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CONSTITUTIONAL LAW – I

(Fundamental Rights)

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I INTRODUCTION

TWO MOST significant questions pertaining to the Constitution of India that need to be considered about the availability of fundamental rights to all the citizens in this country are: (i) Are the provisions conferring "temporary" status (treated as "special" status) on the State of Jammu and Kashmir (article 370) from the inception of the commencement of the Constitution of India or "special status" by later amendments on the States of Maharashtra and Gujarat,[1] Nagaland,[2] Assam,[3] Manipur,[4] Andhra Pradesh,[5] Sikkim,[6] Mizoram,[7] Arunachal Pradesh[8] and Goa;[9] justified in the context of 'rule of law' proclaimed under article 14; and (ii) Do the enabling provisions pertaining to reservation under articles 15 and 16 deserve to be retained, if at all, in the present form in the Constitution after 57 years of the Republic of India and whether a time has come when "rule of law" must be established in the country in its true sense which hitherto does not exist? While reservation envisaged under articles 15 and 16 has divided the nation on the basis of caste and religion, the special status given to

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1 The Constitution of India, art. 371. Original art. 371 was substituted by the Constitution (Seventh Amendment) Act, 1956 and made applicable to the States of Maharashtra and Gujarat which was further amended by the Constitution (Thirty-second Amendment) Act, 1973 and the Bombay Reorganisation Act, 1960.

2 The Constitution of India, art. 371-A, inserted by the Constitution (Thirteenth Amendment) Act, 1962.

3 *Id.*, art. 371-B inserted by the Constitution (Twenty-second Amendment) Act, 1969.

4 *Id.*, art. 371-C inserted by the Constitution (Twenty-seventh Amendment) Act, 1971.

5 *Id*., art. 371-D and 371-E inserted by the Constitution (Thirty-second Amendment) Act, 1973.

6 *Id.*, art. 371-F inserted by the Constitution (Thirty-sixth Amendment) Act, 1975.

7 *Id*., art. 371-G inserted by the Constitution (Fifty-third Amendment) Act, 1986.

8 *Id*., art. 371-H inserted by the Constitution (Fifty-fifth Amendment) Act, 1986.

9 *Id*., art. 371-I inserted by the Constitution (Fifty-sixth Amendment) Act, 1986.

some of the states has divided the country on regional basis. Both these matters are directly and necessarily divisive and prejudicial to the "unity and integrity of the nation" which the Constitution of India aims at in the preamble. One may have hardly any difference of opinion for any special provision for women and children for their protection as envisaged under clause (3) of article 15 and also for different provisions for tribals and other inhabitants of north-east regions which require special treatment on account of their peculiar characteristics, but it is difficult to appreciate special provisions for the State of Jammu and Kashmir, Andhra Pradesh, Telangana, Maharashtra and Gujarat. When a sovereign country like India has one Constitution and one set of laws for all, there can be no question of another regional Constitution and separate and different set of laws for a state like Jammu and Kashmir which is a part and parcel of India, irrespective of any historical considerations. A time has come when the so-called "special status" needs to be deliberated upon threadbare, keeping in view the historical perspective and answered in the light of the progress made during last seven decades of free India. These questions have become very significant because the national interest has suffered enough during this long period and its progress has nose-dived resulting in the politics of caste, race, religion and region.

The fundamental mistake of treating "caste" as "class" seems to be the beginning of all ills coupled with vote-bank politics in so far as reservation is concerned. Similarly, political convenience is the reason for granting special status to certain states and regions. Have not things changed considerably during all these years making things worse than what they were when the aforesaid provisions were incorporated in the Constitution? If there is no political will to change things for the betterment of the country and its people on account of political greed to retain or usurp political power to rule the country, the judiciary is completely free from this evil and is expected to play an activist role in all these matters because, at least partly, the judiciary must also share part of the present day failures. Unfortunately, the judiciary seems to be reluctant to intervene authoritatively in this area. See, for example, the outfall of article 371-D inserted in the Constitution by the Constitution (Thirty-second Amendment) Act, 1973 giving special status to the State of Andhra Pradesh as decided in *Dr. Sandeep s/o Sadashivrao Kansurkar* v. *Union of India*.[10] In this case, the controversy was whether the action of the states of Andhra Pradesh, Telangana and Tamil Nadu in confining the eligibility for appearing in the super-specialty entrance examination for admission to D.M. and M.Ch. courses only to the candidates having domicile in their respective states was violative of article 14 of the Constitution, being discriminatory in nature. Dipak Misra, J held that the position of the State of Andhra Pradesh was not comparable to other states in view of clause (10) of article 371-D which gives overriding effect to article 371-D and any Presidential Order issued thereunder over any other provision

10 (2016) 2 SCC 328 : JT 2015 (11) SC 321; see S N Singh, "Constitutional Law – I (Fundamental Rights)", LI *ASIL* 237 at 274-75 (2015).

of the Constitution or any other law for the time being in force in matters of public employment and education. At the same time, the learned judge did realize that the there was a need to have uniformity in the national interest, but did not strike down clause (10) of article 371-D.[11]

The "temporary" provisions of article 370 (wrongly referred to as special provisions) read with the Constitution (Application to Jammu and Kashmir) Order, 1954 have virtually negated many of the fundamental rights for those living in the State of Jammu and Kashmir.[12]

11 See the observations of Dipak Misra J in para 36 of the judgment at 360-61.

12 The following provisions of the Constitution (Application to Jammu and Kashmir) Order, 1954 (CO 48), issued in by the President of India in exercise of the powers conferred by clause (1) of article 370 of the Constitution, with the concurrence of the Government of the State of Jammu and Kashmir which came into force on the fourteenth day of May, 1954: xxx

2. The provisions of the Constitution as in force on the 20th day of June, 1964 and as amended by the Constitution (Nineteenth Amendment) Act, 1966, the Constitution (Twenty-first Amendment) Act,1967, section 5 of the Constitution (Twenty-third Amendment) Act,1969, the Constitution (Twenty-fourth Amendment) Act, 1971, section 2 of the Constitution (Twenty-fifth Amendment) Act, 1971, the Constitution (Twenty-sixth Amendment) Act, 1971, the Constitution (Thirtieth Amendment) Act, 1972, section 2 of the Constitution (Thirty-first Amendment) Act, 1973, section 2 of the Constitution (Thirty-third Amendment) Act, 1974, sections 2, 5, 6 and 7 of the Constitution (Thirty-eighth Amendment) Act, 1975, the Constitution (Thirty-ninth Amendment) Act, 1975, the Constitution (Fortieth Amendment) Act, 1976, sections 2, 3 and 6 of the Constitution (Fifty-second Amendment) Act, 1985 and the Constitution (Sixty-first Amendment) Act, 1988 which, in addition to article 1 and article 370, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:- xxx

4) PART III.

(a) In article 13, references to the commencement of the Constitution shall be construed as references to the commencement of this Order. xxx

(c) In clause (3) of article 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(d) In article 19, for a period of twenty-five years from the commencement of this Order:-

(i) in clauses (3) and (4), after the words "in the interests of", the words "the security of the State or" shall be inserted;

(ii) in clause (5), for the words "or for the protection of the interests of any Scheduled Tribe", the words "or in the interests of the security of the State" shall be substituted; and

(iii) the following new clause shall be added, namely:-

(7) The words "reasonable restrictions" occurring in clauses (2), (3), (4) and (5) shall be construed as meaning 'such restrictions as the appropriate Legislature deems reasonable.'

(e) In clauses (4) and (7) of article 22, for the word "Parliament", the words "the Legislature of the State" shall be substituted. xxx

(h) In article 32, clause (3) shall be omitted.

(i) In article 35-

(i) references to the commencement of the Constitution shall be construed as references to the commencement of this Order;

This provision has resulted in perpetuating regionalism, harming the development of that region and people residing there. One may take note of article 35A applicable only to the State of Jammu and Kashmir which saves laws with respect to permanent residents of that State and their rights. Article 35A saves laws made by the legislature of Jammu and Kashmir defining permanent residents of that State and conferring on them any special rights and privileges or imposing upon other persons any restrictions regarding employment under the state government; acquisition of immovable property in the state; settlement in the state; or right to scholarships and other forms of aid as the state government may provide. Any such law cannot be questioned on the ground of violation of the fundamental rights or any other provision of the Constitution of India. It is significant to note that when the Constitution (Application to Jammu and Kashmir) Order, 1954 came into force on May 25,th 1954, the Constitution of India had already been amended two times and the amendments in the Constitution of India by 14 later amendments made between 1966 and 1988 were also applied to the State of Jammu and Kashmir by amending the 1954 Order. There is no justification in not applying later amendments made in the Constitution of India during 1988 and 2016 to that State.

Two decisions of the Supreme Court and one decision the High Court of Jammu and Kashmir reported during 2016 indicate the gravity of the problem, which somehow

(ii) in clause (a) (i), the words, brackets and figures "clause (3) of article 16, clause (3) of article 32" shall be omitted; and

(iii) after clause (b), the following clause shall be added, namely:-

"(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of twenty-five years from the commencementof the said Order, except as respects things done or omitted to be done before the expiration thereof."

(j) After article 35, the following new article shall be added, namely:-

"35A. Saving of laws with respect to permanent residents and their rights.- Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,-

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects-

(i) employment under the State Government;

(ii) acquisition of immovable property in the State;

(iii) settlement in the State; or

(iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.".

the Supreme Court had been able to salvage. In *State Bank of India* v. *Santosh Gupta*,[13] the Supreme Court was hearing an appeal from the decision of the High Court of Jammu and Kashmir in which many issues pertaining to legislative competence of Parliament to enact the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") were raised on the ground that the provisions of that Act were in conflict with section 140 of the Jammu & Kashmir Transfer of Property Act, 1920. The SARFAESI Act, *inter alia*, entitles banks to enforce their security interest outside the court's process by moving under section 13 to take possession of secured assets of the borrower and sell them outside the court process. The jurisdiction of the civil courts had been barred in any suit or proceeding in respect of any matter which a debts recovery tribunal or the appellate tribunal under the Act was empowered to determine.

Article 1 of the Constitution of India and section 3 of the Jammu and Kashmir Constitution make it clear that India shall be a Union of States, and that the State of Jammu and Kashmir is and shall be an integral part of the Union of India. The following observations of R.F. Nariman J are noteworthy:[14]

> It is rather disturbing to note that various parts of the judgment speak of the absolute sovereign power of the State of Jammu & Kashmir. It is necessary to reiterate that Section 3 of the Constitution of Jammu & Kashmir, which was framed by a Constituent Assembly elected on the basis of universal adult franchise, makes a ringing declaration that the State of Jammu & Kashmir is and shall be an integral part of the Union of India. And this provision is beyond the pale of amendment. xxx Above all, the Constitution of Jammu & Kashmir has been made to further define the existing relationship of the State with the Union of India as an *integral part thereof*.
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> It is thus clear that the State of Jammu & Kashmir has no vestige of sovereignty outside the Constitution of India and its own Constitution, which is subordinate to the Constitution of India. It is therefore wholly incorrect to describe it as being sovereign in the sense of its residents constituting a separate and distinct class in themselves. The residents of Jammu & Kashmir, we need to remind the High Court, are first and foremost citizens of India. Indeed, this is recognized by Section 6 of the Jammu & Kashmir Constitution….

Nariman, J set aside the judgment of the high court holding that the impugned Act was applicable to the State of Jammu and Kashmir as it had been enacted by Parliament in exercise of powers conferred by article 246 read with entries 45 and 95 of list I of the seventh schedule to the Constitution of India which extends to that state.

13 2016 (12) SCALE 1044 : (2017) 2 SCC 538 : AIR 2017 SC 25.

14 *Id*. at 1069, 1070-71.

The judgment delivered by T.S. Thakur, CJ, on behalf of a Constitution Bench in *Anita Kushwaha* v. *Pushap Sudan*,[15] is similar to the above views. This case raised the issue of access to justice as a fundamental right. In this case, the question was whether the Supreme Court had the power to transfer cases from courts in the State of Jammu and Kashmir to courts outside that state and *vice versa*. The issue was significant as the provisions of section 25, CPC and section 406, Cr PC, as applicable to the rest of India, are not available to the litigants seeking transfer of any case to or from the State of Jammu and Kashmir. Moreover, no such power has been given under the Jammu and Kashmir Code of Civil Procedure and the Jammu and Kashmir Code of Criminal Procedure. It was held by the Chief Justice that such power was inherent in the Supreme Court by virtue of article 142 read with article 32 of the Constitution of India.

On the contrary, the High Court of Jammu and Kashmir held that the provisions relating to reservations in promotion to public offices incorporated under article 16 (4-A) were not applicable in the State of Jammu and Kashmir on account of the provisions of article 370, which the court held to be a permanent provision notwithstanding its title showing "temporary provision". Masood, J held that that article "cannot be abrogated, repealed or even amended as mechanism provided under Clause (3) of Article 370 is no more available. Furthermore, Article 368 cannot be pressed into service in this regard, inasmuch as it does not control Article 370 – a self contained provision of the Constitution."[16] Can a court say that a sovereign country like India does not have power to amend any of the provisions of its Constitution? Is article 370 outside the Constitution of India? The consequence of the interpretation given by Masood J would be disastrous for the country; it deserves to be re-considered by the Supreme Court at the earliest.

The difficulty about judicial decisions is that there is no certainty that the court would continue to have the same view; it may take a different view in future. Even otherwise also, the inhabitants of the State of Jammu and Kashmir are not enjoying all those rights and fundamental rights which the citizens in other parts of the country are enjoying. Needless to say that the instrument of article 32 is being pressed into service not only to protect the fundamental rights of those for whom it is meant (i.e. individuals, artificial persons, institutions), but also for protecting the rights of animals for whom the courts have adopted a uniform principle, based on equality; they have made no distinction between one animal and another by applying the "reasonable classification" test when it comes to curbing cruelty to animals. Why not then the same principle of equality for individuals and institutions all over the country?

One may also note the position of Andhra Pradesh for which special provisions have been made under article 371-D[17] of the Constitution of India. Under this article,

15 2016 (7) SCALE 235 : (2016) 8 SCC 509 : AIR 2016 SC 3506.

16 *Ashok Kumar* v. *State of J. & K*., AIR 2016 J & K 1 at 10-11.

17 Clauses (1) and (10) of article 371-D of the Constitution of India read thus:
371D. *Special provisions with respect to the State of Andhra Pradesh*. (1) The President may

the President of India may by order provide for equitable opportunities and facilities in matters of public employment and education for the State of Andhra Pradesh and now Telangana also. The provisions of article 371-D and any Presidential Order issued thereunder have overriding effect over any other provision of the Constitution or any law as provided under clause (10) of article 371D. In view of this provision, in *Dr. Sandeep s/o Sadashivrao Kansurkar* v. *Union of India*,[18] the court held as valid the action of the State of Andhra Pradesh, Telangana and Tamil Nadu in confining the eligibility only to the candidates having domicile in their respective States for appearing in the super-specialty entrance examination for admissions to D.M. and M.Ch. courses and the same did not violate the guarantee of equality to all persons under article 14. Till how long these regional factors would continue to divide this country and thwart its progress? When will people understand the value of nationality? One can appreciate the backwardness of north-east region of the country but not that of Andhra Pradesh, Maharashtra, Gujarat or even Jammu and Kashmir. Shelter is always taken under the Instrument of Accession entered into by the Maharaja of Kashmir but can't this country once for all scrap article 370 and bring about complete equality for the inhabitants of Jammu and Kashmir to guarantee them the fundamental given to other citizens of the country? Likewise, should not the country think of having a closer look at the present reservation policy which has divided the country on the basis of caste, creed and religion. The reservation has done no good for the country; the entire policy is flawed and it has miserably failed to achieve the desired results.[19]

During the year 2016, the Supreme Court delivered 1153 judgments, of which nearly 200 related to the enforcement of fundamental rights, of which nine were Constitution Bench decisions. The cases pertaining to protection of human right under article 21 were prominent during the year. One of the significant cases dealt with the question of how (un)dignified is the life of prisoners in jails in India? The matter was brought to the court notice by a retired Chief Justice of India as if he did not know the pitiable conditions in jail and the inhuman conditions in the jails in the country when he was the Chief Justice.[20]

> by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.
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> (10) The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

18 JT 2015 (11) SC 321.

19 See the critical comments on the subject made by this author in an earlier survey: S N Singh, "Constitutional Law-I (Fundamental Rights)", XLVIII *ASIL* 173 at 186-91 (2012).

20 *Re - Inhuman Conditions in 1382 Prisons*, 2016 (2) SCALE 185 : (2016) 10 SCC 17.

As in the past, the Supreme Court was approached under article 32 of the Constitution of India by many individuals and organizations raising issues of general public importance affecting the fundamental rights (PIL), particularly those covered under article 21such as foreigner's fundamental right to approach the Supreme Court;[21] witness protection;[22] tackling draught problem in the country;[23] women empowerment;[24] effective implementation of the Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;[25] the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [26] and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) ACT, 1995;[27] child abuse and rape,[28] victims of acid attack;[29] protection of children from drug abuse;[30] population control and family planning,[31] dengue death,[32] appointment of lokayukta in Meghalaya[33] and U.P.;[34] investigation of corruption cases by CBI (*Vyapam* scam);[35] teaching of moral education in schools;[36] singing of national anthem;[37] claim of growing beard by persons professing Muslim religion under article 33;[38] animal welfare;[39] claim for compensation in case

21 *Verhoeven Marie-Emmanuelle* v. *Union of India* , AIR 2016 SC 2165 : (2016) 6 SCC 456.

22 *Savelife Foundation* v. *Union of India2*, JT 2016 (3) SC 369 : AIR 2016 SC 1617.

23 *Swaraj Abhiyan* v. *Union of India*, AIR 2016 SC 2929, 2953.

24 *Richa Mishra* v. *State of Chhattisgarh*, JT 2016 (2) SC 106.

25 *Voluntary Health Assn. of Punjab* v. *Union of India*, AIR 2016 SC 5122 : 2016 (10) SCALE 531 : (2016) 10 SCC 265 : JT 2016 (10) SC 570; *Sabu Mathew George* v. *Union of India*, 2016 (12) SCALE 75.

26 *National Compaign for Dalit Human Rights* v. *Union of India*, 2016 (12) SCALE 955.

27 *Justice Sunanda Bhandare Foundation* v. *Union of India*, 2016 (5) SCALE 582; *Jeeja Ghosh* v. *Union of India*, 2016 (5) SCALE 213(compensation to a physically challenged person for the action of SpiceJet Ltd.).

28 *Supreme Court Women Lawyers Association* v. *Union of India*, AIR 2016 SC 358 : (2016) 2 SCC 680.

29 *Laxmi* v *Union of India* (2016) 3 SCC 669 and *Parivartan Kendra* v. *Union of India* (2016) 3 SCC 57.

30 *Bachpan Bachao Andolan* v. *Union of India*, 2016 (12) SCALE 751.

31 *Devika Biswas* v. *Union of India*, AIR 2016 SC 4405.

