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CONSTITUTIONAL LAW

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I INTRODUCTION

ACCOUNTABILITY AND limited government are the hallmarks of a vibrant democracy. Democratic governments are constrained in their powers, and such constraints are usually contained in their written constitutions. In that sense, written constitutions must adopt strict constitutionalism to constrain the government that has a popular support. In addition to constitutional restraints on the government, governments are also expected to follow constitutional principles in letter and spirit. Governments are expected to follow the constitutional morality rather than the morality of the political party that they belong to. Even though, elections are fought based on their own manifestos, once a government is elected, it must function under the constitution. As a result, the constitutional principles and customs assume importance in governance. However, the question would be who would govern the governed?

Judicial review is one of the primary mechanisms developed to ensure that the government functions within the constitutional limitations. The idea of constitutional morality presupposes that the courts must act as a catalyst in promoting constitutionalism by keeping the popular government under checks and balances. This year's annual survey would precisely focus on how India's constitutional courts carried out such a significant obligation.

II LEGISLATIVE PROCESS: MONEY BILL ARTICLE 110

Legislation making is the primary function of the Parliament. In a Parliamentary democracy like India that adopted bicameralism, both the Houses are expected to play acrucial role in legislation making. However, in certain instances, the House that was directly elected by the voters enjoys more privileges. Money Bill is one of those instances. In the case of Money Bill, Rajya Sabha has a minimal role to play. Also, the role of the President is restricted. Further, article 110 provides that the Speaker has the power to certify a bill as Money Bill, and such certification is final. Though article 110 explains what Bills can be termed as Money Bill, strict parameters to identify Money Bill is not possible. Therefore, at times the certification of Speaker of Lok

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Sabha become contentious. *Justice K.S. Puttaswamy* v. *Union of India* [1] is one instance where the Speaker of Lok Saba's certificate was in question.

In *Puttaswamy,* the petitioner challenged the constitutional validity of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (Aadhaar Act). The legal correctness of passing the Aadhaar Act as Money Bill was one among several contentions of constitutional validity by the petitioners. This case is unique in a sense there are no precedents to rely upon. It is also notable as no country with a democratic set up has adopted such a scheme like Aadhaar. The scale in which the *Aadhaar* was implemented is unprecedented.

Through *Aadhaar*, a new technology was used by the government for several social welfare benefits. The petitioners claim that the biometric technology employed through Aadhaar Act would result in an invasion of various rights and liberties of the citizens recognised by the Constitution of India. The mandatory nature of obtaining biometrics of the citizens and using such data by the State can cause a citizen's civil death by merely switching off the Aadhaar. Further, the Aadhaar Act allows the use of such data by a private actor.The Aadhar Act switched the State's obligation to be transparent by making citizens transparent to the State. Further, the petitioners contented that the impugned Aadhaar Act was illegally passed as a Money Bill.

Bill No. 47 of 2016 was introduced in the Lok Sabha as a Money Bill in terms of article 110 ofthe Constitution of India. The major objection to consider Aadhaar Bill as a money bill is that even though the Bill is to charge the expenditure from the Consolidated Fund of India for the delivery of subsidies, benefits and services, a careful reading of the Bill reveals that it is far beyond what is envisaged under article 110. The Bill was disguised under Money Bill and bypassed the established constitutional procedure. Therefore, the contention was that the legislative process being colourable, the Aadhaar Act is liable to be struck down.

The fundamental issues that the Supreme Court was asked to resolvewerewhether the Aadhaar Act could be passed as Money Bill within the meaning of article 110 of the Constitution? And whether the court can exercise judicial review over the certification issued by the speaker that it is a Money Bill?

It was contested that the Bill was wrongly certified as Money Bill under article 110 of India's Constitution by the Speaker of the Lok Sabha. Once it was certified by the speaker as a Money Bill, it virtually excludes the Rajya Sabha from rejecting or amending and depriving the President of his return power. Therefore, declaring a Bill as a Money Bill is a serious matter and requires a strict and narrow interpretation. The Bill that falls strictly under article 110 shall be certified as Money Bill by the speaker. Besides, greater emphasis needs to be given to the word 'only' used in article 110 as it implies that to qualify as a Money Bill, the Bill must strictly fall within one or more of the clauses of article 110.

1 (2019) 1 SCC 1.

