to those limits in which the legislature intended they should be placed."— Sydney Smith (1771-1845), The Peter Plymley letters, 1807, V