32 *In re: Outrage as Parents End Life After Child's Dengue Death*, 2016 (9) SCALE 548, 719.

33 *Jt. Secretary, Political Department, Govt. of Meghalaya, Main Secretariat, Meghalaya* v. *High Court of Meghalaya*, AIR 2016 SC 1467 : 2016 (3) SCALE 351 : JT 2016 (3) SC 203.

34 *Mahendra Kumar Jain* v. *State of U.P*. (2016) 13 SCC 750. The order passed in this case was recalled in *Sachidanand Gupta "Sachey"* v. *State of U.P*., 2016 (1) SCALE 615 : JT 2016 (1) SC 571.

35 *Nidhi Kaim* v. *State of M.P.*, AIR 2016 SC 2865 : (2016) 7 SCC 615 : 2016 (5) SCALE 246.

36 *Santosh Singh* v. *Union of India*, AIR 2016 SC 3456 : 2016 (7) SCALE 287 : (2016) 9 SCC 253.

37 *Shyam Narayan Chouksey* v. *Union of India*, 2016 (12) SCALE 404 : (2017) 1 SCC 421.

38 *Mohammed Zubair Corporal No. 781467-G* v. *Union of India*, 2016 (12) SCALE 845.

39 *Chief Secretary to the Govt., Chennai Tamilnadu* v. *Animal Welfare Board*, 2016 (12) SCALE 334 : JT 2017 (1) SC 531; *Animal Welfare Board of Indi*a v. *People for Elimination of Stray Troubles*, 2016 (10) SCALE 131, 136, 139 and 2016 (12) SCALE 240; *Compassion Unlimited*

of communal violence and death;[40] Haj pilgrimage;[41] government advertisements;[42] exemption from security check at the airports for judges of the high courts[43] and racial discrimination.[44]

In most of the above cases, directions were issued by the apex court exercising power under article 142 of the Constitution. In fact, the year 2016 was flooded with directions either to fill in gap in law or to make the executive more responsive and responsible for the protection of human rights. The directions indicate as if nothing was being done till now either in law or by the executive to protect human rights of citizens and it would only be henceforth that the human rights would be protected. The court also exercised its power under article 142 in a case of land acquisition where the state of Rajasthan had acquired land for the purpose of the Army for its "Field Filing Range" and the land owners were promised 15% developed residential land in lieu of compensation by the urban development department of the state government by its policy dated December 13, 2001. The promise was, however, not fulfilled. With a view to do complete justice, the court exercising its power under article 142 directed the state to fulfil the promise within six weeks.[45] This author in an earlier survey, after quoting Raveendran, J who had observed that article 142 of the Constitution vested "unfettered independent jurisdiction to pass any order in public interest to do complete justice', had stated: "This kind of exercise of "unfettered jurisdiction" necessitates laying down of some guiding principles for the exercise of power under article 142 lest its exercise nullifies the entire constitutional jurisprudence."[46] Unfortunately, the court is not willing to lay down any principles for guidance in future.The decision in *Nidhi Kaim* v. *State of M.P.*,[47] however, deserves special mention. The Madhya Pradesh professional examination board (*Vyapam*) had cancelled the results of the professional MBBS course of the appellants on the ground that they had gained admission to the course, by resorting to unfair means, during the Pre-Medical Test during 2008 to 2012. Chelameswar, J, constituting the division bench, exercising powers under article 142, expressed the view that "complete justice in the

Plus Action v. *Union of India*, 2016 (1) SCALE 299, 305 : AIR 2016 SC 429 : (2016) 2 SCC 65; *Wildlife Rescue and Rehabilitation Centre* v. *Union of India* (2016) 1 SCC 716 (directions issued to curb cruelties to captive elephants in the state of Kerala).

40 *Archbishop Raphael Cheenath S.V.D.* v. *State of Orissa*, AIR 2016 SC 3639 : (2016) 9 SCC 682.

41 *Subhan Tours & Travel Services* v. *Union of India*, AIR 2016 SC 2549.

42 *State of Karnataka* v. *Common Cause*, AIR 2016 SC 1437 - modification of order passed in *Common Cause* v. *Union of India*, 2015 (6) SCALE 302) : AIR 2015 SC 2286.

43 *Union of India* v. *Rajasthan High Court*, 2016 (12) SCALE 763.

44 *Karma Dorji* v. *Union of India*, 2016 (12) SCALE 770 : AIR 2017 SC 113.

45 *Lalaram* v. *Jaipur Development Authority* (2016) 11 SCC 31.

46 S N Singh, "Constitutional Law-I (Fundamental Rights)", XLVII *ASIL* 171 at 175 (2011).

47 AIR 2016 SC 2865 : (2016) 7 SCC 615 : 2016 (5) SCALE 246; also see *Nidhi Kaim* v. *State of M.P.*, 2017 (2) SCALE 626.

matter would be rendered, if the qualifications successfully acquired by the appellants were not annulled, and the knowledge gained by them, was not wasted. This, for the simple reason, that knowledge could not be transferred to those, who had been wrongfully deprived of admission, and cancellation of the results of the appellants, would not serve any purpose." Abhay Manohar Sapre, J, on the other hand, held a contrary view as the appellants had adopted unfair means to get admission and article 142 jurisdiction could not be invoked for them. In view of this divergence of opinion, the matter was placed before a full bench of the court[48] which agreed with the views expressed by Abhay Manohar Sapre, J and nullified the admission of 634 guilty students, out of whom 300 had completed their MBBS degree course.[49]

During the current year, frivolous litigation/misuse of writ jurisdiction under 32 was also noted by the apex court in a few cases. Thus, in *Pratibha Ramesh Patel* v. *Union of India*,[50] a writ petition was filed under article 32 of the Constitution while a petition on the same facts and for the identical relief was pending before the high court under article 226. The apex court found that the petition filed under article 32 was a true copy of the petition filed under article 226 which was pending. The apex court dismissed the petition imposing cost of one lakh rupees on the petitioner holding that this was an abuse of the process of the court. Another petition was dismissed in which change of name of the country from India to 'Bharat' was prayed.[51] In *Suresh Chand Gautam* v. *State of Uttar Pradesh*[52] the prayer was to issue a writ of mandamus commanding the respondents to enforce appropriately the constitutional mandate as contained on articles 16(4-A), 16(4-B) and 335 of the Constitution of India or, direct the respondents to constitute a committee or appoint a commission headed by a retired judge of the high court or Supreme Court in making survey and collecting necessary data of the scheduled castes and the scheduled tribes in the services of the state of U.P. for granting reservation in promotion in the light of direction gives by the Supreme Court in *M. Nagaraj* v. *Union of India*.[53] The petition was held to be misconceived as no mandamus could lie in such a case. In *Ashiq Hussain Fektoo* v. *Union of India*,[54] a petition under article 32 was filed by the petitioner for a writ of habeas corpus or

48 *Nidhi Kaim* v. *State of M.P*., 2016 (8) SCALE 341 (Order dated 30.08.2016).

49 *Nidhi Kaim* v. *State of M.P.*, 2017 (2) SCALE 626 : (2017) 4 SCC 1 (Order dated 13.02.2017).

50 AIR 2016 SC 1561 : 2016 (3) SCALE 480 : JT 2016 (3) SC 283 : (2016) 12 SCC 375; also see *Medical Council of India* v. *Kalinga Institute of Medical Sciences*, 2016 (4) SCALE 649 in which the court imposed cost of Rs. 5 crores on the respondent for playing with the future of its students and the mess created for them.

51 *Niranjan Bhatwal* v. *Union of India*, W.P. (C) 203/2015 dismissed on 11.03.2016.

52 AIR 2016 SC 1321 : 2016 (3) SCALE 246 : JT 2016 (3) SC 540.

53 AIR 2007 SC 71 : (2006) 8 SCC 212.

54 AIR 2016 SC 4033 : 2016 (8) SCALE 336.Likewise, in *Manohar Lal Sharma* v. *Union of India*, 2016 (8) SCALE 707, the PIL under article 32 was filed for directions to the respondents to stop funds for the state of Jammu and Kashmir as the same was in contravention of the constitutional provisions. The petition was dismissed being not maintainable as the matter fell within the exclusive domain of the central government.

other similar direction, order or writ to the respondents to produce the petitioner before the court and thereafter forthwith release him from illegal custody after his appeal, review petition and curative petition had already been dismissed by the Supreme Court against his conviction under section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) and section 302 read with section 120B of the Indian Penal Code, 1860 (IPC) and sentenced him to undergo imprisonment for life. The court held that the petition was not maintainable under article 32. Unfortunately, the court was soft in not penalizing the petitioners for filing such writ petitions under article 32. Finally, in *Supreme Court Women Lawyers Assn.* v. *Union of India*,[55] the apex court refused either to enhance the punishment prescribed under section 376(2)(i), IPC for the offence of rape of minor girls or create a new offence therefor in view of the existing law since that power vested only in the legislature.

The Supreme Court also reviewed some of the judgments delivered by it earlier. One of the most significant of them relates to reservation for Jats in some states. In *Ram Singh* v. *Union of India*,[56] while quashing the central government's notification dated 04.03.2014, the court had not agreed with the view taken by the central government that Jats in the nine states of Bihar, Gujarat, Haryana, Himachal Pradesh and NCT of Delhi, Bharatpur and Dholpur districts of Rajasthan, Uttar Pradesh and Uttarakhand were backward and entitled for inclusion in the central lists of OBC. The court reviewed that decision but reiterated its view.[57] In *Common Cause* v. *Union of India*,[58] a division bench of the apex court had directed that in government advertisements, the photographs of President, Prime Minister and Chief Justice of India, subject to the said authorities themselves deciding the question, could only be published and the advertisements issued to commemorate the anniversaries of acknowledged personalities like the father of the nation would carry the photograph of the departed leader. This decision was reviewed in *State of Karnataka* v. *Common Cause*[59] by the same two judges who modified the order holding that the exception carved out in the aforesaid judgment permitting the publication of the photographs of the President, Prime Minister and Chief Justice of India, was also extended to the Governors and the Chief Ministers of the States and in lieu of the photograph of the Prime Minister, the photograph of the departmental (cabinet) minister/minister in-charge of the concerned ministry may be published, if so desired and in the states, the photograph of the departmental (cabinet) minister/minister in-charge in lieu of the photograph of the chief minister may be published, if so desired. In *Christian Medical College, Vellore* v. *Union of India*,[60] by a majority of 2:1, Altmas Kabir, CJ, for the

55 (2016) 3 SCC 680.
56 2015 (3) SCALE 570.
57 Review Order was passed in April, 2016.
58 2015 (6) SCALE 302 : AIR 2015 SC 2286.
59 2016 (3) SCALE 346.
60 (2014) 2 SCC 305.

majority, had held that the regulations made by the Medical Council of India (MCI) and the Dental Council of India (DCI) prescribing national eligibility-cum-entrance test (NEET) for making admissions to MBBS/BDS and post-graduate courses in the medical colleges/institutions in the country run by the state governments and by private agencies were unconstitutional since MCI had no power to regulate admissions in respect of minority educational institutions enjoying protection under article 30 of the Constitution of India. Anil R. Dave J had given a dissenting judgment and held that the regulations were validly made under the provisions of the Medical Council of India Act, 1956 and the Dentists Act, 1948 as they enabled the MCI and DCI to prescribe common entrance test for admissions to medical courses for improving the standards of education and instill confidence in the students. Oral hearing of the review petition was allowed by a full bench[61] but the matter was placed before a Constitution Bench which allowed the review petition, recalled the judgment and directed that the matter be heard afresh.[62] In *Sankalp Charitable Trust* v. *Union of India*,[63] a full bench of the court allowed the central board of secondary education to hold NEET for admissions to MBBS course during the year 2016-17.

The decision in *Naz Foundation* needs special mention here. The Supreme Court had upheld the constitutional validity of section 377, IPC, which criminalises consensual sexual acts such as those of lesbian, gay, bisexual and transgender (LGBT) adults in private.[64] On 28th January, 2014, the court had dismissed petition seeking review of its decision.[65] A full bench of the apex court, on 2nd February, 2016, allowed the hearing of a curative petition by a Constitution Bench,[66] giving credence to the arguments that the threat imposed by the provisions of section 377 amounted to denial of the rights to privacy and dignity of LGBTs and had resulted in gross miscarriage of justice. The full-bench was of the opinion that the issues raised in the petition were of "considerable importance and public interest" and some of the issues raised had "constitutional dimensions including whether the Curative Petitions qualify for consideration of this Court in the light of the judgment in *Rupa Ashok Hurra's* case"[67] and it referred the matter to a Constitution Bench of five judges. It would indeed be interesting to note whether the bench hearing the curative petition would limit itself to the grounds on which such a petition lies *i.e.* violation of the principles of natural justice and the bias of the judges who had decided the matter earlier or whether it would further hear the matter in a comprehensive manner for the alleged violation of the rights of dignity and privacy of the LGBTs.

61 *Christian Medical College, Vellore* v. *Union of India* (2014) 2 SCC 392. By that time, both judges who had constituted the majority had retired.

62 *Medical Council of India* v. *Christian Medical College, Vellore*, 2016 (4) SCALE 721 : JT 2016 (4) SC 118.

63 (2016) 7 SCC 487 : 2016 (4) SCALE 585.

64 *Suresh Kumar Koushal* v. *Naz Foundation*, AIR 2014 SC 563 : (2014) 1 SCC 1.

65 *Naz Foundation (India) Trust* v. *Suresh Kumar Koushal* (2014) 3 SCC 220.

66 *Naz Foundation Trust* v. *Suresh Kumar Koushal*, 2016 (2) SCALE 553.

67 *Rupa Ashok Hurra* v. *Ashok Hurra*, 2002 (4) SCC 388.

Some significant questions relating to fundamental rights were raised but not decided in *Kaushal Kishor* v. *State of U.P.*[68] as the matter was sent to the Chief Justice of India for consideration by a Constitution Bench. These questions related to conforming a private individual or group of private individuals (including private corporations) to the rigor and discipline of article 21; permissibility of an individual or group of individuals to be proceeded against to protect a third person's fundamental right under article 21; subjecting private corporations, whose activities have the potential of affecting the life and health of the people, to the discipline of article 21; subjecting the statements and acts of a public figure such as a minister to the discipline of article 21 where it adversely effects the right of a third person to a fair investigation of a criminal case and/or to a fair trial of the case or which is "improper abuse of public power", *etc.*

II RIGHT TO EQUALITY

Violation of the principles of natural justice amounts to arbitrariness

The writ petition under article 32 of the Constitution is maintainable only when there is violation of a fundamental right.[69] In *Alagaapuram R. Mohanraj* v. *Tamil Nadu Legislative Assembly Rep. by its Secretary*,[70] six members of legislative assembly belonging to DMK party petitioned the Supreme Court under article 32 challenging the decision of the assembly, taken on the recommendation of the privileges committee, suspending them for ten days of the next session of the House and resolved that they should not be paid their salaries or given other benefits due to them as members of the assembly for the period of suspension. The action was taken for allegedly obstructing the proceedings of the assembly on March 31, 2015. The question was whether the petition was maintainable. The petitioners contended that their fundamental rights under articles 14, 19(1)(a), 19(1)(g) and 21 of the Constitution had been violated by the impugned resolution.[71] The petitioners contended that the impugned action had violated their fundamental right of speech and expression under article 19(1)(a) and right to carry on occupation under article 19(1)(g). Depriving the petitioners of their salary and other facilities was violation of their fundamental right under article 21. Moreover, the impugned action violated the principles of natural justice and, therefore, the same was arbitrary under article 14.

68 (2016) 9 SCC 395.

69 *Gujarat State Financial Corporation* v. *Lotus Hotel*, AIR 1983 SC 848: (1983) 3 SCC 379; *Air India Statutory Corpn.* v. *United Labour Union*, AIR 1997 SC 645, 680 : (1997) 9 SCC 377.

70 (2016) 5 SCC 82 : 2016 (2) SCALE 340 : AIR 2016 SC 867.

71 *Raja Ram Pal* v. *Hon'ble Speaker, Lok Sabha* (2007) 3 SCC 184. The court held that in this case, the question was neither raised nor decided.

An action taken in contravention of the principles of natural justice would be arbitrary and violative of article 14 of the Constitution. The petitioners contended that the said proceedings before the privileges committee were in contravention of the principles of natural justice in as much as they were neither supplied with a copy of videograph of the incident nor given an opportunity to see or comment on it. The court accepted the contention of the petitioners that a copy of the videograph relied upon by the privileges committee was not provided to them and the impugned action was violative of article 14. The court noted that the video recording had played a crucial role in the deliberations of the privileges committee. The proceedings of the committee had made repeated reference to the video recording and that was the only material which it had considered; it had found only six petitioners guilty even though the matter related to 19 members. The petitioners had not even been given an opportunity to watch the video recording or comment on its content and authenticity. Chelameswar, J observed:[72]

> The principles of natural justice require that the petitioners ought to have been granted an opportunity to see the video recording. Perhaps they might have had an opportunity to explain why the video recording does not contain any evidence/material for recommending action against all or some of them or to explain that the video recording should have been interpreted differently.
>
> The Privileges Committee should have necessarily offered this opportunity, in order to make the process adopted by it compliant with the requirements of Article 14. Petitioner No. 1 in his reply letter to the notice issued by the Privileges Committee seeks permission to give further explanation when the video recording is provided to him. The Petitioner No. 3 in his reply letter states that he believes his version of his conduct will be proven by the video recording. The other petitioners do not mention the video recording in their reply letters. However, it is not the petitioners' burden to request for a copy of the video recording. It is the legal obligation of the Privileges Committee to ensure that a copy of the video recording is supplied to the petitioners in order to satisfy the requirements of the principles of natural justice The failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording relied upon by the committee in our view clearly resulted in the violation of the principles of natural justice *i.e.* a denial of a reasonable opportunity to meet the case. We, therefore, have no option but to set aside the impugned resolution dated 31.03.2015 passed in the Tamil Nadu Legislative Assembly. The same is accordingly set aside.

72 AIR 2016 SC 867 at 881-82.

> The consequence of setting aside the impugned resolution of the Tamil Nadu Legislative Assembly dated 31.3.2015 is that the salary and other benefits incidental to the membership of the assembly stand restored to the six petitioners herein.

Equal pay for equal work

The principle of 'equal pay for equal work' has been a contentious issue in numerous cases. In *State of Punjab* v. *Jagjit Singh*,[73] this issue once again cropped up: "whether temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, alongwith dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts." A division bench of the apex court, after analyzing a large number of cases decided earlier, summarized the position emerging from those cases in para 42 in the following words:[74]

(i) The 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post.

(ii) The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government.

(iii) The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification. For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity.

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work'. Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of

73 2016 (10) SCALE 446 :AIR 2016 SC 5176; also see *Ram Naresh Rawat* v. *Sri Ashwini Ray*, JT 2016 (12) SC 225; *Santosh Devi* v. *Union of India*, 2016 (5) SCALE 13..

74 2016 (10) SCALE 446 at 497-99.

the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and, therefore, pay differentiation would be legitimate and permissible. The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work'.