The Supreme Court relied on the observation of Speaker Mavalankar:

> I think, prima facie, that the word only is not restrictive of the scope of the general terms. If a Bill substantially deals with the imposition, abolition, etc., of a tax, then the mere fact of the inclusion in the Bill of other provisions which may be necessary for the administration of that tax or, I may say, necessary for the achievement of the objective of the particular Bill, cannot take away the Bill from the category of Money Bills. One has to look to the objective of the Bill. Therefore, if the substantial provisions of the Bill aim at imposition, abolition, etc., of any tax then the other provisions would be incidental and their inclusion cannot be said to take it away from the category of a Money Bill.

Section 7 of Aadhaar Bill expressly mentions that subsidies, benefits, and services shall be provided from India's Consolidated Fund. However, some of the other provisions, such as, clauses 23(2)(h), 54(2)(m) and 57 of the Bill (which corresponds to sections 23(2)(h), 54(2)(m) and 57 of the Aadhaar Act) do not fall under any of the clauses of article 110 of the Constitution.

The respondents argued that the heart of the Aadhaar Act is section 7. It is not the creation of aadhaar number per se which is the core of the Act; instead, that is only a means to identify the correct beneficiary and ensure targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India. Another argument raised in support of Money Bill is that the Aadhaar Bill in its pith and substance falls under article 110. Therefore, the court should not look into the isolated provisions.

Agreeing on the contentions the court held that the Bill is a Money Bill and there is no constitutional impropriety in passing it as a Money Bill. It was observed that even the petitioners accept that section 7 of the Aadhaar Act has Money Bill elements. The contention was that several other provisions of the Bill are outside the limits of article 110 of the Constitution. Therefore, Bill was not limited to only those subjects mentioned in article 110 hence it could not be certified by the speaker as a Money Bill. Answering the contention in negative, the court said that the other provisions pointed out by the petitioners are incidental and were incorporated for the effective working of the Aadhaar Act.

Therefore, the court held that the Aadhaar Act was validly passed as a Money Bill on the following grounds:

a. The term targeted delivery of subsidies contemplates an expenditure of funds from the Consolidated Fund of India, which brings the Aadhaar Act within the purview of a Money Bill under article 110 of the Constitution;

b. Sections 7, 24, 25 and the Preamble of the Act also support its classification as a Money Bill;

c. Therefore, the Aadhaar Act is validly passed as a Money Bill.

Another contention from the respondents was whether clause (3) of article 110 makes the decision of the speaker - declaring a Bill as a Money Bill - final. Therefore,

whether the speaker's decision with regards to Money Bill is subjected to judicial review? The constitutional scheme on the Money Bill makes it clear that the decision of the speaker incorporated into a certificate sent to the President is final. However, whether the court can review such a decision was the moot point. Article 122 also prohibits calling of any proceedings of Parliament as irregular before any court. Both articles 110 and 122 placed the matter beyond the judicial reach, and even the separation of powers embedded in these provisions excludes judicial review.

However, it was held that the speaker's final decision does not mean that it was not subject to the judicial scrutiny. On the question whether court was empowered to decide as to whether the decision of the speaker was constitutionally correct, the Supreme Court relied on the Constitution Bench Judgment in *Kihoto Hollohan*[2] and *Raja Ram Pal*,[3]and held that the finality of the decision of the speaker is not immune from judicial review. Further, it clarified the difference between the subject irregularity of procedure and substantive illegality. In the present case the question is substantive illegality.

The Aadhar Bill was challenged as it did not fulfil the essential constitutional condition under article 110(1). Therefore, the requirement that a Bill must be within the preview of the article 110 would not be evaporated just because the speaker certified it. If such interpretation is allowed, it amounts to bypassing or ignoring of the constitutional provisions altogether. speakers power to certify a Bill as Money Bill is not a just procedure. Whether such a decision was taken by the speaker in breach of the constitutional provisions or not is subjected to judicial review. Further, the finality clause of the decision of the speaker of the Lok Sabha is only for Parliament, and does not exclude judicial review.

Unlike other legislations constitution is not just a legal document. Therefore, the interpretation of the constitution differs from the interpretation of other legislations. Indian Constitution is a socio-economic and political document. Thus, the expression that the speaker's decision 'shall be final' cannot be construed strictly in its literal meaning. In its political sense, the Constitution anticipates upholding democratic values by the constitutional functionaries. Consequently, the judiciary needs to venture into the propriety of the speaker's decision, whether it is within the parameters of constitutional principles or not. Supreme Court is apt in declaring that the finality clause would not impede them in ensuring the constitutionality of the decision.