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale.

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria.

(viii) If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable. In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post.

(x) A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master. Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity.

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post.

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable.

(xiii) The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities.

(xiv) For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable.

(xv) There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level, when the duties are qualitatively dissimilar.

(xvi) The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues.

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply.

Applying the aforesaid principles in relation to temporary employees in the present case (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the court held that the temporary employees were entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post. Khehar J observed:[75]

> (T)he sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the

75 *Id*. at 512.

> application of the parameters of the principle of 'equal pay for equal work'…. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

Discrimination and arbitrariness

It is well settled that equality can be claimed only among equals and, therefore, universal application of law to all is not expected. If, however, a classification is made between persons, things or places, the same must have a reasonable nexus with the object sought to be achieved. During the current year, cases relating to discrimination related to elections, taxes, trading activities and education.

The decision in *Rajbala* v. *State of Haryana*[76] is significant not only for article 14 but also for electoral reforms. The State of Haryana passed the Panchayati Raj (Amendment) Act, 2015 making it mandatory for a candidate *inter alia* to possess the prescribed educational qualification, i.e. matriculation for contesting Panchayat elections. The validity of the amendment was challenged on the ground that it made unreasonable, artificial and arbitrary classification between voters by prescribing

76 AIR 2016 SC 33 : (2016) 2 SCC 445; also see *Yogendra Kumar Jaiswal* v. *State of Bihar*, AIR 2016 SC 1474 (creation of special courts).

educational qualification which was violative of article 14. Chelameswar J rejected the argument holding that:[77]

> The impugned provision creates two classes of voters – those who are qualified by virtue of their educational accomplishment to contest the elections to the PANCHAYATS and those who are not. The proclaimed object of such classification is to ensure that those who seek election to PANCHAYATS have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the PANCHAYATS. The object sought to be achieved cannot be said to be irrational; or illegal or unconnected with the scheme and purpose OF THE ACT or provisions of Part IX of the Constitution. It is only education which gives a human being the power to discriminate between right and wrong, good or bad. Therefore, prescription of an educational qualification is not irrelevant for better administration of the PANCHAYATS. The classification in our view cannot be said either based on no intelligible differentia, unreasonable or without a reasonable nexus with the object sought to be achieved.

The court rejected the argument that by the impugned amendment, a large number of persons would become ineligible to contest the elections and that would be violative of their right enshrined in the Constitution of India. The court held that the Constitution itself prescribes various kinds of qualifications and disqualifications for elections to different offices.

The question whether prescribing cut off marks in the *viva voce* for selection to a post during the selection process violates article 14 of the Constitution of India was raised in *Salam Samarjeet Singh* v. *High Court of Manipur*,[78] but could not be decided finally as the two judges constituting the division bench had divergent views.

In *Union of India* v. *M/s. N.S. Rathnam,*[79] the government had issued two notifications under the Central Excise Act, 1904 granting exemption from payment of excise duty on iron and steel scrap obtained by breaking of imported ship. In one

77 *Id*. at 66 (of AIR).

78 2016 (9) SCALE 738 : (2016) 10 SCC 484.

79 AIR 2016 SC 1273 : (2015) 10 SCC 681; see also *Hiralal P. Harsora* v. *Kusum Narottamdas Harsora*, 2016 (9) SCALE 776 (domestic violence); (*Veerendra Kumar Dubey* v. *Chief of Army Staff* (2016) 2 SCC 627 (issue of circular to ensure procedural equity and fairness was valid under art. 14); *State of Punjab* v. *Brijeshwar Singh Chahal*, AIR 2016 SC 1629 : (2016) 6 SCC 1 : 2016 (3) SCALE 535 (no advocate has a right to be appointed as law officer by the government but the government must adopt a fair, reasonable and non-discriminatory process which should be transparent and credible); *Shree Bhagwati Steel Rolling Mills* v. *CCE* (2016) 2 SCC 643.

notification, full exemption was granted to an assessee who had paid customs duty @ Rs. 1400/- per DLT on imported ship. The other notification applied to an assessee who had paid customs duty at lower rate by adopting some other formula and it had to pay duty at the specified rate. This was challenged as being discriminatory since both notifications related to the same subject, i.e. iron and steel obtained from the breaking of the imported ship. Sikri J found the classification to be arbitrary and held that both kinds of assessees belonged to the same category. He held that reasonable classification must be real and substantial with just and reasonable relation to the object of the notification. "Classification having regard to microscopic differences is not good", as the same might undo equality, the learned judge held. The court, however, directed that the assessee who had paid duty at lower rate will also be granted exemption on payment of the balance amount of duty as paid by other category of assessees.

Lottery is a form of gambling and has always been considered as a vice by all civilized societies from time immemorial. The *Rigveda*, the *Smritis* and the *Arthashastra* have equally condemned this as a vice. The question whether the state government can discriminate between the paper lottery and online lottery was the question considered in *All Kerala Online Lottery Dealers Assn.* v. *State of Kerala*.[80] By a notification issued under the Lottery (Regulation) Act, 1998, the State of Kerala prohibited the sale of computerized and online lottery tickets organized, conducted or promoted by every state government declaring the state to be internet and computerized lotteries-free zone.The prohibition was challenged on the ground of being discriminatory *vis-à-vis* paper lotteries which were not prohibited. The court held that online lotteries formed a class by themselves. It was observed:[81]

> (I)f the State Government has to prohibit any lottery organized, conducted or promoted by every other State, it has to prohibit the sale of its own lottery also. Meaning thereby, if a paper lottery is being prohibited by a particular State then that paper lottery has to be prohibited as a whole. Likewise, if online or internet lottery is to be prohibited by a State then that online or internet lottery of all States including that State also has to be prohibited. Viewed from this angle, we are of the considered opinion that State of Kerala was well within its rights to prohibit the sale of online or internet lotteries in its State and there is no fault in it.

Likewise, none can claim exemption permissible under a taxing statute on the ground that some other goods have been given exemption by issuing notifications. In *Amin Merchant* v. *Central Board of Direct Taxes*,[82] the appellant's contention was

80 (2016) 2 SCC 161

81 *Id.* at 198.

82 (2016) 9 SCC 191.

that under section 25(1) of the Customs Act, 1962, the respondent had issued a large number of notifications granting exemption from payment of customs duty for two financial years in respect of many goods but no notification had been issued in respect of goods cleared by him for home consumption. The court found no discrimination in this action of the respondent.

The Medical Council of India Postgraduate Medical Education Regulations, 2000, made under the Medical Council Act, 1956, prescribed that admissions to post-graduate medical courses shall be made strictly on the basis of the merit in the NEET (National Eligibility-cum-Entrance Test). A proviso to regulation 9 provided that "in determining the merit and the entrance test for postgraduate admission weightage in marks may be given as an incentive at the rate of 10% of the marks obtained for each year in-service in remote or difficult areas up to the maximum of 30% of the marks obtained." In *State of U.P.* v. *Dinesh Singh Chauhan*,[83] the court found nothing wrong in this proviso and it did not provide for any kind of reservation. Moreover, the proviso did not open a new channel for in-service candidates. But the government's order imposing a condition of working of three years in a rural or difficult areas was not permissible under the proviso. Upholding the validity of the proviso, A.M. Khanwilkar J observed:[84]

> Regulations have been framed by an Expert Body based on past experience and including the necessity to reckon the services and experience gained by the in-service candidates in notified remote and difficult areas in the State. The proviso prescribes the measure for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State. That can be termed as a qualitative factor for determining their merit. Even the quantitative factor to reckon merit of the eligible in-service candidates is spelt out in the proviso. It envisages giving of incentive marks at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas up to 30% of the marks obtained in NEET. It is an objective method of linking the incentive marks to the marks obtained in NEET by the candidate. To illustrate, if an in-service candidate who has worked in a notified remote and/or difficult area in the State for at least one year and has obtained 150 marks out of 200 marks in NEET, he or she would get 15 additional marks; and if the candidate has worked for two years, the candidate would get another 15 marks. Similarly if the candidate has worked for three years and more, the candidate would get a further 15 marks in addition to the marks secured in NEET. 15 marks out of 200

83 AIR 2016 SC 3841.

84 *Id.* at 3857.

> marks in that sense would work out to a weightage of 7.5% only, for having served in notified remote and/or difficult areas in the State for one year. Had it been a case of giving 10% marks enbloc of the total marks irrespective of the marks obtained by the eligible in-service candidates in NEET, it would have been a different matter. Accordingly, some weightage marks given to eligible in-service candidate linked to performance in NEET and also the length of service in remote and/or difficult areas in the State by no standard can be said to be excessive, unreasonable or irrational. This provision has been brought into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for the in-service candidate, much less reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational.

III STATE LARGESSE

During the year 2016, a large number of cases relating to distribution of state largesse decided by the Supreme Court were reported. It is well settled that the principles of equality are applicable in the distribution of state largesse.[85] Some of these cases were in the nature of public interest litigation.The government property cannot be given to any person without adequate consideration. In *Lok Prahari* v. *State of U.P.*,[86] the Supreme Court held as *ultra vires* the U.P. Ex-Chief Ministers Residence Allotment Rules, 1997 made under the U.P. Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981, by which ex-chief ministers were allowed, free of cost, to continue occupation of government bungalows for their lifetime after demitting office. In *Centre for Public Interest Litigation* v. *Union of India*,[87] the Supreme Court upheld a policy decision of the central government by which it had allowed migration of existing licences obtained from auction of 3G and BWA (broadband wireless access) spectrum to new telecom service from USAL to UL (unified licence) and from ISP to UL thereby delinking allocation of spectrum from licence on the ground that the same had been taken after thorough examination of all pros and cons and the policy decision was not in contravention of any statutory provision, arbitrary, discriminatory or based on irrelevant considerations.

85 *State of Jharkhand* v. *CWE-Soma Consortium* (2016) 6 SCALE 743.

86 AIR 2016 SC 3537 : (2016) 8 SCC 389 : JT 2016 (11) SC 177.

87 AIR 2016 SC 1777 : (2016) 8 SCC 408; also see *Essar Steel Ltd*. v. *Union of India*, AIR 2016 SC 1980 : (2016) 11 SCC 1; *Sulekhan Singh & Co*. v. *State of U.P*., AIR 2016 SC 228 : 2016 (1) SCALE 190.

If the government nominates a public sector enterprise for a contract without inviting tender or issuing any public notice, the government's action would be invalid.[88] But in a case where the government's new catering policy resulted in non-renewal of the existing licences of small business units providing food and catering services and also for running catering/fruit/fruit juice at the railway stations and required the existing licensees to participate in open bidding, the court held that the policy violated their right to livelihood and same was arbitrary under article 14.[89] But in a case where the supply related to "mission critical" strategic defence products (specialized and critical spare parts), the government is not required to invite open tenders. In *Union of India* v. *HBL Nife Power Systems Ltd*.,[90] to supply submarine batteries to issue request for proposal (RFP), M/s. Exide Industries Ltd. was the only approved supplier of all types of submarine batteries and approval was given to it. But for common use items normally available in the open market, open tenders were being invited. The court upheld this action of the government on the ground that stringent procedure was being followed for the procurement of critical spare parts by the ministry of defence/ Director General of Quality Assurance; no person could claim a vested right to be issued RFP merely because it was also registered for supply of torpedo batteries which was of common use.

Prescribed procedure for distribution of state largesse must be followed

It is well settled that if the law requires a particular thing to be done in a particular manner, in order to be valid, the act must be done in the prescribed manner alone.[91] Moreover, the courts are reluctant to interfere with the terms of notification issued by a governmental agency inviting tenders. There is no doubt that highest bid should ordinarily be accepted by the government but it is not always bound to do so. In case, however, the government decides to reject the highest bid, the decision should contain the reasons which prevailed on the official taking the decision to arrive at his conclusion; the government does not have a *carte blanche* to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision.[92]

88 *Score Information Technologies Ltd*. v. *Sriyash Technologies Ltd*. (2016) 12 SCC 417; also see *Metal Seams Co. of India Ltd.* v. *Avadh Delicacies* (2016) 4 SCC 564.

89 *South Central Railways* v. *S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Assn*. (2016) 3 SCC 582.

90 (2016) 12 SCC 242 : AIR 2016 SC 558.

91 *Captain Sube Singh* v. *Lt. Governor of Delhi* (2004) 6 SCC 440; *State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358; and *Mohinder Singh Gill* v. *Chief Election Commissioner* (1978) 1 SCC 405.

92 *State of Punjab* v. *Bandeep Singh* (2016) 1 SCC 724; also see *State of U.P.* v. *Al Feheem Meetex Pvt. Ltd*., AIR 2016 SC 953.

In matters relating to distribution of state largesse, the procedure prescribed by the statute must be followed. In *State of Kerala* v. *Kerala Rare Earth and Minerals Ltd.*,[93] the state government, exercising its power under section 11(5) of the Mines and Minerals (Development and Regulation) Act, 1957 and with prior approval of the central government as prescribed under section 5(1) of that Act, by an order sanctioned the grant of mining of beach sand along coastal stretches for exploitation of minerals-ilmenite, rutile, leucoxene,zircon and sillimanite- non-scheduled mineral for a period of 20 years in favour of the respondent. Within ten days thereafter, the state government stayed further action in the matter on the ground that a detailed study on the environmental impact of the proposed leases needed to be undertaken before taking any further steps. On the directions of the revisional authority (central government), the state government informed the respondent that it did not consider it necessary to grant mining leases for mineral sand to private parties. The question was whether the state government was justified in declining the applications for grant of leases in favour of the respondent on the ground that being the owner of the mineral deposits, it was entitled to reserve in its own favour or in favour of state owned companies or corporations the right to exploit such deposits. Under section 17-A(2) of the above Act,the "State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved." T.S. Thakur, CJI, for the majority, pointed out that there were three distinct requirements under section 17-A(2) for a valid reservation, *viz*. (i) the reservation could be done in respect of areas not already held under any prospecting licence or mining lease and only with the approval of the central government; (ii) the reservation must be made by a notification in the *official gazette*; and (iii) the notification must specify the boundaries of such areas and the mineral or minerals in respect of which such areas would be reserved. The court did not find any notification as prescribed. As the prescribed procedure was not followed in reserving any kind of minerals in any specified area for allotment to a state owned body, the court upheld the impugned decision of the high court quashing the state government's action. The court, however, made it clear that the state government was free to exercise its power under section 17-A(2) by following the prescribed procedure.

Necessity of complying with all conditions in the tender document

There is no consistency in various decisions on the question whether all the conditions in the tender documents/advertisements must be complied with by a tenderer.

93 (2016) 6 SCC 323.

The Supreme Court in *Om Prakash Sharma* v. *Ramesh Chand Prashar*,[94] drew a distinction between essential and non-essential conditions of eligibility in a tender notice, relying on *Poddar Steel Corporation* v. *Ganesh Engineering Works*.[95] An advertisement was issued by Himachal tourism inviting bids from interested parties for outright purchase of sites located at three places in Himachal Pradesh and the bidders were required to provide information as to area of business interests and annual turnover & net worth in last three years for consideration. The respondent, being the highest bidder, was given the contract even though he had not given any information regarding annual turnover and net worth as required in the advertisement. Udai U. Lalit, J upheld the contract observing that:[96]

> (T)he site in question was to be sold on outright sale basis. The advertisement or the stipulations therein did not contemplate creation and or continuation of any relationship between the parties calling for continued existence of any particular level of financial parameters on part of the bidder, except the ability to pay the price as per his bid. The condition was not an essential condition at all but was merely ancillary to achieve the main object that was to ensure that the bid amount was paid promptly. The advertisement contemplated payment of bid amount whereafter the Sale Deed would be executed and not a relationship which would have continued for considerable period warranting an assurance of continued ability on part of the bidder to fulfill his obligations under the arrangement. Nor was this condition aimed at ensuring a particular level of financial ability on part of the bidder, for example in cases where the benefit is designed to be given to a person coming from a particular financial segment, in which case the condition could well be termed essential. The idea was pure and clear sale simplicitor.

Dipak Misra, J. in *ShobikaaImprex (P) Ltd*. v. *Central Medical Services Society*,[97] held that non-compliance with an essential condition stipulated in the notice inviting tenders was binding on the tenderers. For this purpose, the court looked to the mandatory words like "must" used in the tender notice.

Contrary view was expressed by a division bench consisting of the same judges (Madan B. Lokur and R.K. Agrawal, JJ) in the following two later decisions without

94 AIR 2016 SC 2570; see also *Bakshi Security and Personnel Services Pvt. Ltd*. v. *Devkishan Computers Pvt. Ltd*., AIR 2016 SC 3585 : 2016 (7) SCALE 425.

95 (1991) 3 SCC 273

96 AIR 2016 SC 2570 at 2573.

97 (2016) 16 SCC 233.

reference to the above case which had been decided earlier. In *Central Coalfields Ltd.* v. *SLL – SML* (*Joint Venture Consortium*),[98] the appellant issued a notification inviting tenders and prescribed a proforma for bank guarantee. Nine bidders complied with that requirement but the bank guarantee furnished by the respondent was not in the prescribed form which was rejected. The respondent contended that this requirement of submitting a bank guarantee in the prescribed format was a nonessential term requirement. Madan B. Lokur, J refused to accept the argument holding that whether a term was essential or not has to be decided by the agency inviting the tender. Moreover, even if a term is essential, the agency inviting the tender has a right to deviate from it provided the same was applicable to all bidders uniformly. Even a subsidiary or ancillary term prescribed by the agency has to be respected, the court ruled. Lokur, J relied upon his above decision in *Afcons Infrastructure Ltd.* v. *Nagpur Metro Rail Corporation*.[99] Bids were invited by the respondent for the design and construction of a viaduct between Jhansi Rani Square and Lokmanya Nagar Stations on the East-West Corridor of Nagpur Metro Rail Project. M/s. Guangdong Yuantian Engineering Company (GYT) of China and M/s. TATA Projects Limited (TPL) as a Joint Venture ('GYT-TPL JV') gave their bid for the contract but the respondent, by an e-mail, communicated to GYT-TPL JV that its bid was disqualified at the technical bid opening stating that the documents submitted by them did not meet the eligibility conditions stipulated in the bid documents, i.e. "A minimum number of similar contracts specified below that have been satisfactorily completed as a prime contractor, joint venture member during last 10 (ten) years i.e. up till 31.05.2016 Should have received minimum INR 3200 Million from 1 contract in a metro civil construction work and should have completed viaduct length not less than 5 km in the same contract." The civil construction work completed by GYT-TPL JV was for Pearl River Delta Intercity high speed railway project in China and had completed a viaduct of 7.284 km length and had also received more than INR 3200 million for satisfactorily completing the said contract. The court, however, held that the construction in a metropolitan city or in a metropolitan area during the execution of the Pearl River Delta inter-city high speed railway project, did not make that project an intra-city metro rail project; it continued to be an inter-city railway project and, therefore, it upheld the decision of the respondent.

IV RESERVATIONS IN ADMISSIONS AND PUBLIC EMPLOYMENT

In *Ram Singh* v. *Union of India*,[100] the apex court had struck down the central government's notification dated 04.03.2014, by which Jats in the nine states of Bihar,

98 2016 (8) SCALE 99 : JT 2016 (9) SC 242 : AIR 2016 SC 3815.

99 JT 2016 (9) SC 165; also see *Montecarlo Ltd*. v. *N.T.P.C. Ltd*., AIR 2016 SC 4946 : 2016 (10) SCALE 50.

100 2015 (3) SCALE 570.

Gujarat, Haryana, Himachal Pradesh and NCT of Delhi, Bharatpur and Dholpur districts of Rajasthan, Uttar Pradesh and Uttarakhand were considered backward and included in the central lists of OBC. The review application was also rejected.[101] It may be noted that the court unequivocally threw away a petition[102] in which a prayer was made to issue mandamus commanding the respondents to constitute a committee or commission headed by a retired judge of the high court or Supreme Court in making survey and collecting necessary data of the scheduled castes and the scheduled tribes in the services of the state of U.P. for granting reservation in promotion. It has also been held by the apex court that un-filled vacancies reserved for the scheduled castes and schedules tribes cannot be de-reserved but have to be carried forward independent of fifty per cent of permissible reservation.[103]

In *Ram Kumar Gijroya* v. *Delhi Sub. Services Selection Bd*.,[104] the question was whether a candidate appearing in an examination under the OBC category, submitting the certificate after the last date mentioned in the advertisement was eligible for selection to the post under the OBC category. The respondent had invited applications *vide* advertisement for selection to the post of staff nurse in the department of health and family welfare, Govt. of NCT of Delhi and the last date of submission of the application form was 21.01.2008. The appellant submitted his application form before

101 A review of the decision was rejected in April, 2016. It may be noted that a division bench of the Supreme Court issued notice on the prayer for interim relief on 16.02.2018 against the Punjab and Haryana High Court order, refusing to quash schedule - III of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 which provided reservations to six castes, *viz*. Jat, Jat Sikh, Ror, Bishnoi, Tyagi, MullaJat/ Muslim Jat, by declaring them as backward classes Block 'C'. This reservation was challenged before the Punjab and Haryana high court on the ground that it was contrary to the Supreme Court judgment in *Ram Singh* v. *Union of India* (2015) 4 SCC 697. Schedule - III of the 2016 Act was enacted on the basis of report of K.C. Gupta Commission, set up for the identification of the backwardness of the above classes for providing adequate reservation in educational institutions for their upliftment. The petitioners had contended before the high court that the Supreme Court had not accepted the K.C. Gupta Commission report in *Ram Singh* case and since the date of that judgment (March 17, 2015) till the passing of the impugned legislation, no new facts had emerged nor was there any change in the circumstances which might have warranted the passing of the legislation; reservations made for the Jat community was arbitrary as they already had adequate representation in the state services and necessary identification of castes given the benefit of reservations had not been carried out. The high court, however, dismissed the petition holding that the identification could be carried out at a later stage. However, the high court had directed the State BC Commission to carry out an exercise by 31.03.2018 to detersmine the extent of reservation to which the castes in Schedule - III would be entitled to and also the quantum of reservation to be provided for them. Till that was done, the benefit of reservation in services and in admissions for the BCs in Schedule - III were kept in abeyance.

102 *Suresh Chand Gautam* v. *State of Uttar Pradesh*, AIR 2016 SC 1321 : 2016 (3) SCALE 246 : JT 2016 (3) SC 540.

103 *Kulwant Pal Singh* v. *State of Punjab*, AIR 2016 SC 2281.

104 AIR 2016 SC 1098.

the due date without caste certificate which he did after last date was over. His application was rejected for the reason that he had failed to submit the OBC certificate issued along with application form before the last date of submission of application form. The Supreme Court held that the appellant was entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category in the backdrop of the object of reservations made to the reserved categories.

In *Melvin Chiras Kujur* v. *State of Maharashtra*,[105] the appellant had sought admission to the B.Tech course in a college in the State of Maharashtra for the session 2009-10 against a reserved seat of the scheduled tribes. He belonged to Oraon caste which was found in the States of Jharkhand, Bihar, West Bengal and Maharashtra. He claimed that his forefathers had migrated to the State of Maharashtra in the year 1947 and since then they had lived permanently in that state. The candidates belonging to Oraon caste were recognised as Scheduled Tribes in the State of Maharashtra. As the appellant's family had migrated from Jharkhand to Maharashtra, he could not be denied the benefit of reservation for that caste but the competent authority declined to grant him a caste validity certificate on the ground that he was a migrant in the State of Maharashtra and not entitled to the benefit of reservation. The apex court gave relief to the appellant on the reasoning accepted in another case.[106]

The question of refusal to provide 3% reservation prescribed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came up for consideration in *Rajeev Kumar Gupta* v. *Union of India*.[107] In this case, the petitioners, employed with Prasar Bharati Corporation of India, were aggrieved by two office memoranda by which they were deprived of the benefit of statutory reservation of 3% in group A and group B posts in Prasar Bharati. The court declared the impugned memoranda as illegal and directed the government to extend 3% reservation to PWD in all identified posts in group A and group B, irrespective of the mode of filling up of the posts.

While making reservation, the Supreme Court had held that the State should not completely exclude and ignore the rest of the society.[108] In *Modern Dental College & Research Centre* v. *State of Madhya Pradesh*,[109] the appellants, who were private medical and dental colleges, claimed that they had a fundamental right to make admissions and fix eligibility criteria and admission fee. They had challenged the validity of the Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007, the Admissions Rules, 2008 and the Madhya Pradesh

105 2016 (3) SCALE 684.

106 *State of Maharashtra v. Milind* (2001) 1 SCC 4.

107 AIR 2016 SC 3228.

108 *M. R. Balaji* v. *State of Mysore*, AIR 1963 SC 649.

109 AIR 2016 SC 2601.

Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2009 *inter alia* on the ground that they contain provisions for reservation of seats. Sikri, J turned down the argument made against reservation in private educational institutions holding that sufficient number of seats were available for general categories as well and there was no merit in the challenge to the reservation of seats for SC/ST and OBC which was in consonance with article 15(5) of the Constitution.

V REGULARISATION IN SERVICE

In *Secretary, State of Karnataka* v. *Umadevi* (3),[110] a Constitution Bench of the Supreme Court had unequivocally held that regularization of ad hoc, temporary or daily wage employees was contrary to constitutional mandate under articles 14 and 16. The court, however, carved out an exception where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees had continued to work for ten years or more without the intervention of orders of the courts or tribunals. As a one-time measure, the court had directed that their regularization be considered on merits within six months and in future, no ad hoc, temporary, *etc*. appointment be made against permanent vacant posts bypassing the constitutional requirement. The directions of the court had no meaning for the state and the problem of ad hoc and temporary appointment has rather aggravated. Every year, the court is being approached for regularization. As would be revealed from the following discussion of the cases, the courts do not seem to follow any consistent approach in the matter and there is no predictability about the law. The general trend, however, discernible from the cases is that the courts are quite strict in allowing regularization of employees. A very significant question that needs to be decided by the court is whether a person having accepted the arbitrary terms and conditions of appointment has waived his fundamental rights under articles 14 and 16 of the Constitution, a question that has been answered by the court in the past in the negative.

The decision of a division bench of the High Court of Delhi in *Delhi University Contract Employees' Union* v. *University of Delhi*[111] is very significant on the question of regularization of contractual employees working in the University of Delhi as assistants against permanent posts for various periods ranging between 2 – 15 years. The single judge had simply dismissed the petition by passing a cryptic order relying on *Uma Devi* without going through the factual position on record and the contentions raised in the writ petition. On appeal, Gita Mittal, J rightly held that the petitioners

110 (2006) 4 SCC 1; also see *Sachivalaya Dainik Vetan Bhogi Karamchari Union* v. *State of Rajasthan*, 2016 (8) SCALE 64 (members of the appellant Union had been attending to various menial works in the secretariat in the State of Rajasthan); *Vice Chancellor, Luknow University* v.*Akhilesh Kumar Khare*, 2015 (9) SCALE 625.

111 235 (2016) DLT 657 (D.B.).

had not prayed for regularization in their service; what they had sought was a direction to the respondent to "prepare a scheme for regularization". The prayer in the writ petition *inter alia* was:

> "(i) To direct the Respondent to formulate a scheme for regularising the services of members of the petitioner Union and other petitioners working on contract/ad hoc/daily wage basis after relaxing age requirement so as to confer on them permanent status."

After an exhaustive analysis of the leading cases decided by the apex court, Gita Mittal, J held:[112]

I. The decision of the University of Delhi to grant one time age exemption to all contract labour who may have served for over a year on such basis for participating in the selection in effect is in the nature of the Scheme postulated by the Supreme Court in para 53 of Umadevi. It cannot be denied that such opportunity to participate in the selection process has to be meaningful.

II. In view of the age relaxation given by the University of Delhi, an opportunity to undergo the selection process was made available to all contract employees who had worked for one year or more on contract. As a result of such opportunity, the contract workers were rendered entitled to be tested on a realistic and fair scale and benchmark. There is substance in the grievance of the contractual employees that to test them on the same standards as new applicants is to deprive them of a fair and meaningful opportunity to participate in the selection process.

III. The Delhi University admits that the contract employees who applied under the last recruitment drive i.e 6 November, 2013 possessed the requisite qualifications as per the recruitment rules of 2008. Regular vacant posts were available when they were appointed. Therefore, so far as all those who applied are concerned, their qualifications stand verified. Furthermore, their original appointments could also, at the worst, be termed irregular and not illegal.

IV. There is substance in the grievance of the appellants that pursuant to the notification dated 6 November, 2013, they have not been subjected to a test that is fair and appropriate for them. The respondent-University ought to have designed an appropriate mechanism for testing the appellants having regard to the date when they would have acquired their qualifications. Beside the appointment drive conducted by the respondent-University, they have regular post available for making appointments pursuant to a test appropriately designed for the appellants and other persons based like them.

V. The appellants and others like them have served the organisation for long years, and, it is evident that even if their having acquired academic qualifications much

112 *Id*. at 679-80.

before the new applicants, the deficiency, if any, is made good by the valuable experience acquired by them by virtue of the years of service. The learned Single Judge has fallen into error in treating the writ petition as one seeking a relief of regularisation.

VI. The respondents were unable to fill up the vacancies pursuant to the process initiated by the notification dated 6 November, 2013 which are still available.

VII. In view of the passage of time, it would be unfair to the appellants as well as the respondents to remand the matter for consideration of the above. This court is adequately empowered to mould the relief to ensure complete justice to the parties.

Result :

In view thereof, this appeal is disposed of with a direction to the University of Delhi to design and hold an appropriate test for selection in terms of the notification dated 6 November, 2013 having regard to the fact that the persons working on contract basis covered under the notification dated 6 November, 2013 had obtained their essential qualifications much before the fresh applicants; that they have rendered satisfactory service and bring with them the benefit of the knowledge acquired by experience gained while working on contract basis with the Delhi University.

It is also clarified that the same persons who shall be so tested would be those who would be eligible pursuant to the advertisement dated 6 November, 2013.

Gita Mittal, J has clearly shown the path to the employees working for years for no fault of theirs. There is no doubt that such employees cannot compete with young minds, who have just passed out from universities and colleges but who have no work experience, which is possessed by the existing employees. The present author has not come across any such decision from any court showing the path as done in the present case by Gita Mittal, J. The decision in this case deserves to be widely discussed and followed.

In *Dullu Devi* v. St*ate of Assam*,[113] the Supreme Court directed regularization of the services of the appellant who had been working for 25 years as a teacher/head mistress.

In *State of Maharashtra* v. *Anita*,[114] 471 posts of legal advisors, law officers and law instructors were created by government resolutions for appointment on contractual

113 AIR 2016 SC 2152; also see *Bharat Singh* v. *Union of India*, 2016 (8) SCALE 684 (petitioners working as parcel-porters of eastern railways were given regularization).

114 AIR 2016 SC 3333 : 2016 (6) SCALE 807; also see *State of Jammu and Kashmir* v. *District Bar Assn*., 2016 (12) SCALE 534 in which the high court had directed regularisation of 209 daily rated workers working in various courts but the Supreme Court remanded the case to the high court for reconsideration; *Pragati Mahila Samaj* v. *Arun*, AIR 2016 SC 3450 (claim for permanency made by a teacher was refused by the court); *Workmen Rastriya Colliery* v. *Bharat Coking Coal Ltd*., 2016 (9) SCALE 509; *Rashtriya Colliery Mazdoor Sangh.* v. *Employers in Relation to Management of.Kenduadih of M/s. BCCL*, JT 2016 (11) SC 147.

basis on fixed pay under the director general of police and commissioner of police, Greater Mumbai. The high court had held the posts to be permanent in nature. The apex court, on the contrary, held that the government resolutions creating the posts had made it clear that the posts should be filled up on contractual basis as per the prescribed terms and conditions. Clause 'B' of one of the resolutions clearly stipulated that the initial contractual period of appointment was eleven months with provision for extension of contract for another eleven months. The clause made it clear that the appointment could be made upto a maximum of three times only. In case the reappointment of such candidates was considered necessary, they had to face the selection process again. The terms of the agreement entered into by the petitioners had expressly laid down that the appointment was purely contractual and the appointees will not be "entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government". After having accepted contractual appointment, the petitioners were estopped from challenging the terms of their appointment. In the light of these terms and conditions, the court refused to direct the regularisation of the petitioners. This decision raises certain doubts in mind. Can the fundamental rights be waived? The answer is obviously in the negative. A person seeking employment has no choice to select the terms and conditions of service; whatever term is given to him, he has no choice but to accept the same, otherwise he would not get the job. How can then the court say that once having accepted the terms, the employee cannot resile? The court in this case did not correctly appreciate the ratio of *Umadevi*.

VI FREEDOM OF SPEECH AND EXPRESSION

The provisions of sections 499 and 500 of the Indian Penal Code, 1860 criminalising defamation was not a violation of the fundamental right under article 19(1)(a) of the Constitution of India. Clause (2) of article 19 does not use the word "incitement" with defamation with the result that there can be criminality even without inciting a person to commit a crime. The provisions of sections 499 and 500 do not restrict the freedom guaranteed under article 19(1)(a).[115]

No violation of fundamental right of speech and expression of a suspended member of legislative assembly

If a member of the legislative assembly is suspended for breach of privilege, his/her right to speak inside the assembly under article 194 is curtailed by virtue of an action taken for breach of privilege of the House, such a person cannot complain that his/her fundamental right of speech and expression guaranteed under article 19(1)(a) of the Constitution has been violated. In *Alagaapuram R. Mohanraj* v. *Tamil Nadu*

115 *Subramanian Swamy* v. *Union of India*, AIR 2016 SC 2728.

Legislative Assembly Rep. by its Secretary,[116] the petitioners were held to be guilty of breach of privilege of the Tamil Nadu legislative assembly and were suspended for ten days of the next session of the House. It was also resolved that the petitioners will not be paid their salaries or given other benefits due to them as members of the legislative assembly for the period of suspension. The petitioners approached the court alleging violation of their fundamental right under article 19(1)(a). The court examined two questions with reference to article 19: (i) Does a member of a state legislature exercise his fundamental right of speech and expression under article 19(1)(a) while participating in the proceedings of the House; and (ii) Does the disabling a member from participating in the proceedings of the legislative body, amount to deprivation of the fundamental right to freedom of speech under article 19(1)(a) of such a legislator? The court drew a distinction between the "freedom of speech and expression" guaranteed under article 19(1)(a) on one hand and the "freedom of speech in Parliament" under article 105(1) and "freedom of speech in the Legislature of every State" under 194(2) on the other. Chelameswar, J pointed out the distinction between these provisions thus:[117] (i) While the fundamental right of speech guaranteed under Article 19(1)(a) was guaranteed to every citizen, the freedom of speech contemplated under articles 105 and 194 was available only to the citizens who are members of the legislative body concerned; (ii) The freedom of speech contemplated in articles 105 and 194 was available only during the tenure of the membership of the body but the freedom under article 19(1)(a) was available all the time; (iii) The constitutional right of free speech under articles 105 and 194 is limited to the premises of the legislative body while the freedom of speech under article 19(1)(a) has no such geographical limitations; and (iv) The freedom of speech guaranteed under article 19(1)(a) is subject to reasonable restriction which can be imposed by law in accordance with clause (2) to article 19 but the right of free speech available to a legislator under article 105 or 194 is subject to "other provisions of the Constitution and to the rules and standing orders regulating the procedure of the legislative bodies." Thus, the scope and amplitude of the freedom of speech available to a citizen and that available to a member of a legislative body were totally different; no citizen has a right to enter the legislative body and exercise his freedom of speech unless he is a member thereof and the member of a legislative body can enjoy his freedom of speech within the

116 (2016) 5 SCC 82 : 2016 (2) SCALE 340 : AIR 2016 SC 867; also see *Star Sports India Pvt. Ltd*. v. *Prasar Bharati*, 2016 (5) SCALE 661 (mandatory sharing of signals without advertisements under the Sports Broadcasting Signals (Mandatory Sharing with PrasarBharati) Act, 2007).

117 See *P.V. Narasimha Rao* v. *State (CBI/SPE)* (1998) 4 SCC 626. The limitation expressly contained in the Constitution, *e.g*. are those provided under articles 121 and 211 (discussion in the legislative bodies about the conduct of any Judge of Supreme Court or of the High Court in the discharge of his duties is prohibited); articles 118 and 208 (authorising the legislative bodies to make rules for regulating their procedure and the conduct of the business).

house only so long as he continues to be a member of that body but not thereafter. The court, therefore, rejected the contention of the petitioners that there was curtailment of their right of speech in the legislative assembly of Tamil Nadu to which they were entitled under article 194 by virtue of the impugned order, the impugned order did not violate the fundamental rights of the petitioners guaranteed under article 19(1)(a).

Disclosure of information under art.19(1)(a)

It has now become well settled that right to freedom of speech and expression includes right to information[118] which has been provided under the Right to Information Act, 2005 (RTI Act). In *Kerala Public Service Commission* v. *State Information Commission*,[119] the court considered the scope of this right with reference to examinations. The High Court of Kerala and also in another case, the High Court of Allahabad had directed the appellant to provide to the respondent not only the scan copy of his answer-sheet, tabulation-sheet containing interview marks but also the names of the examiners who had evaluated the answer sheet as there existed no fiduciary relationship. Rejecting the views of the two high courts, M.Y. Eqbal, J held that the public service commission (PSC) and the relationship between examiners and PSC was that of principal and agent. Being agents, the examiners are bound to evaluate the answer-sheet as per the instructions of the PSC. This brings fiduciary relationship between the two and, therefore, any information shared between them is not liable to be disclosed. Moreover, the information seeker had no role to play in this matter and the information seeker was not likely to get any benefit out of that disclosure. The disclosure of examiner's name was not in public interest and the disclosure might have serious consequences. Revelation of examiner's identity might lead to confusion and public unrest. This might also lead to prospective candidates for the forthcoming examinations approaching the examiners for favours by illegal means. The court, therefore, modified the impugned judgment to the extent that the respondents were not entitled to the disclosure of names of the examiners.