III INDEPENDENCE OF JUDICIARY

Independence of the courts is the backbone of constitutionalism. Such autonomy must be protected and preserved. Judges of the high court and Supreme Court, being the judges of constitutional courts established under India's Constitution, enjoy a certain amount of autonomy and independence. Though principles of natural justice are required to be observed by all the judges, judges of the constitutional courts themselves can decide whether a judge must recuse from a case before him/her on the ground of bias.

2 *Kihoto Hollohan* v. *Zachillhu* 1992 SCC Supl. (2) 651.

3 *Raja Rampal* v. *Hon'ble Speaker, Lok Sabha* (2007) 3 SCC 184.

In *Seema Sapra* v. *Court on its own motion,*[4] the issue of recusal of a Supreme Court judge was raised. The case arose out of a criminal appeal under section 19(1) of the Contempt of Courts Act, 1971 from the High Court of Delhi's judgment where the appellant was found guilty of committing contempt of court.In the appeal, the appellant requested the recusal of A.M. Khanwilkar, J. from hearing the case. The reason attributed for such a request was that A.M. Khanwilkar, J. was well acquainted with members of the Bar against whom she made personal allegations. As a result, she was apprehensive that she may not get justice.

The court observed that every judge undertakes oath under article 219 to perform his/her duties faithfully and without fear or favour or ill-will while dealing with the cases. It is also necessary that the judge must be unbiased and must uphold the constitutional values of fair adjudication of the dispute. While referring to the judgement of Constitution Bench in *Supreme Court Advocates"on"Record Association* v. *Union of India,*[5] the court emphasised that impartiality of the judge is one of the epitomes of the fair trialand the judge should not hesitate in recusing himself/herself if he or she feels that there arethe possibility of bias. However, such a decision of recusal cannot be used as a routine as the judges also under the constitutional obligation to decide the matters without fear and with utmost fairness and sincerity.

The court while answering whether the appellant has a right to ask recusal of a judge held that "Indubitably, it is always open for a Judge to recuse at his own volition from a case entrusted to him by the chief justice. But that may be a matter of his choosing. Recusal, at the asking of the litigating party, cannot be countenanced unless it deserves due consideration and is justified." Therefore, the court rightly held that the appellant's request is devoid of any merit and without any substanceand hence her request cannot be entertained.

IV BREVITY OF JUDGEMENTS

Brevity is the need of the hour. We had witnessed several judgments of the courts runs into pages. One of the problems with bulk judgments is to find out what is *ratio* and *obiter*. It is also a practice that in several judgements the judges quote previous judgments at length. This issue was under consideration in *Surjeet Singh* v. *Sadhu Singh*.[6]

In an appeal from the High Court of Himachal Pradesh, the Supreme Court made a fascinating observation. The observation was regarding the need for the brevity of judgement. The court observed that it is very often that the judgements are long and running into pages. Another practice found in the judgements is that while deciding the cases, the court quotes several previous judgements in detail, which runs into several pages. Raising a concern about it in the present case, the Supreme Court held that "there was no need for the High Court to devote 60 pages in writing the impugned order. In our view, it was not required. The examination could be confined only to the

4 AIR 2019 SC 4020.
5 (2016) 5 SCC 808.
6 AIR 2019 SC 406.

issue of remand and not beyond it. At the same time, there was no need to cite several decisions and that too in detail. Brevity being a virtue, it must be observed as far as possible while expressing an opinion."

It is a welcome observation and hopes that all the courts, including the Supreme Court, follow it so that the judgement of the case is to the point of issues raised. This will go in a long way in reducing the confusion and misunderstanding the judgements. This would indeed help the litigants understand the judgment; appellant courts to dispose the cases in effective manner and, the academicians and the students to focus only on the relevant issues.

V APPELLATIVE JURISDICTION OF SUPREME COURT ARTICLE 134.

Article 134 confers appellate jurisdiction to Supreme Court in criminal matters from a judgement of any high court. In *Ajit Kr. Bhuyan* v.*Debajit Das*[7]a wit petition was filed before the single judge of High Court of Gauhati questioning the promotion. One of the contentions raised before the court was that the writ petition challenging the promotion was filed after nine years from the promotion and as such, it suffers from delay and laches. The single judge negatived the contention holding that delay and laches would not apply in case of fraud. However, the division bench reversed the order on the ground of delay and laches. In an appeal, the Supreme Court held that the division bench should not have interfered with a single judge's judgment by holding that fraud vitiates every action and cannot be kept under the carpet on the ground that the action challenged was belated. Delay and laches would not apply wherein the parties committed fraud.