Under section 8(1)(e) of the RTI Act, any information received in a fiduciary relationship is exempt from disclosure. In *Reserve Bank of India* v. *Jayantilal N. Patel*,[120] the Supreme Court held that the Reserve Bank of India does not stand in any fiduciary relationship with any public or private sector bank and, therefore, an information regarding irregularities committed by these banks cannot be denied on the ground that it might endanger the economic interest of the country.

118 *People's Union for Civil Liberties* v. *Union of India* (1997) 1 SCC 301; *Union of India* v. *Association for Democratic Reforms* (2002) 5 SCC 294.

119 (2016) 3 SCC 417.

120 AIR 2016 SC 1.

VII FREEDOM TO CARRY ON TRADE, BUSINESS AND PROFESSION

It is well settled that article 19(1)(g) of the Constitution of India does not entitle a citizen to carry on trade or business in immoral and criminal activities or in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e. *res extra commercium* (outside commerce). Likewise, there can be no business in crime. The right under sub-clause (g) does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious. In *Kerala Bar Hotels Assn*. v. *State of Kerala*,[121] Vikramajit Sen, J, contrary to general view, held that a "right under Article 19(1)(g) to trade in liquor does exist provided the State permits any person to undertake this business. It is further qualified by Article 19(6) and Article 47." In this case, the petitioners were hotels classified as two star, three star, four star and heritage hotels, who had challenged the abkari policy announced by the state for the year 2014-15 as well as the amendments to the foreign liquor rules which were aimed at liquor-free Kerala by prohibiting sale of liquor by issuing bar licences only to five star hotels. Upholding the policy, Sen, J observed:[122]

> (I)t is not the State that makes classification of Star Rating so far as hotels are concerned. This is intrinsically modulated by the Tourism Industry and not by the State Government. It seems to us that the impugned policy of eradicating consumption of alcohol in public applies to all stakeholders without exception. However, thereafter a relaxation or exception, in the interest of tourism, has been forged in favour of Five Star hotels alone so far as the drive against public consumption of liquor is concerned. In other words, were it not for considerations of tourism, this exception in favour of Five Star Hotels may have been struck down. As already noted, Courts should be chary from interfering in policy matters, by infusing or imposing its assessment of the policy. The Court may well opine that there is close similarity between Five Star and Four Star and Heritage Hotels with regard to foreign clientele; but that segregation or selection is the preserve of the State Government. This is altogether different from viewing the position from the stand point of creating a classification in favour of Five Star hotels. The State can draw support from Rule 13(3) which postulates that special measures for the spromotion of tourism can be ordained by the State. We cannot subscribe to the view that this Rule violates Section 15C of the Abkari Act. xxx

121 AIR 2016 SC 163; also see *Indian Hotel & Restaurants Assn*. v. *State of Maharashtra*, 2016 (5) SCALE 604.

122 *Id*. at 180-81.

> Judicial review is justified only if the policy is arbitrary, unfair or violative of fundamental rights. Courts must be loathe to venture into an evaluation of State policy. It must be given a reasonable time to pan out. If a policy proves to be unwise, oppressive or mindless, the electorate has been quick to make the Government aware of its folly.
> x xx
> From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the Court is not expected to sit as an appellate authority on an opinion.
> We find no illegality or irrationality with the intention of the State to clamp down on public consumption of alcohol.

In *Modern Dental College & Research Centre* v. *State of Madhya Pradesh*,[123] A.K. Sikri, J, while upholding the constitutional validity of restrictions imposed by the Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007, the Admissions Rules, 2008 and the Madhya Pradesh Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2009) on admission criteria, state-conducted centralized entrance test for admissions and fixation of fee for the post-graduate medical and dental education imparted in private professional colleges, observed:[124]

> Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of material is produced, it is, undoubtedly, in the larger interest and welfare of the students community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to 'restrictions' on the right of the appellants to carry on their 'occupation', are clearly 'reasonable' and satisfied the test of proportionality.

With regard to the right of the private medical and dental colleges to fix the fee to be charged from the students, Sikri, J held:[125]

> To put it in nutshell, though the fee can be fixed by the educational institutions and it may vary from institution to institution depending

123 AIR 2016 SC 2601 : (2016) 7 SCCC 353.
124 *Id.* at 2632.
125 *Id.* at 2634.

> upon the quality of education provided by each of such institution, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same.

This decision was further clarified in *State of M.P*. v. *Jainarayan Chouksey*,[126] to the effect that not only state-conducted centralized entrance test for admissions to all medical seats was valid restriction under article 19(1)(g) but also state-conducted centralized counselling to make the entire admission process a composite one.

In *Alagaapuram R. Mohanraj*v. *Tamil Nadu Legislative Assembly Rep. by its Secretary*,[127] the Supreme Court repelled the argument that membership of a legislative assembly was a kind of 'occupation' to which the petitioners were entitled to carry on under article 19(1)(g) of the Constitution. The court also rejected the argument of the petitioners that a member of the legislative assembly pursued an 'occupation' by becoming a member of a legislature since the term 'occupation' denoted an activity which generated income or profit.[128] The right to contest an election to the legislative bodies established by the Constitution was a constitutional right subject to other provisions of the Constitution but not a fundamental right. It was held that:[129]

> The economic underpinnings of an 'occupation' under Article 19(1)(g) and the transient and incidental nature of economic benefits flowing from the office of a legislator must inevitably lead to the conclusion that a member of the legislative assembly cannot be treated as pursuing an 'occupation' under Article 19(1)(g). We, therefore, reject the contention that the issue at hand involves the rights of the petitioners under Article 19(1)(g).

The Allahabad High Court Rules, 1952 prescribe that an advocate not on the rolls of U.P. State Bar Council cannot appear, act or plead before that court unless he/

126 (2016) 9 SCC 412; also see *State of Maharashtra* v. *D.Y. Patil Vidyapeeth* (2016) 9 SCC 401; *Medical Council of India* v. *Christian Medical College*, *Vellore*, 2016 (4) SCALE 72 : JT 2016 (4) SC 118.

127 AIR 2016 SC 867 : 2016 (2) SCALE 340.

128 *T.M.A Pai Foundation* v. *State of Karnataka* (2002) 8 SCC 481; *Sodan Singh* v. *New Delhi Municipal Committee* (1989) 4 SCC 105.

129 *Id*. at 878 (of AIR).

she files an appointment along with an advocate who is on the rolls of that state bar council. The Supreme Court held that this rule did not violate the fundamental right of an advocate guaranteed under article 19(1)(g) of the Constitution. The court held that there was no absolute bar on an advocate who could be allowed to plead with the permission of the court or by an appointment with an advocate who is on the rolls of U.P. State Bar Council. The rule was held to be reasonable as it was intended to fix accountability and maintain orderly functioning of the court for effecting service of notices, copies of pleadings and ensure regular procedural compliances.[130] If this test of reasonableness is applied, it would create serious practical problems for the advocates who, under section 30 of the Advocates Act, 1961 are "entitled as of right to practise throughout the territories to which this Act extends– (i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise." Moreover, the restriction imposed by the rules framed by the High Court of Allahabad would encourage regionalism.

In *Cellular Operators Assn. of India* v. *Telecom Regulatory Authority of India*,[131] the Supreme Court struck down a regulation framed by the respondent according to which every originating service provider providing cellular mobile service to credit to the account of the calling consumer by one rupee for each call drop within its network, limited to three dropped calls in a day. The court held the regulation to be violative of articles 14 and 19(1)(g) of the Constitution as it lacked the basis and purpose. It was held that call drops may be because of several reasons and all of them may not be attributable to the service provider. The impugned regulation did not maintain a balance between the interest of the consumer and the service provider.

VIII RIGHT TO LIFE AND PERSONAL LIBERTY

Access to justice

In *Anita Kushwaha* v. *Pushap Sudan*,[132] the court had considered the question whether the Supreme Court had the power to transfer a civil or criminal case pending in any court in the State of Jammu and Kashmir to a court outside that state and *vice versa*. In the present case, out of thirteen transfer petitions, eleven had sought transfer of civil cases from or to the State of Jammu and Kashmir while the remaining two had sought transfer of criminal cases from the state to courts outside that state. T.S. Thakur, CJ accepted that the petitioners were perfectly justified in contending that the provisions of section 25 of the Code of Civil Procedure, 1908 and section 406 of the Criminal Procedure, 1973, as applicable to the rest of India, could not be invoked by

130 *Jamshed Ansari* v. *High Court of Judicature at Allahabad*, AIR 2016 SC 3997.

131 AIR 2016 SC 2336.

132 2016 (7) SCALE 235 : (2016) 8 SCC 509 : AIR 2016 SC 3506.

any litigant seeking transfer of any case to or from the State of Jammu and Kashmir. It was equally true that Jammu and Kashmir Code of Civil Procedure, SVT.1977 and Jammu and Kashmir Code of Criminal Procedure SVT.1989 also did not have any provision empowering the Supreme Court to direct transfer of any civil or criminal case from any court in the state to a court outside that state or *vice versa*.

It was, however, argued that access to justice was a fundamental right guaranteed under article 21 of the Constitution of India and any litigant, whose fundamental right of access to justice was denied or jeopardized, can approach the Supreme Court for relief under article 32 of the Constitution for the protection and enforcement of his/her right and the court can issue appropriate directions to protect such right including a direction for transfer of the case from that state to the court outside the state or *vice versa.* Moreover, article 142 of the Constitution read with article 32 clearly empowers the Supreme Court to intervene by issuing suitable directions whenever necessary to do complete justice to the parties.

The court considered two questions: The first involved examination of whether access to justice was a fundamental right and, if so, what was the sweep and content of that right; and the second was whether articles 32 and 142 of the Constitution empower the Supreme Court to issue suitable directions for transfer of cases to and from the State of Jammu and Kashmir in appropriate situations. After extensively quoting jurists and judicial precedents from foreign countries, the court held that the right to access to justice has been well recognised by various decisions of the apex court.[133] Likewise, the right to speedy trial was also engraved under article 21.[134] Thakur, CJ, on behalf of a Constitution Bench, observed:[135]

> Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman Jurisprudential maxim of '*Ubi Jus Ibi Remedium',* the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce.

133 See *In re under Article 143, Constitution of India* [*Keshav Singh* case], AIR 1965 SC 745 and *L. Chandra Kumar* v. *Union of India* (1997) 3 SCC 261.

134 *Hussainara Khatoon* v. *State of Bihar* (1980) 1 SCC 81; *Imtiyaz Ahmad* v. *State of Uttar* (2012) 2 SCC 688; *Brij Mohan Lal* v. *Union of India* (2012) 6 SCC 502; *Tamilnad Mercantile Bank Shareholders Welfare Association* v. *S.C. Sekar* (2009) 2 SCC 784.

135 2016 (7) SCALE 235 at 248-250.

> This Court has by a long line of decisions given an expansive meaning and interpretation to the word 'life' appearing in Article 21 of the Constitution….[136] In the recent Constitution Bench decision of this Court in *Subramanian Swamy*v. *Union of India*,[137] this Court held reputation to be an inherent and inseparable component of Article 21. Given the fact that pronouncements mentioned above have interpreted and understood the word *"life"* appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/ or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of the Article 21 of the Constitution of India. If *"life"* implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of *"access to justice"* will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal

136 See the cases in which the scope of the right to life under article 21 was expanded: *Maneka Gandhi* v. *Union of India* (1978) 1 SCC 248 (the right to life does not mean mere animal existence alone but includes every aspect that makes life meaningful and liveable); *Sunil Batra*v. *Delhi Administration* (1978) 4 SCC 494 (the right against solitary confinement, prison torture and custodial death); *Charles Sobhraj* v. *Suptd. Central Jail* (1978) 4 SCC 104 (the right against bar fetters); *Khatri II* v. *State of Bihar* (1981) 1 SCC 627 (the right to free legal aid); *Prem Shankar Shukla* v. *Delhi Administration* (1980) 3 SCC 526 (the right against handcuffing); *Rudal Sah* v. *State of Bihar* (1983) 4 SCC 141 (the right to compensation for illegal and unlawful detention); *Sheela Barse* v. *Union of India* (1988) 4 SCC 226 (the right to speedy trial); *Parmanand Katara* v. *Union of India* (1989) 4 SCC 248 (the right to emergency medical aid); *Chameli Singh* v. *State of U.P.* (1996) 2 SCC 549 and *Shantistar Builders* v. *Narayan Khimalal Totame* (1990) 1 SCC 520 (the right to shelter, clothing, decent environment and a decent accommodation); *M.C. Mehta* v. *Union of India* (1997) 1 SCC 388 (the right to clean environment); *Lata Singh* v. *State of U.P.* (2006) 5 SCC 475 (the right to marriage); *Suchita Srivastava* v. *Chandigarh Administration* (2009) 9 SCC 1 (the right to make reproductive choices); *Sukhwant Singh* v. *State of Punjab* (2009) 7 SCC 559 (the right to reputation).

137 AIR 2016 SC 2728 : (2016) 7 SCC 221 : JT 2016 (6) SC 41.

> and adjudicatory fora where law is applied and justice administered. The Citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.

Considering the question whether article 32 of the Constitution read with article 142 empowers the Supreme Court to direct transfer in a situation where neither the Code of Civil Procedure nor the Code of Criminal Procedure empowers such transfer to/from the State of Jammu and Kashmir, Thakur CJ held that if the provision empowering courts to direct transfer from one court to other were to stand deleted from the statute, the superior courts would still be competent to direct such transfer in appropriate cases so long as such courts are satisfied that denial of such a transfer would result in violation of the right.

Right to fair investigation and fair trial

Article 21 guarantees a right to fair investigation and fair trial of a case.[138] Thus, if investigation of a criminal case was not being properly done, the court can entrust the investigation to CBI.[139]

Directions issued to protect the fundamental right to life and personal liberty

In a number of cases reported during the current year, the Supreme Court had issued detailed directions for the protection of the fundamental right to life and personal liberty. The court has, however, made it clear that the directions would be issued only when legal provisions are silent. In *Supreme Court Women Lawyers Assn.* v. *Union of India*,[140] the court had refused to prescribe a higher punishment in cases of sexual assault than the punishment prescribed under section 376, IPC. The court also suggested that the Parliament may consider re-defining the term "child" in the context of rape

138 *Sanjiv Rajendra Bhatt* v. *Union of India* (2016) 1 SCC 1 (investigation into Gujarat riot cases); *State of Haryana* v. *Ram Mehar*, AIR 2016 SC 3942 : (2016) 8 SCC 762; *Pooja Pal* v. *Union of India*, AIR 2016 SC 1345 : (2016) 2 SCC 135; *State (NCT of Delhi)* v. *Shiv Kumar Yadav* (2016) 2 SCC 402.

139 *Dharam Pal* v. *State of Haryana*, AIR 2016 SC 618.

140 AIR 2016 SC 360 : (2016) 2 SCC 680.

and prescribe higher punishment. Similarly, the court refused to issue any guidelines in *Trained Nurses Assn. of India* v.*Union of India*,[141] in which the petitioner had ventilated its grievance with regard to the pathetic working conditions of nurses in private hospitals and nursing homes.The court agreed that the nurses working in private hospitals and nursing homes were not being treated fairly in the matter of their service conditions and pay but it left the matter at the wisdom of the central government.

Some of the cases in which directions were issued by the court in exercise of power under article 142 for the protection of the right under article 21, are noted in the following pages.

(i) FIR to be uploaded on website

In *Youth Bar Association of India* v. *Union of India*,[142] the petitioner organization approached the court under article 32 for direction to the respondent and the states to upload each and every first information report (FIR) registered at all the police stations in the country on the official website of the police of all the states at the earliest, preferably within 24 hours of registration. Relying on some leading decisions of the Supreme Court relating to life and personal liberty under article 21 of the Constitution, it was contended that after the registration of FIR,[143] the criminal law is set in motion and liberty of an individual is at stake and, therefore, he should have the information so that he can take necessary steps to protect his liberty. Disposing of the petition, the court issued the following directions:[144]

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

141 2016 (2) SCALE 554 : JT 2016 (2) SC 158.

142 2016 (8) SCALE 611.

143 See *State of West Bengal* v. *Committee for Protection of Democratic Rights, West Bengal* (2010) 3 SCC 571; *Som Mittal* v. *Government of Karnataka* (2008) 3 SCC 753 and *D.K. Basu* v. *State of West Bengal*, AIR 1997 SC 610.

144 *Youth Bar Association of India* v. *Union of India*, 2016 (8) SCALE 611 at 614-15.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure *per se* a ground to obtain the benefit under Section 438 of the Cr.P.C.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State.The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(i) The competent authority referred to herein above shall constitute the committee, as directed herein-above,within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15thNovember, 2016.

(ii) Ban on sex determination tests – directions issued for effective implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

In *Voluntary Health Association of Punjab* v. *Union of India*,[145] the issue before the apex court was the increase of female foeticide, resulting in imbalance of sex ratio and the indifference of the law enforcing agencies in not effectively implementing the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and the rules framed thereunder. On account of dropping sex ratio and keeping in view the far reaching impact of the problem, the court issued the following directions[146] in addition to the directions[147] issued earlier:-

(a) All the States and the Union Territories in India shall maintain a centralized database of civil registration records from all registration units so that information can be made available from the website regarding the number of boys and girls being born.
(b) The information that shall be displayed on the website shall contain the birth information for each District, Municipality, Corporation or Gram Panchayat so that a visual comparison of boys and girls born can be immediately seen.
(c) The statutory authorities if not constituted as envisaged under the Act shall be constituted forthwith and the competent authorities shall take steps for the reconstitution of the statutory bodies so that they can become immediately functional after expiry of the term. That apart, they shall meet regularly so that the provisions of the Act can be implemented in reality and the effectiveness of the legislation is felt and realized in the society.
(d) The provisions contained in Sections 22 and 23 shall be strictly adhered to. Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The Appropriate Authorities who have been appointed under Sections 17(1) and 17(2) shall be imparted periodical training to carry out the functions as required under various provisions of the Act.
(e) If there has been violation of any of the provisions of the Act or the Rules, proper action has to be taken by the authorities under the Act so that the legally inapposite acts are immediately curbed.
(f) The Courts which deal with the complaints under the Act shall be fast tracked and the concerned High Courts shall issue appropriate directions in that regard.

145 AIR 2016 SC 5122 : (2016) 10 SCC 265 : 2016 (10) SCALE 531 : JT 2016 (10) SC 570.
146 *Id.* at 5138-39 (of AIR).
147 *Voluntary Health Association of Punjab* v. *Union of India* (2013) 4 SCC 1 at 6-7.

(g) The judicial officers who are to deal with these cases under the Act shall be periodically imparted training in the Judicial Academies or Training Institutes, as the case may be, so that they can be sensitive and develop the requisite sensitivity as projected in the objects and reasons of the Act and its various provisions and in view of the need of the society.

(h) The Director of Prosecution or, if the said post is not there, the Legal Remembrancer or the Law Secretary shall take stock of things with regard to the lodging of prosecution so that the purpose of the Act is subserved.

(i) The Courts that deal with the complaints under the Act shall deal with the matters in promptitude and submit the quarterly report to the High Courts through the concerned Sessions and District Judge.

(j) The learned Chief Justices of each of the High Courts in the country are requested to constitute a Committee of three Judges that can periodically oversee the progress of the cases.

(k) The awareness campaigns with regard to the provisions of the Act as well as the social awareness shall be undertaken as per the direction No 9.8 in the order dated March 4, 2013 passed in *Voluntary Health Association of Punjab*.

(l) The State Legal Services Authorities of the States shall give emphasis on this campaign during the spread of legal aid and involve the para-legal volunteers.

(m) The Union of India and the States shall see to it that appropriate directions are issued to the authorities of All India Radio and Doordarshan functioning in various States to give wide publicity pertaining to the saving of the girl child and the grave dangers the society shall face because of female foeticide.

(n) All the appropriate authorities including the States and districts notified under the Act shall submit quarterly progress report to the Government of India through the State Government and maintain Form H for keeping the information of all registrations readily available as per sub- rule 6 of Rule 18A of the Rules.

(o) The States and Union Territories shall implement the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realising the objects and purpose of this Act.

(p) As the Union of India and some States framed incentive schemes for the girl child, the States that have not framed such schemes, may introduce such schemes.

Similarly, in *Sabu Mathew George* v. *Union of India*,[148] three software companies, viz. Google Ltd., Yahoo and Microsoft Corporation, had undertaken before the apex court that they will not engage in future in advertising for sex determination test and they would apply 'auto block' principle for this kind of advertisement. The Supreme Court directed, as an *interim* measure, that the respondent would constitute a "nodal agency" and issue advertisement in television, newspapers and radio stating that the nodal agency had been constituted pursuant to the order of the Supreme

148 2016 (12) SCALE 75 at 79 : (2017) 2 SCC 514 at 527.

Court and anyone could bring to its notice anything in the nature of an advertisement or any impact in identifying a boy or a girl in any manner by any search engine. After that, the nodal agency would intimate immediately the search engine concerned or the corridor provider and after receipt of the same, the search engine has to delete the same within thirty-six hours and intimate the same to the nodal agency. One would only wish that the directions are truthfully and sincerely complied with and the problem of sex ratio is contained.

(iii) Protection of children from drug abuse

In *Bachpan Bachao Andolan* v. *Union of India*,[149] the court considered the question of enforcing the fundamental rights of children who were suffering on account of alarming increase in the use of drugs and alcohol. The court's intervention was sought for the identification, investigation, recovery, counselling and rehabilitation of the affected children. After a detailed analysis of the reports concerning the issue such as report of planning commission's working group on adolescent and youth development for formulation of 12th five year plan (2012-17); research study by national commission on protection of child rights (August 2013); national policy on narcotic drugs and psychotropic substances drafted by the ministry of finance, department of revenue, annual report of the ministry of social justice and empowerment (2013-2014); the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and various conventions of the United Nations, a division bench issued these directions: "union government shall (i) Complete a national survey and generate a national data base within a period of six months; (ii) Formulate and adopt a comprehensive national plan within four months, which will among other things also address the areas of immediate concern noted earlier; and (iii) Adopt specific content in the school curriculum under the aegis of NEP."[150]

(iv) Protection of dalit human rights

In *National Campaign on Dalit Human Right*s v. *Union of India*,[151] writ petition under article 32 of the Constitution was filed for issuing directions for the effective implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A full bench of the apex court found that the materials on record proved that the authorities concerned were guilty of not enforcing the provisions of the Act. The court directed the central and state governments to strictly enforce the provisions of the Act; the national commission for scheduled castes and national commission for scheduled tribes were directed to discharge their duties to protect the scheduled castes and scheduled tribes and the national legal services authority was requested to formulate appropriate schemes to spread awareness and provide free legal aid to the members of the scheduled castes and scheduled tribes.

149 2016 (12) SCALE 751 : AIR 2017 SC 754.

150 *Id.* at 762 (of SCALE).

151 2016 (12) SCALE 955: (2017) 2 SCC 432.

(v) Ban on sale of liquor on national and state highways

It is well established that there is no fundamental right under article 19(1)(g) to trade in liquor which has been regarded as *res extra commercium*.[152] While considering appeals from the high courts of Madras and Punjab and Haryana, the apex court in *State of Tamil Nadu rep. by its Secretary Home, Prohibition & Excise Dept* v. *K Balu*,[153] took serious note of liquor shops located on the national and state highways in the country which lead to drunken driving resulting in serious road accidents causing deaths and serious injuries. The court noted that India had reported the highest number of road accident fatalities in the world and the data of 2009 indicated that a road accident occurred every four minutes and drunken driving was a leading cause of road accidents. Dr. D.Y. Chandrachud, J, for the full bench of the court, pointed out that no distinction could be made between national and state highways in regard to the location of liquor shops as the safety of the users of the road was of paramount concern. To enforce the fundamental rights of citizens guaranteed under article 21 of the Constitution, Chandrachud, J, in exercise of power under article 142, ordered strict enforcement of the following directions:[154]

(i) "All states and union territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;
(ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;
(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April 2017; *In the case of those licences for the sale of liquor which have been renewed prior to 15 December, 2016 and the excise year of the concerned state is to end on a date falling on or after 1 April, 2017 the existing licence shall continue until the term of the licence expires but in any event not later than 30 September, 2017*.[155]
(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways; and

152 *Krishan Kumar Narula* v. *State of J & K* (1967) 3 SCR 50; *Nashirwar* v. *State of Madhya Pradesh* (1975) 1 SCC 29; *Har Shankar* v. *Deputy Excise and Taxation Commissioner* (1975) 1 SCC 737; *State of Kerala* v. *Kandath Distilleries* (2013) 6 SCC 573; *State of Bihar* v. *Nirmal Kumar Gupta* (2013) 2 SCC 565.

153 2016 (12) SCALE 979 : JT 2016 (12) SC 82 : (2017) 2 SCC 281 : AIR 2017 SC 262. These directions were slightly modified as indicated below and the court has granted permission to file review petition.

154 *Id*. at 94 (of JT).

155 The italicised part of the direction was added later by an order dated 31.03.2017 passed by the court: *State of Tamil Nadu rep. by its Secretary Home, Prohibition & Excise Dept*v. *K Balu*, AIR 2017 SC 1670 at 1680.

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 metres shall stand reduced to 220 metres"[156]

The directions were to come into effect from 1st April, 2017. Strangely, with a view to wipe out the impact of the above directions of the apex court, barely a few hours before the apex court's order came into effect, the internal roads of the city (notified as state highways) connected to a bypass were declared as additional district roads while city bypasses were being declared as state highways by the state of U.P. The same action was taken by many other states also to save loss of revenue to the states on some lame excuse by declaring state highways as local, municipal or state roads.[157] This is one of the glaring examples to prove the extent to which the executive can bend and nullify judicial verdicts aimed at protecting the public health.

(vi) Good samaritans protected by law

In *Savelife Foundation* v. *Union of India*,[158] the petition was filed in public interest under article 32 of the Constitution for developing supportive legal framework to protect samaritans, *i.e.* by standers and passers-by who render the help to the victims of road accidents. A notification dated 12.5.2015[159] was issued by the ministry of road transport and highways containing broad guidelines for protection of good samaritans

156 *Ibid.*

157 This has been done by many states such as Maharashtra, Himachal, Uttarakhand, Rajasthan Punjab, Union Territory of Chandigarh and others. The news about this matter is widely published in print media during March-April, 2017.

158 AIR 2016 SC 1617 : JT 2016 (3) SC 369.

159 The central government issued the following guidelines to be followed by hospitals, police and all other authorities for the protection of good samaritans:-

(1) A bystander or good Samaritan including an eyewitness of a road accident may take an injured person to the nearest hospital, and the bystander or good Samaritan should be allowed to leave immediately except after furnishing address by the eyewitness only and no question shall be asked to such bystander or good Samaritan.

(2) The bystander or good Samaritan shall be suitably rewarded or compensated to encourage other citizens to come forward to help the road accident victims by the authorities in the manner as may be specified by the State Governments.

(3) The bystander or good Samaritan shall not be liable for any civil and criminal liability.

(4) A bystander or good Samaritan, who makes a phone call to inform the police or emergency services for the person lying injured on the road, shall not be compelled to reveal his name and personal details on the phone or in person.

(5) The disclosure of personal information, such as name and contact details of the good Samaritan shall be made voluntary and optional including in the Medico Legal Case (MLC) Form provided by hospitals.

to be in force till appropriate legislation was framed by Parliament. Subsequently, another notification was issued on January 21, 2016[160] for the examination of good

(6) The disciplinary or departmental action shall be initiated by the Government concerned against public officials who coerce or intimidate a bystander or good Samaritan for revealing his name or personal details.

(7) In case a bystander or good Samaritan, who has voluntarily stated that he is also an eye-witness to the accident and is required to be examined for the purposes of investigation by the police or during the trial, such bystander or good Samaritan shall be examined on a single occasion and the State Government shall develop standard operating procedures to ensure that bystander or good Samaritan is not harassed or intimidated.

(8) The methods of examination may either be by way of a commission under section 284, of the Code of Criminal Procedure 1973 or formally on affidavit as per section 296, of the said Code and Standard Operating Procedures shall be developed within a period of thirty days from the date when this notification is issued.

(9) Video conferencing may be used extensively during examination of bystander or good Samaritan including the persons referred to in guideline (1) above,who are eye witnesses in order to prevent harassment and inconvenience to good Samaritans.

(10) The Ministry of Health and Family Welfare shall issue guidelines stating that all registered public and private hospitals are not to detain bystander or good Samaritan or demand payment for registration and admission costs, unless the good Samaritan is a family member or relative of the injured and the injured is to be treated immediately in pursuance of the order of the Hon'ble Supreme Court in Pt. ParmanandKatara v. Union of India [1989] 4 SCC 286.

(11) Lack of response by a doctor in an emergency situation pertaining to road accidents, where he is expected to provide care, shall constitute "Professional Misconduct", under Chapter 7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 and disciplinary action shall be taken against such doctor under Chapter 8 of the said Regulations.

(12) All hospitals shall publish a charter in Hindi, English and the vernacular language of the State or Union territory at their entrance to the effect that they shall not detain bystander or good Samaritan or ask depositing money from them for the treatment of a victim.

(13) In case a bystander or good Samaritan so desires, the hospital shall provide an acknowledgement to such good Samaritan, confirming that an injured person was brought to the hospital and the time and place of such occurrence and the acknowledgement may be prepared in a standard format by the State Government and disseminated to all hospitals in the State for incentivising the bystander or good Samaritan as deemed fit by the State Government.

(14) All public and private hospitals shall implement these guidelines immediately and in case of noncompliance or violation of these guidelines appropriate action shall be taken by the concerned authorities.

(15) A letter containing these guidelines shall be issued by the Central Government and the State Government to all Hospitals and Institutes under their respective jurisdiction, enclosing a Gazette copy of this notification and ensure compliance and the Ministry of Health and Family Welfare and Ministry of Road Transport and Highways shall publish advertisements in all national and one regional newspaper including electronic media informing the general public of these guidelines.

The above guidelines were issued without prejudice to the liability of the driver of a motor vehicle in the road accident under section 134 of the Motor Vehicles Act, 1988.

160 As required in clauses (7) and (8) of the notification dated 12.05.2015, the standard operating procedure laid down in this notification was as follows:-

Samaritans. The court approved the above two notifications to fill in the gap in the existing law by exercising power under article 142 read with article 32 with a view to provide immediate relief to the victims of road accidents for protecting their rights

1. The Good Samaritan shall be treated respectfully and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.
2. Any person who makes a phone call to the Police control room or Police station to give information about any accidental injury or death, except an eyewitness may not reveal personal details such as full name, address, phone number etc.
3. Any Police official, on arrival at the scene, shall not compel the Good Samaritan to disclose his / her name, identity, address and other such details in the Record Form or Log Register.
4. Any Police official or any other person shall not force any Good Samaritan who helps an injured person to become a witness in the matter. The option of becoming a witness in the matter shall solely rest with the Good Samaritan.
5. The concerned Police official(s) shall allow the Good Samaritan to leave after having informed the Police about an injured person on the road, and no further questions shall be asked if the Good Samaritan does not desire to be a witness in the matter.

2. Examination of Good Samaritan by the Police
   i. In case a Good Samaritan so chooses to be a witness, he shall be examined with utmost care and respect and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.
   ii. In case a Good Samaritan chooses to be a witness, his examination by the investigating officer shall, as far as possible, be conducted at a time and place of his convenience such as his place of residence or business, and the investigation officer shall be dressed in plain clothes, unless the Good Samaritan chooses to visit the police station.
   iii. Where the examination of the Good Samaritan is not possible to be conducted at a time and place of his convenience and the Good Samaritan is required by the Investigation Officer to visit the police station, the reasons for the same shall be recorded by such officer in writing.
   iv. In case a Good Samaritan so chooses to visit the Police Station, he shall be examined in a single examination in a reasonable and time-bound manner, without causing any undue delay.
   v. In case the Good Samaritan speaks a language other than the language of the Investigating Officer or the local language of the respective jurisdiction, the Investigating Officer shall arrange for an interpreter.
   vi. Where a Good Samaritan declares himself to be an eye-witness, he shall be allowed to give his evidence on affidavit, in accordance with section 296 of the Code of Criminal Procedure, 1973 (2 of 1974) which refers to Evidence in Formal Character on Affidavit.
   vii. The complete statement or affidavit of such Good Samaritan shall be recorded by the Police official while conducting the investigation in a single examination.
   viii. In case the attendance of the Good Samaritan cannot be procured without delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, or his examination is unable to take place at a time and place of his convenience, the Court of Magistrate may appoint a commission for the examination of the Good Samaritan in accordance with section 284 of the Code of Criminal Procedure, 1973 (2 of 1974) on an application by the concerned.

3. The Superintendent of Police or Deputy Commissioner of Police or any other Police official of corresponding seniority heading the Police force of a District, as the case may be, shall be responsible to ensure that all the above mentioned procedures are implemented throughout their respective jurisdictions with immediate effect.

under article 21 by making two minor modifications in them.[161] It was made clear that these guidelines will have the force of law under article 141 and it was the duty of all authorities –judicial and civil – in the territory of India under article 144 of the Constitution to act in aid of the Supreme Court by implementing them.

(vii) Population control and family planning

A large number of directions were issued by the Supreme Court in *Devika Biswas* v. *Union of India*,[162] which were in addition to the directions issued in an earlier case on the subject.[163] In this case, the issues raised related to pre-operation procedure and post-operation care in cases of sterlisation of men and women which had led to a large number of deaths in the country. The court felt that with the passage of time, change in the circumstances and need to use technology to the optimum, the policies and incentives for sterlisation should be made gender neutral.

(viii) Tackling draught situation in the country

In *Swaraj Abhiyan (I)*,[164] Madan B. Lokur, J issued detailed directions to tackle the grave problem of draught in various parts of the country. The directions were given to the Union of India to constitute a National Disaster Response Force within a period of six months with an appropriate and regular cadre strength; to establish a National Disaster Mitigation Fund within a period of three months from the date of the order; to formulate a National Plan in terms of section 11 of the Disaster Management Act, 2005 at the very earliest and with immediate concern; the Drought Management Manual be revised and updated on or before 31st December, 2016 and while revising and updating the Manual, the ministry of agriculture in the Union of India should take into consideration several factors indicated in the order apart from others. In the proposed revised and updated Manual as well as in the National Plan, the Union of India was required to provide for the prevention, preparedness and mitigation of disasters in future. The court emphasized that "innovative methods of water conservation, saving and utilization (including ground water) should be seriously considered and the experts in the field should be associated in the exercise. Illustratively, dry land farming, water harvesting, drip irrigation etc. could be considered

161 With regard to the guidelines contained in para 13 of the first notification, the court held that the 'acknowledgement' if so desired by good samaritans, has to be issued as may be prescribed in a standard format by the state government and if there was no such format, the acknowledgement be issued on official letter-pad *etc.* and, if desired by the good samaritan, mentioning the name of samaritan, address, time, date, place of occurrence and confirming that the injured person was brought by the samaritan. In the notification dated 21.1.2016, para 2(vii) was modified by the court thus: "The affidavit of Good Samaritan if filed, shall be treated as complete statement by the Police official while conducting the investigation. In case statement is to be recorded, complete statement shall be recorded in a single examination."

162 AIR 2016 SC 4405 : (2016) 10 SCC 726.

163 *Ramakant Rai* v. *Union of India* (2009) 16 SCC 565.

164 *Swaraj Abhiyan (I)* v. *Union of India*, AIR 2016 SC 2929.

amongst other techniques." The Government of India must insist on the use of modern technology to make an early determination of a drought or a drought-like situation instead of continuing with colonial methods and manuals that followed a colonial legacy. The court also directed the secretary, department of agriculture, cooperation and farmers welfare, ministry of agriculture in the Government of India "to urgently hold a meeting within a week with the Chief Secretary of Bihar, Gujarat and Haryana to review the apparent drought situation with all the available data and if so advised persuade the State Government to declare a drought in whichever district, taluka, tehsil or block is necessary." The court was concerned with humanitarian factors such as migrations from affected areas, suicides, extreme distress, the plight of women and children which must be kept in mind by state governments while tackling draught problem particularly making available adequate food grains and water for the affected persons.

(ix) Inhuman Conditions in 1382 Prisons

The in-human conditions in 1382 jails in the country were considered by the apex court in *Re - Inhuman Conditions in 1382 Prisons*,[165] in which the following directions were passed by Madan B. Lokur, J, leaving other important issues raised in the case like unnatural deaths in jails, inadequacy of staff and training of staff, to be decided later on:-

> (P)risoners, like all human beings, deserve to be treated with dignity. To give effect to this, some positive directions need to be issued by this Court and these are as follows:
>
> 1. The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services

165 2016 (2) SCALE 185 at 200-201; also see *Re - Inhuman Conditions in 1382 Prisons*, 2016 (9) SCALE 503. It may be stated here that the court also noted the new Model Prison Manual, 2016 (21.01.2016) approved by Union Home Minister. The Manual, consisting of 32 chapters, aims at bringing in basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners all over the country. It is meant for guidance to the states/union territories. The key provisions in the Manual include: (i) Access to free legal services; (ii) Additional provisions for women prisoners; (iii) Rights of prisoners sentenced to death; (iv) Modernisation & Prison computerization; (v) Focus on after-care services; (vi) Provisions for children of women prisoners; (vii) Organisational uniformity and increased focus on prison correctional staff; (viii) Inspection of Prisons and (ix) Other revisions including repatriation of prisoners, bringing uniformity and clarifying provisions regarding remission, usage of the commonly used terms 'parole' and 'furlough' in place of leave and special leave and setting out in detail the objective behind parole and furlough and the procedure for the same, bringing medical services within the domain of the state medical services/ health department instead of the prison department and a more comprehensive and relevant security classification for high-risk offenders.

Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.

2. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.

4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.

5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.

6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.

7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.

8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

(x) Singing of national anthem[166]

A division bench of the apex court emphasized that corrosive attitude to the honour of the national sentiment was impermissible and the dramatisation of the national anthem was against the constitutional philosophy. The court, therefore, issued the following directions:

(a) The film 'Kabhi Khushi Kabhi Gham' shall not be shown in any theatre unless the scene which depicts the national anthem is deleted.

(b) Respondents 4 and 5 shall immediately withdraw the film from all cinema-halls and the theatre owners are restrained from showing the film in the present form.

(c) The respondent No. 3 shall withdraw the certificate unless the deletion is effected and deleted feature film is shown to the members of the Board as required under the Act and the Rules.

(d) The aforesaid film shall not be telecast in national channel and also in any satellite channel without deletion.

(e) If any video cassette/VCD/DVD is sold in the market without deletion of the national anthem the appropriate authority shall take action against the said persons as permissible in law as it would amount to dealing with an uncensored film.

(f) No cable operator shall show the movie as long as the national anthem is not deleted as that would tantamount to showing of an uncensored film.

By an order issued later, the court clarified that there was no need to stand up if the national anthem was being sung during the course of the film or it is a part of a documentary.[167]

(xi) Right of homeless persons to shelter in urban areas[168]

Two writ petitions raised the issue of the right of homeless persons to shelter in urban areas. The Government of India had launched the National Urban Livelihoods Mission (NULM) on 24.09.2013 "to reduce the poverty and vulnerability of urban poor households by enabling them to access gainful self-employment and skilled wage employment opportunities through building strong grassroots level institutions for the poor which would result in an appreciable improvement in their livelihoods on a sustainable basis." There was, however, no monitoring or evaluation of the progress of work and utilization of the huge amount of money that was released to the State Governments under the NULM and the destitute in urban areas continue to suffer without shelters. A full bench of the apex court was very unhappy to note that despite the availability of funds and disbursement and monitoring by the court, an extremely unsatisfactory state of affairs existed on the ground. In view of this, the court issued the following directions:

166 *Shyam Narayan Chouksey* v. *Union of India,* 2016 (12) SCALE 404 at 405.

167 Order dated 14.02.2017.

168 *E.R. Kumar* v. *Union of India*, 2016 (12) SCALE 19.

A Committee is constituted which will have Mr. Justice Kailash Gambhir, retired Judge, High Court of Delhi as its Chairman with an officer of the Joint Secretary cadre from the Ministry of Housing & Urban Poverty Alleviation to be deputed by the Union of India and an officer, serving or retired, from the Delhi Judicial Service to be nominated by the Chief Justice of the High Court of Delhi in consultation with the Chairperson of the Committee as Members. The last mentioned shall be the Member Secretary of the Committee.

The Ministry of Housing and Urban Poverty Alleviation shall be the Nodal Ministry to provide all logistical support to the Committee. The Chairman of the Committee shall be entitled to all such emoluments/ perquisites and facilities as are admissible to any retired Judge, when holding a post retirement assignment like Chairperson of the State Consumer Commissions except residential accommodation. The Committee may not require any regular office space but should there be any such requirement it may take up the matter with the relevant authority. The Committee shall cause physical verification of the available shelters for urban homeless in each State/UT.

The Committee shall also verify whether the shelters are in compliance of the operational guidelines for the Scheme of Shelters for Urban Homeless under the National Urban Livelihoods Mission (NULM). The Committee shall inquire into the reasons for the slow progress in the setting up of shelter homes by the States/UTs.

The Committee shall further inquire about the non-utilization and/or diversion/misutilization of the funds allocated for the Scheme for providing shelters to the urban homeless.

The Committee shall issue suitable recommendations to the State Governments to ensure that at least temporary shelters are provided for the homeless in the urban areas to protect them during the winter season. The State Governments shall ensure compliance with the recommendations along the time frame indicated by the Committee. Any non implementation shall be drawn to the attention of this Court.

The Committee is directed to submit its report within a period of four months.

(xii) Directions for revision of cadre review of CBI

The Supreme Court, taking cognizance of shortage of manpower in CBI, issued several directions to the central government for cadre review with a view to expedite effective and quick investigation of criminal cases. The case had come up before the court by way of a public interest litigation seeking investigation by CBI into the Saradha Chit Fund scam cases.[169]

169 *Subrata Chattoraj* v. *Union of India* (2016) 2 SCC 1.

Can consecutive life sentences be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?

A significant question concerning the right to life and personal liberty raised before a Constitution Bench of the apex court on a reference by a full bench in *Muthuramalingam* v. *State rep. by Insp. of Police*,[170] was whether consecutive life sentences could be awarded to a convict if found guilty of a series of murders for which he has been tried in a single trial?[171] In this case, appellants were tried for several offences including those punishable under section 302, IPC for several murders alleged to have been committed by them in a single incident. They were found guilty and sentenced to imprisonment for life for each murder and also varying other sentences. The sentence of imprisonment for life for each one of the murders was directed to run consecutively. After considering a number of cases on the issue,[172] T.S. Thakur, CJI, noted that section 31 was attracted only in cases where two essentials were satisfied,*viz*. (i) a person was convicted at one trial and (ii) the trial was for two or more offences. Once these two conditions were satisfied, the court could sentence the offender to several punishments prescribed for the offences committed by him if the court was otherwise competent to impose such punishments. The learned Chief Justice pointed out:[173]

170 2016 (7) SCALE 129. For an analysis of the case, see K.I. Vibhute, "Life Sentence' After 'Life Sentence' in Span of 'Life' : A Penal Measure!", 58 *JILI* 447-56 (2016).

171 In this connection, s. 31, IPC reads: "31. *Sentences in cases of conviction of several offences at one trial*.

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that-

(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

172 *Kamalanantha* v. *State of Tamil Nadu* (2005) 5 SCC 194; *Sanaullah Khan* v. *State of Bihar* (2013) 3 SCC 52; *Gopal Vinayak Godse*v. *State of Maharashtra* (1961) 3 SCR 440; *State of Punjab* v. *Joginder Singh* (1992) 2 SCC 661; *Union of India* v. *Sriharan*, 2015 (13) SCALE 165.

173 *Muthuramalingam* v. *State rep. by Insp. of Police*, 2016 (7) SCALE 129 at 135 and 137.

> What is significant is that such punishments as the Court may decide to award for several offences committed by the convict when comprising imprisonment shall commence one after the expiration of the other in such order as the Court may direct unless the Court in its discretion orders that such punishment shall run concurrently. Sub-section (2) of Section 31 on a plain reading makes it unnecessary for the Court to send the offender for trial before a higher Court only because the aggregate punishment for several offences happens to be in excess of the punishment which such Court is competent to award provided always that in no case can the person so sentenced be imprisoned for a period longer than 14 years and the aggregate punishment does not exceed twice the punishment which the court is competent to inflict for a single offence. x xx
>
> The legal position is, thus, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under Cr.P.C. must be so interpreted as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison. Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31(1) would permit consecutive running of sentences only if such sentences do not happen to be life sentences.That is, in our opinion, the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

T.S. Thakur, CJI, while answering the question in the negative, held:[174]

> We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.
>
> (W)hether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants

174 *Id.* at 142-43.

> that even this part of the direction is not legally sound, for once the prisoner is sentenced to under go imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence.

IX PREVENTIVE DETENTION

Can a preventive detention order be challenged after the detention has already been revoked? This question was answered in the affirmative by the Supreme Court *in Bipinchandra Gamanlal Chokshi* v. *State of Gujarat*,[175] in which a preventive detention order was passed against the petitioner under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Ac, 1974 (COFEPOSA) during emergency and the same was revoked after the emergency was revoked. The court held that during emergency, the petitioner could not challenge the impugned order and, therefore, he had a right to do the same after he got that opportunity.

The representation of a detenu must not be considered in a mechanical manner, without proper application of mind. But if the same has been rejected by the competent authority after proper consideration, the order of detention would not be invalid merely because the order has not been communicated to the detenu.[176] In *E. Subbulakshmi* v. *Secy. to Governmen*t,[177] by an order, the state government had delegated to commissioner of police its power to pass preventive detention order which was not given to the detenu while passing the detention order. The court held that it was not mandatory to give a copy of that order to the detenu and his detention was not invalid on that ground.

X RIGHT TO RELIGIOUS FREEDOM

The decision of a division bench of High Court of Bombay in *Dr. Noorjehan Safia Niaz* v. *State of Maharashtra*[178] is quite significant as it highlights as to how

175 2016 (1) SCALE 50.

176 *Union of India* v. *Saleena*, 2016 (2) SCALE 682.

177 2016 (12) SCALE 225.

178 Public Interest Litigation No. 106 of 2014 decided on 26.08.2016.

thekedars of religion try to exploit religion for their personal vendetta. In this case, the petitioners, the office bearers of 'Bharatiya Muslim Mahila Andolan' – a national secular autonomous mass movement of Muslim Women, had filed a public interest petition before Bombay High Court alleging gender discrimination and arbitrary denial of access to women in the sanctum sanctorum at the Haji Ali Dargah at Bombay. According to the President of the Haji Ali Dargah Trust (respondent no. 2), a public charitable Trust registered under the provisions of the Bombay Public Trusts Act, 1950, the reasons for denial were – (i) women wearing blouses with wide necks bend on the Mazaar, thus showing their breasts; (ii) for the safety and security of women; and (iii) that earlier they were not aware of the provisions of Shariat and had made a mistake and therefore had taken steps to rectify the same. The question was whether the entry of women in close proximity to the grave of male Muslim saint was sin in Islam? It was contended that menstruating women were unclean and impure in Islam and could not offer prayers or visit the Dargah/Mosque. Revati Mohite Dere, J. pointed out that reliance was placed on the following Qur'anic verses which address the interaction of men and women in social context:

> "a. Tell the believing men to lower their gaze and to be mindful of their chastity: this will be most conducive to their purity – (and) verily, Allah is aware of all that they do. And tell the believing women to lower their gaze and to be mindful of their chastity, and not to display their charms beyond what may be apparent thereof; hence let them draw their veils over their bosoms." - Qur'an, Sura 24 (An-Nur), ayat 30-31
>
> b. O Prophet, tell your wives and your daughters and the women of the believers to bring down over themselves [part] of their outer garments. That is more suitable that they will be known and not be abused. And ever is Allah Forgiving and Merciful. - Qur'an, Sura 23 (Al-Ahzab), ayat 59
>
> c. Prophet Muhammad (peace be upon him) specifically admonished the men not to keep their wives from going to the mosques: -Ibn Omar reported
>
> The following are verses from the Hadiths :
>
> "I know that you women love to pray with me, but praying in your inner rooms is better for you than praying in your house, and praying in your house is better for you than praying in your courtyard, and praying in your courtyard is better for you than praying in your local mosque, and praying in your local mosque is better for you than praying in my mosque." - Abu Dawud in al-Sunan "The best places of prayer for women are the innermost apartments of their houses."
>
> "So, if a woman is at her period, she has to stop praying and fasting, and if her period is over, she has to get back to them and if Ramadan

> ends, then she has to fast what she had missed." - [IbnJabreen : al lolo al-makeen]
>
> "The majority of the Muslim scholars (among them the four Imams) are agreed that the menstruating woman should not stay in the mosque or the dargah even if her purpose is to study or teach the Qur'an or other Sharia sciences. I state that Allah says (interpretation of meaning):
>
> "{nor when you are in a state of Janaba, (i.e. in a state of sexual impurity and have not yet taken a bath} [4:43]. I state that Menstruation is like Janaba (ritual impurity) in this rule."
>
> "Abu Dawood narrated from Aisha that she said: "The Prophet said:"I do not make the mosque lawful to the Junub (who is in the state of ritual impurity) or the menstruating woman."
>
> Muslim also narrated that Aisha said that The Messenger of Allah (peace be upon him) said to me:"Get me the mat from the mosque. I said: I am menstruating. Upon this he remarked: Your menstruation is not in your hand."

When a denomination claims the fundamental right guaranteed to it to manage its own affairs in matters of religion, it is necessary to consider whether the practice in question is religious or whether the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. It has been held in one case that a public place of worship (mosque) cannot be reserved for a particular sect or class of people.[179] Repelling all the contentions of the respondent no. 2, Revati Mohite Dere, J., on behalf of the division bench, held:[180]

> 35. In the facts of the present case, first and foremost the respondent No. 2 Trust, even under the Scheme, cannot enforce a ban which is contrary to Part III of the Constitution of India. The aims, objects and activities of the Haji Ali Dargah Trust as set out in the Scheme are not governed by any custom, tradition/usage. The objects of the Haji Ali Dargah Trust are in respect of purely secular activities of a non-religious nature, such as giving loans, education, medical facilities, etc. Neither the objects nor the Scheme vest any power in the trustees to determine matters of religion, on the basis of which entry of woman is being restricted. Matters relating to administration of property, by the respondent No. 2 are not matters of religion to which clause (b) of Article 26 applies. The Trust has no power to alter or modify the mode or manner of religious practices of any individual or any group.

179 *Mohd. Wasi* v. *Bachchan Sahib*, AIR 1955 All. 68 (F.B.).

180 Public Interest Litigation No. 106 of 2014 decided on 26.08.2016, paras. 35-37.

36. Admittedly, the Haji Ali Dargah Trust is a public charitable trust. It is open to people all over the world, irrespective of their caste, creed or sex, etc. Once a public character is attached to a place of worship, all the rigors of Articles 14, 15 and 25 would come into play and the respondent No. 2 Trust cannot justify its decision solely based on a misreading of Article 26. The respondent No. 2 Trust has no right to discriminate entry of women into a public place of worship under the guise of 'managing the affairs of religion' under Article 26 and as such, the State will have to ensure protection of rights of all its citizens guaranteed under Part III of the Constitution, including Articles 14 and 15, to protect against discrimination based on gender. In fact, the right to manage the Trust cannot override the right to practice religion itself, as Article 26 cannot be seen to abridge or abrogate the right guaranteed under Article 25 of the Constitution. We may also note, that it is also not the respondent No. 2 Trust's claim that they are an independent religious denomination or a section thereof, having complete autonomy under Article 26. Thus, even considering the said fact, the protection claimed under Article 26 is clearly misconceived.

37. The other justification given by the respondent No. 2 Trust for imposing the ban was the safety and security of the women, in particular, to prevent sexual harassment of women at places of worship. It is stated that the said ban is in keeping with the decision of the Apex Court, wherein stringent directions have been issued to ensure that there is no sexual harassment to women at places of worship. We may note, that the said submission is completely misplaced and misconceived and reliance placed on the judgment of the Apex Court in the case of The Deputy General of Police & Anr. v. S. Samuthiam (dated 30th November, 2012) is completely out of context, inasmuch as, the directions were issued when the Protection of Women from Sexual Harassment at Work Place Bill, 2010 was under consideration and as the provisions of that Bill were not sufficient to curb eve-teasing. It is in these circumstances, certain directions were issued by the Apex Court and directions were given to the State Governments to take effective and appropriate measures to curb instances of eve-teasing. It is also pertinent to note, that at that time, there were no suitable provisions to curb eve-teasing. The said judgment was also prior to the Criminal Law (Amendment) Act, 2013. Reliance placed on this Judgment is clearly misconceived and cannot justify the ban imposed by the respondent No. 2 Trust. The respondent No. 2, under the guise of providing security and ensuring safety of women from sexual harassment, cannot justify the ban and prevent women from entering the sanctum sanctorum of the Haji Ali Dargah. The respondent No. 2 Trust is always at liberty to take steps to prevent sexual harassment of women, not by banning their entry in the sanctum sanctorum, but by

> taking effective steps and making provisions for their safety and security e.g. by having separate queues for men and women, as was done earlier. It is also the duty of the State to ensure the safety and security of the women at such places. The State is equally under an obligation to ensure that the fundamental rights guaranteed under Articles 14, 15 and 25 of the Constitution are protected and that the right of access into the sanctum sanctorum of the Haji Ali Dargah is not denied to women.
> 38. We hold that the ban imposed by the respondent No. 2 Trust, prohibiting women from entering the sanctum sanctorum of the Haji Ali Dargah contravenes Articles 14, 15 and 25 of the Constitution, and as such restore status-quo ante i.e. women be permitted to enter the sanctum sanctorum at par with men. The State and the respondent No. 2 Trust to take effective steps to ensure the safety and security of women at the said place of worship.

The Trust filed special leave petition against the above order of the high court. The Supreme Court disposed of the petition allowing two weeks time to the Trust to remove all obstructions to facilitate women pilgrims to enter the sanctum sanctorum of the Haji Ali Dargah at Bombay at par with men.[181]

XI RIGHTS OF MINORITIES

The right of minorities under article 30 does not include right to mismanage educational institutions established by them. Moreover, this right does not negate the rights of individuals guaranteed to them under Part III of the Constitution. The minorities cannot claim exemption from common entrance test conducted for admission to medical colleges.[182]

In *Oslen A. D'silva* v. *State of Maharashtra*,[183] the petitioners challenged the validity of clause 18(18) of the information brochure for admission to post-graduate technical courses for the academic year 2016-17 which required the minority candidates to attach 'domicile certificate' along with the application form for centralized admission process. A division bench of the high court held that there was no infringement of article 30 of the Constitution in restricting minority quota to seats earmarked for the minority community students from within the state, belonging to minority community to which the institution belongs. This requirement was relevant and consistent with

181 *Haji Ali Dargah Trust* v. *Dr. Noorjehan Safia Niaz* (2016) 16 SCC 788.

182 *Medical Council of India* v. *Christian Medical College, Vellore*, 2016 (4) SCALE 72 : JT 2016 (4) SC 118. By this order passed by a Constitution Bench, the court recalled the decision given by the majority in *Christian Medical College Vellore* v. *Union of India* (2014) 2 SCC 305. Also see *State of M.P.* v. *Jainarayan Chouksey* (2016) 9 SCC 412; *State of Maharashtra* v. *D.Y. PatilVidyapeeth* (2016) 9 SCC 401; *Sankalp Charitable Trust* v. *Union of India* (2016) 7 SCC 487 : 2016 (4) SCALE 585.

183 2016 (5) Mah. LJ 345.

the true scope and ambit of the protection given to minorities under article 30. The court held that the minority quota meant seats earmarked for the minority community students from within the state belonging to the minority community to which the institution belongs.

XII RIGHT TO JUDICIAL REMEDIES

The access to justice is a part of the right to life and personal liberty and this right has expressly been included under article 32 of the Constitution.[184] The Supreme Court has been very liberal in matters pertaining to public interest but quite conscious when any attempt is made to misuse the constitutional remedy in the guise of access to justice. It is well settled that the court does not go into the questions of policy unless the same is violative of any of the fundamental rights.