In *Ashok Kumar Mehra* v. *The State of Punjab*, the appellants who were father and son were prosecuted for committing the offence of murder. The sessions court acquitted both the appellants, however, in an appeal the high court convicted both and awarded them a life sentence. An appeal is preferred to Supreme Court. During the pendency of the appeal, the first appellant (father) died. As a result, the court held that as far as the father is concerned, the appeal stands abated on account of his death. Regarding the second appellant (son), it was argued that he was a juvenile at the commission of the offence. The fact establishes that appellant no.2 was a juvenile as he was 17 years and 5 months at the commission of the offence.

This fact was not raised before the Session Judge or before the high court. Hence the question is can such issue be raised in an appeal before the Supreme Court? Relying on *Raju*v. *The State of Haryana*[8] the Supreme Court held that the plea of juvenility could be raised at any stage of the case and before any court. There is no need to go into the question of why such a plea was not taken before the trial court. Accordingly, the Supreme Court held that the second appellant is entitled to the benefit of juvenility.

7 AIR 2019 SC 492.

8 2019(4) SCALE 398. See also *Abuzar Hossain* v. *State of West Bengal* (2012) 10 SCC 489; *Abdul Razzaq* v. *State of Uttar Pradesh* (2015) 15 SCC 637).

VI REVIEW OF JUDGEMENTS ARTICLE 137

Article 137 empowers the Supreme Court to review its own judgements. However, a review cannot be used as an appeal in disguise. Review of criminal cases assumes importance. Recognising its essence, the Supreme Court declared that in all death sentences cases review must be heard orally in the open court. Such a requirement is made to satisfy the mandate under article 21 procedure established by law. Supreme Court had a chance to reiterate the same in *Sudam @ Rahul Kaniram Jadhav* v. *The State of Maharashtra*.[9]

In this case, the appellant was prosecuted and convicted for death for murdering his wife and four children. High court confirmed the conviction and the sentence. On appeal, the Supreme Court also confirmed the conviction and the sentence. A review petition before the Supreme Court was also dismissed by circulation. However, the appellant filed a criminal miscellaneous petition seeking reopening of review petition as he was not heard orally in view of the Supreme Court's judgment in *Mohd. Arif @ Ashfaq* v. *Registrar*.[10] In *Mohd Arif* case, the Supreme court held that to satisfy article 21 of the Indian Constitution, all "review petitions arising out of appeals where the death sentence had been affirmed were required to be heard orally by a 3-Judge Bench, and specifically permitted the reopening of review petitions in all cases where review petitions had been dismissed by circulation."

As a result, the Supreme Court recalled its earlier order of dismissing the review petition and permitted to hear the petition in open court. In the hearing, the appellant requested the court to reappreciate the evidence as there were several infirmities in appreciation of evidence by the trial court.

While explaining the true nature of review under article 137, the court held that a review proceeding could not be treated as an appeal in disguise. The scope of this court's review jurisdiction in criminal cases is guided by article 137 of the Indian Constitution and Order XL Rule 10 of the Supreme Court Rules, 1966. Both of them only permit the court to correct any possible miscarriage of justice on the ground of error apparent on the face of the record.

Referring to its earlier cases *Vikram Singh* v. *State of Punjab*,[11] *P.N. EswaraIyer* v. *The Supreme Court*,[12] and *Suthendra raja* v. *State,*[13] the court explained the scope of the review as follows:

> it is clear that scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent on the face of the record.

9 (2019) 9 SCC 388.
10 (2014) 9 SCC 737.
11 (2017) 8 SCC 518.
12 (1980) 2 SCR 889.
13 (1999) 9 SCC 323.

VII LAW DECLARED BY THE SUPREME COURT AND TO PROVIDE COMPLETE JUSTICE ARTICLES 141 AND 142

Article 141 mandates that the law declared by the Supreme Court is binding on all courts in India. Not the entire judgement of the Supreme Court is binding on all other courts. It is only the ratio of the judgement, *i.e.,* the principles of law formulated by the Supreme Court in deciding the dispute alone would be binding. Article 142 permits the Supreme Court to give any kind of a remedy to provide complete justice. A combined reading of article 141 and 142 may raise a premise that what is declared under article142 can be enforced under article141, and thereby it could become a precedent. In *Bir Singh* v. *Mukesh Kumar*,[14] the Supreme Court discussed this issue.