Frivolous litigation/misuse of writ jurisdiction

In *Pratibha Ramesh Patel* v. *Union of India*,[185] writ petition was filed under article 32 of the Constitution while a petition on the same facts and for the identical relief pending before the high court under article 226 was pending. The petition was filed with the prayer *inter alia* to declare that sections 2, 12 and 15(a) of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012, were unconstitutional and void. While filing the writ petition under article 32, the petitioner had disclosed the fact of having filed a petition before the high court of Bombay under article 226 "seeking a declaration that the measures under Sections 13 and 14 of the SARFAESI Act, 2002 are void ab initio and the high court had admitted the same." The Supreme Court noted that the petition filed under article 32 was a true copy of the petition filed under article 226 which was pending. The court held this to be an abuse of the process of the court and it dismissed the petition imposing costs of Rs.1,00,000/-. During the year 2016, article 32 jurisdiction was invoked for purposes other than enforcement of fundamental rights. One petition was filed seeking change of name of the country from India to 'Bharat'.[186]

Another writ petition, dismissed by the apex court, was *Suresh Chand Gautam* v. *State of Uttar Pradesh*[187] in which the prayer related to issue of a direction in the nature of mandamus commanding the respondents to enforce appropriately the constitutional mandate as contained under the provisions of articles 16(4-A), 16(4-B) and 335 of the Constitution of India or, in the alternative, directing the respondents to constitute a Committee or appoint a Commission chaired either by a retired Judge of the High Court or Supreme Court in making survey and collecting necessary qualitative data of the Scheduled Castes and the Scheduled Tribes in the services of the State for

184 *Anita Kushwaha* v. *Pushap Sudan*, AIR 2016 SC 3506 : 2016 (7) SCALE 235.

185 AIR 2016 SC 1561 : 2016 (3) SCALE 480 : JT 2016 (3) SC 283.

186 *Niranjan Bhatwal* v. *Union of India*, W.P. (C) 203/2015 dismissed on 11.03.2016.

187 AIR 2016 SC 1321 : 2016 (3) SCALE 246 : JT 2016 (3) SC 540.

granting reservation in promotion in the light of direction gives by this Court in *M. Nagaraj* v. *Union of India*. In *Santosh Singh* v. *Union of India*,[188] the Supreme Court refused to issue mandamus to the government for introduction of moral science as a compulsory subject in the school curriculam. In *Tara Singh* v. *Union of India*,[189] the court refused to issue mandamus to the authorities to grant remission to the petitioners who had been convicted under the Narcotic Drugs and Psychotropic Substances Act, 1965 and sentenced to undergo rigourous imprisonment of more than ten years.

In *Ashiq Hussain Fektoo* v. *Union of India*,[190] the petitioner had been convicted in 2003 under section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) and section 302 read with section 120B of the Indian Penal Code, 1860 (IPC) and sentenced to undergo imprisonment for life. His review petition and the curative petition had also been dismissed by the apex court in 2003 and 2005. It was only thereafter that a writ petition under article 32 was filed before the Supreme Court praying for a writ of habeas corpus or other similar direction, order or writ to the respondents to produce the petitioner before the court and thereafter forthwith release him from illegal custody. In fact, the petition was for interfering with the order of conviction and the sentence imposed on the petitioner. At the time of hearing, the court was kept in the dark by the senior counsel about the dismissal of the review petition and that is why the petition was posted for hearing before a full bench.[191] It was argued by the petitioner that the sole basis of his conviction was his confession which was not valid in law. It was pleaded that invoking the principles of *ex debito justitiae*,[192] the Supreme Court in *Rupa Ashok Hurra*[193] had carved out an exception permitting the Court to have a re-look at its concluded judgments on twin grounds, *i.e.* (1) the order being in infraction of the principles of natural justice; and (2) or an order which shakes the integrity of the justice delivery system by an association of the judge with the subject matter or the litigating parties which may have escaped the attention of the learned Judge. It was also argued that open court hearing of review petitions in terms of the judgment in *Mohd. Arif alias Ashfaq*[194] was available as of

188 AIR 2016 SC 3456 : (2016) 9 SCC 253.

189 AIR 2016 SC 3058.

190 AIR 2016 SC 4033.

191 This fact was specifically noted by the court in para 4 of the judgment thus: "4. As already noted review petitions were filed by the present writ petitioner as also by the co-accused (Mohd. Shafi Khan @ Mussadiq Hussain) and the same were dismissed by this Court by order dated 2nd September, 2003, the said fact was not brought to the notice of the Court while the order dated 24.09.2013 was rendered., *id.*at 4034.

192 A matter *ex debito justiciae* is one which a litigant is entitled merely upon the asking for it; as opposed to something which may be a matter of judicial discretion or determination. Justice Beetz of Canada's Supreme Court, writing in *Harelkin* v. *University of Regina* [1979] 2 S.C.R. 561, adopted these words: "Ex debito justitiae literally means *as of right*, by opposition to *as of grace*.

193 *Rupa Ashok Hurra* v. *Ashok Hurra* (2002) 4 SCC 388.

194 *Mohd. Arif alias Ashfaq* v. *Registrar, Supreme Court of India* (2014) 9 SCC 737.

right only in death sentence cases. The court held that the writ petition was not maintainable inasmuch as Review Petition (Criminal) No. 478 of 2003 filed by the writ petitioner had been dismissed by the court earlier. It was made clear that the present writ petition under article 32 did not "fit into any of the permissible categories of post-conviction exercises permissible in law" as laid down by the apex court. Holding that the writ petition was not maintainable, the court observed, "Merely because in the comprehension of the writ petitioner the judgment of this Court is erroneous would not enable the Court to reopen the issue in departure to the established and settled norms and parameters of the extent of permissible exercise of jurisdiction as well as the procedural law governing such exercise." Significantly, the court did not say anything about the suppression of the fact of dismissal of the review petition before filing the present petition by the petitioner's counsel.

Why the court did not adopt uniformly the same principle of penalizing the petitioners for abusing the judicial process in all the cases? Only in one case fine was imposed but not in others!

XIII AWARD OF COMPENSATION

In *Jeeja Ghosh* v. *Union of India*,[195] the petitioner, a disabled person suffering from cerebral palsy, was de-boarded from the aircraft operated by SpiceJet Ltd., a private enterprise, without ascertaining whether her condition was such that might prevent her from flying. This action was held to be violative of her right under article 21 of the Constitution as she had a right to human dignity. The court directed ten lakh rupees as damages to be paid by the concerned airlines. In *Anita Thakur* v. *Govt. of J. & K.*,[196] the police had committed excesses against some migrants and the court awarded monetary compensation of two lakh rupees to one person and one lakh rupees each to two petitioners holding that their fundamental right had been violated. The court further held that the doctrine of sovereign immunity did not apply to cases of violation of fundamental rights and could not be used as a defence in public law. Compensation was likewise awarded to shop keepers, who were not trespassers of public property, for clearing in public interest the area where they were having shops.[197] The court directed payment of compensation to the kins of victims who had died on account of occupational disease called silicosis as the State of Gujarat had failed to act in the manner it was expected to protect the lives of workers.[198] The victims of acid attack were allowed enhanced compensation of three lakh rupees[199] and the amount was enhanced in another case to six lakh rupees.[200] This was in addition to the full

195 AIR 2016 SC 2392.

196 (2016) 15 SCC 525 : AIR 2016 SC 3803 : 2016 (7) SCALE 725.

197 *Sayyed Ratanbhai Sayeed* v. *Shirdi Nagar Panchayat*, AIR 2016 SC 1042.

198 *People's Rights & Social Research Centre* v. *Union of India*, 2016 (5) SCALE 46.

199 *Laxmi* v. *Union of India* (2016) 3 SCC 669.

200 *Parivartan Kendra* v. *Union of India* (2016) 3 SCC 571.

responsibility of the state for the treatment and rehabilitation of the acid victims. The court disposing of the petition directed "all States and Union Territories to consider the plight of such victims and take appropriate steps with regard to inclusion of their names under the disability list."[201]

In *Rini Johar* v. *State of M.P.*,[202] petitioner no. 1, a doctor, pursuing higher studies in United States of America (USA), was running an NGO to provide services for South Asian Abused Women in USA while petitioner no. 2, a septuagenarian lady, was a practising advocate in the district court at Pune for 36 years. A complaint was filed against them in connection with sale and purchase of some machine and laptop and a case was registered under section 420 read with section 34 of IPC and section 66-A of Information Technology Act. They were eventually arrested. Petitioner no. 2, an old lady, was not taken to a doctor despite her request and she was compelled to lie on the cold floor of the train compartment without any food and water. The petitioners were given indignified treatment and faced humiliation. On production before the magistrate, they were released on bail after being in custody for about 17 days and after more than three weeks, respectively. In a petition filed under section 482, Cr PC, the Supreme Court took note of the allegations of the petitioners as to the manner in which they were arrested, the norms laid down by the apex court had been flagrantly violated and the dignity of the petitioners had been sullied permitting the atrocities to reign. It was contended that no case was made out against them and they were entitled to compensation for violation of their right under article 21. The court held that this case related to the alleged cheating between two persons in respect of sale and purchase of goods.Dipak Misra, J held:[203]

> (W)e are inclined to think that the dignity of the petitioners, a doctor and a practicing Advocate has been seriously jeopardized. Dignity, as has been held in Charu Khurana v. Union of India,[204] is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity.When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualize that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the

201 *Id.* at 581.

202 AIR 2016 SC 2679 : (2016) 11 SCC 703.

203 *Id.* at 716-717 (of SCC)

204 (2015) 1 SCC 192.

> sanguinity of liberty.The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus - eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli: "I repeat .... that all power is a trust - that we are accountable for its exercise - that, from the people and for the people, all springs and all must exist." We are compelled to say so as liberty which is basically the splendor of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy.

Dipak Misra, J, while allowing the petition, observed:[205]

> In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in the case of D.K. Basu,[206] there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A of CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in *Nilawati Behra*,[207] *Sube Singh* v. *State of Haryana*,[208] *Hardeep Singh* v. *State of M.P.*,[209] comes into play.
>
> The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs. 5,00,000/- (rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised.

If, however, the prosecution of a person was not malicious, no compensation would be awarded to him. In *State of Rajasthan* v. *Jainudeen Sheikh*,[210] the question was whether granting compensation of an amount of Rs.1.5 lakh to each of the

205 (2016)11 SCC 703 at 718.
206 (1997) 1 SCC 416.
207 *Smt. NilabatiBehera* v. *State of Orissa*, AIR 1993 SC 1960.
208 (2006) 3 SCC 178.
209 (2012) 1 SCC 748.
210 (2016) 1 SCC 514.

respondents was justified. The respondents, arraigned as accused for the offences under various sections of the Narcotic Drugs and Psychotropic Substances Act, 1985, claimed that they had suffered illegal custody causing great harm to dignity and reputation violating the fundamental right to speedy trial guaranteed under article 21 of the Constitution as there was delay in obtaining the report from the forensic science laboratory and the seized items did not contain any contraband article. The apex court held that the police had noticed the suspicious behavior of the accused persons while patrolling; there was nothing to suggest that there was any lapse on the part of the seizing officer; no evidence was brought to show that the prosecution had falsely implicated the accused or they had acted with malice. There was no material to show that the prosecution had deliberately roped in the accused persons. Reversing the decision of the high court, the apex court held that the accused persons were not entitled to any compensation.

In *Archbishop Raphael Cheenath S.V.D.* v. *State of Orissa*,[211] a public interest petition highlighted the failure of the State of Orissa in deploying adequate police force to maintain law and order in Kandhamal District of Orissa, a communally sensitive area, and in protecting innocent people whose human rights were violated after the assassination of Swami Laxmanananda Saraswati and others on 23.08.2008 by some maoists. Total properties affected due to communal violence were: 4822 houses including 3316 partially damaged and 1506 fully damaged houses; 232 religious institutsions including 7 big churches and 225 small churches/prayer houses; 119 shops/shop-cum- residence damaged; 12 public institutions were damaged and 4 self-help group (SHG) centers were damaged. The communal violence cases registered were 827. Compensation of varying amounts was paid out of Chief Minister's Relief Fund as well as Prime Minister's Relief Fund. The court relying on the decision in Muzaffarnagar communal violence case,[212] directed further compensation in cases of death and bodily injuries and damage to properties.

XIV CONCLUSION

By and large, the Supreme Court and high courts have been vigilant in enforcing the fundamental rights of not only citizens of India but those of the foreigners[213] and even the rights of animals.[214] At the same time, the Supreme Court did not play an

211 AIR 2016 SC 3639.

212 *Mohd. Haroon* v. *Union of India*, 2014 (4) SCALE 86. See S N Singh, "Constitutional Law – I (Fundamental Rights)", L *ASIL* 239 at 335 (2014).

213 *Verhoeven Marie-Emmanuelie* v. *Union of India*, AIR 2016 SC 2165 : 2016 (4) SCALE 426.

214 *Chief Secretary to the Govt., Chennai Tamilnadu* v. *Animal Welfare Board*, 2016 (12) SCALE 334 & JT 2017 (1) SC 531; *Animal Welfare Board of Indi*a v. *People for Elimination of Stray Troubles*, 2016 (10) SCALE 131, 136, 139 and 2016 (12) SCALE 240; *Compassion Unlimited Plus Action* v. *Union of India*, 2016 (1) SCALE 299, 305 : AIR 2016 SC 429 : (2016) 2 SCC 65; *Wildlife Rescue and Rehabilitation Centre* v. *Union of India* (2016) 1 SCC 716 (directions issued to curb cruelties to captive elephants in the state of Kerala).

activist role in some of the important issues confronting the citizens such as enforcement of the right to equality in the State of Jammu and Kashmir and the State of Andhra Pradesh,[215] though some damage control had been done by its pronouncements regarding access to justice[216] and the application of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.[217]

On certain issues, the principles of law emerging from some of the judgments are not consistent and clear, e.g. whether all terms and conditions of a tender document are binding or whether only essential conditions are binding;[218] the principles governing regularization of ad hoc, temporary or daily wage earning employees.[219]

It may be noted that in some of the cases, court had not issued directions keeping in view wider and long term perspective. One may note the orders once passed without proper consideration of the entire issue and the consequences of the order and later on they are modified, *e.g.* first order prohibiting publication of advertisements by the government except with photographs of only President, Prime Minister and Chief Justice of India and the second order extended to the Governors and the Chief Ministers of the States and in lieu of the photograph of the Prime Minister, the photograph of the departmental (cabinet) minister/minister in-charge of the concerned ministry and in case of states, departmental (cabinet) minister/minister in-charge in lieu of the photograph of the Chief Minister;[220] singing of national anthem;[221] closure of liquor shops within 500 meters of national and state highways,[222] ban on animal races like jallikattu,[223] *etc.*

The sweep of the directions issued by the Supreme Court in exercise of its power under article 142 is so wide that most of the time the directions are not effectively complied with, otherwise the same issues would not have come up before it repeatedly.

215 *Dr. Sandeep s/o Sadashivrao Kansurkar* v. *Union of India* (2016) 2 SCC 328 : JT 2015 (11) SC 321; see S N Singh, "Constitutional Law – I (Fundamental Rights)", LI *ASIL* 237 at 274-75 (2015).

216 *Anita Kushwaha* v. *Pushap Sudan*, 2016 (7) SCALE 235 : (2016) 8 SCC 509 : AIR 2016 SC 3506.

217 *State Bank of India* v. *Santosh Gupta*, 2016 (12) SCALE 1044 : (2017) 2 SCC 538 : AIR 2017 SC 25.

218 *Om Prakash Sharma* v. *Ramesh Chand Prashar*, AIR 2016 SC 2570.

219 *State of Maharashtra* v. *Anita*, AIR 2016 SC 3333 : 2016 (6) SCALE 807.

220 See *State of Karnataka* v. *Common Cause*, AIR 2016 SC 1437 - modification of order passed in *Common Cause* v. *Union of India*, 2015 (6) SCALE 302) : AIR 2015 SC 2286.

221 *Shyam Narayan Chouksey* v. *Union of India,* 2016 (12) SCALE 404 modified vide Order dated 14.02.2017 and further modified vide Order dated 09.01.2018.

222 *State of Tamil Nadu rep. by its Secretary Home, Prohibition & Excise Dept* v. *K Balu*, 2016 (12) SCALE 979 : JT 2016 (12) SC 82 : (2017) 2 SCC 281 : AIR 2017 SC 262. These directions were slightly modified and the court had granted permission to file review petition.

223 *Compassion Unlimited Plus Action* v. *Union of India*, AIR 2016 SC 429 : 2016 (1) SCALE 299, 305 : (2016) 3 SCC 85 and *Animal Welfare Board of India* v. *A. Nagaraja* (2014) 7 SCC 547.

One may, for instance, consider the cases on environmental protection. One also notices with discomfort the judicial intervention in routine matters like hygiene at Kalkaji temple[224] or the security check of the judges of the high courts and exemption from pre-embarkation security checks at the airports.[225]

It is not that the Supreme Court has been exercising powers liberally in all kinds of cases. It has remained cautious and unequivocally refused to grant any relief when frivolous petitions were filed before it, *e.g.* filing of a petition under article 32 during the pendency of a petition for identical relief under article 226;[226] petition seeking directions for appointing a committee or commission headed by a retired judge of the high court or Supreme Court for making survey and collecting necessary data of the scheduled castes and the scheduled tribes in the services in the State of U.P. for granting reservation in promotion;[227] petition for habeas corpus or other similar direction, order or writ to the respondents to produce the petitioner before the court and thereafter forthwith release him from illegal custody after his appeal, review petition and curative petition had already been dismissed by the Supreme Court against his conviction and sentenced to undergo imprisonment for life;[228] teaching of moral education in schools;[229] enhancing the punishment prescribed under section 376(2)(i), IPC for the offence of rape of minor girls or creating a new offence therefor in view of the existing law since that power vested only in the legislature;[230] pathetic working conditions of nurses working in private hospitals and nursing homes not being treated fairly in the matter of their service conditions and pay.[231]

224 *Kalkaji Mandir Vikreta Sangthan II* v. *Piyush Joshi* (2016) 16 SCC 504.

225 *Union of India* v. *Rajasthan High Court*, 2016 (12) SCALE 763.

226 See *Pratibha Ramesh Patel* v. *Union of India*, AIR 2016 SC 1561 : 2016 (3) SCALE 480 : JT 2016 (3) SC 283 : (2016) 12 SCC 375.

227 *Suresh Chand Gautam* v. *State of Uttar Pradesh*, AIR 2016 SC 1321 : 2016 (3) SCALE 246: JT 2016 (3) SC 540.

228 *AshiqHussainFektoo* v. *Union of India*, AIR 2016 SC 4033 : 2016 (8) SCALE 336.

229 *Santosh Singh* v. *Union of India*, AIR 2016 SC 3456 : 2016 (7) SCALE 287 : (2016) 9 SCC 253.

230 *Supreme Court Women Lawyers Assn.* v. *Union of India* (2016) 3 SCC 680.

231 *Trained Nurses Assn. of India* v.*Union of India*, 2016 (2) SCALE 554 : JT 2016 (2) SC 158.