The appellant filed a criminal complaint against the respondent before the Judicial Magistrate First Class, under section 138 of the Negotiable Instruments Act on the ground thatthe cheque work 15 lakhs issued by the respondent bounce due to insufficient funds. Finding the respondent guilty the judicial magistrate, first class convicted him under section 138 of the Negotiable Instruments Act. He was sentenced for simple imprisonment for one year and to pay compensation of Rs.15 lakhs to the appellant. The respondent preferred an appeal before the court of additional sessions judge. The appellate court upheld judicial magistrate's judgment. However, the sentence was reduced to six months from one year. An appeal was preferred before the high court. In the appeal, the high court set aside the judgement on the ground that there is a fiduciary relationship between the appellant and respondent. In the case of a fiduciary relationship, the burden is on the appellant to establish that the cheque issued was to discharge a debt. Court held that the presumption under section 139 of the Negotiable Instruments Act could not be raised. Aggrieved by the judgement, the appellant filed an appeal before the Supreme Court.

The Supreme Court pointed out that in revisional jurisdiction under section 482 of the Criminal Procedure Code, 1973 the high court cannot re-analyse the evidence. The high court do so only in case of perversity. Therefore, it is erred in setting aside the concurrent factual findings of the lower court. Further, it was held that the presumption under section 139 is rebuttable, but it is a presumption of law hence the court has to presume that a cheque was issued in discharge of a debt or other liability. The Supreme Court referred various judgements of its own to establish that the presumption clarifies that the burden of proving that the cheque was issued not for discharging any liability is always on the drawer.

While explaining the relevance of precedent and what binds as a precedent, the court said that "It is well settled that a judgment is a precedent for the issue of law which is raised and decided. It is the ratio decidendi of the case which operates as a binding precedent. As observed by this court in *State of Punjab* v. *Surinder Kumar*.[15] what is binding on all courts is what the Supreme Court says under Article 141 of the

14 (2019) 4 SCC 197, 2019 AIR SC 2446.

15 (1992) 1 SCC 489.

Constitution, which is the declaration of the law and not what it does under Article 142 to do complete justice."

When the courts were asked to interpret the law, the courts are duty-bound to interpret, and such interpretations are binding as precedents. But when the court interpreting the laws may discuss the disputed legislation at length. All those discussions would not have a binding effect as they are not the ratio. Court held that only the ratio that binds as a precedent.

In *Raj Kumar* v. *The State of Uttar Pradesh*[16] the question raised was when the legislation prescribed a minimum sentence can the Supreme Court commute the sentence under article 142 of the Indian Constitution. The facts were that the appellant was convicted for adulteration of milk and sentenced to imprisonment. The Prevention of Food Adulteration Act, 1954 prescribed six months as a minimum punishment for the offence of adulteration keeping in view of health effects due to that such adulteration of milk. The appellant requested the court to exercise the powers under article 142 of the Constitution of India and commute the sentence to a fine as the case of adulteration was more than 20 years back.

The court refused to commute the sentence and held that the power under article 142 could not be exercised as the passage of time cannot be an excuse to reduce the sentence lower than the minimum sentence prescribed by the legislation. Explaining the power of the court under article 142, the court held that it could not violate the provisions of the legislation. When the legislature prescribed minimum sentence for an offence, it cannot reduce the same under article 142. Overriding the express provisions of the law is not the purpose of article 142. Exercising such power under article 142 in such a manner would amount to the mockery of the law itself.

Ankush Maruti Shinde v. *State of Maharashtra*[17] raises a crucial question whether the Supreme Court can grant compensation for the failure of fair trial and violation of fundamental rights under article 20 and 21 in a criminal trial exercising its jurisdiction under article 142?

The court observed that the accused members of a nomadic tribes were falsely implicated in the case, and the police failed to conduct a fair investigation. Even the trial was not conducted fairly. As a result, all the accused except one are in jail for 16 years, and one of them was found to be juvenile later. In the medical assessment, it was found that the juvenile was living in a sub-human condition, and he was kept in solitary confinement.

Further, all of them were under fear of death, and they were not allowed to use other facilities like parole or furlon. It is also pointed out that all the accused were young (between 25-30 years). Considering the numbers of their prime years lost and the stress the accused undergone, and in the exercise of our powers under article 142 of the Constitution of India, the court directed the State of Maharashtra to pay a sum of Rs.5,00,000/- to each of the accused by way of compensation. The amount to be

16 AIR 2019 SC 4902.
17 AIR 2019 SC 1457.

deposited within four weeks by the state with the sessions court. The sessions court shall use the amount for the rehabilitation of the accused.

Referring to *Kishanbhai* the court said that "Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted."[18] Further, in the said case the apex court directed the Home Department of every state to constitute a standing committee of senior officers of the police and prosecution departments to carefully analyse all orders of acquittal and record reasons for each failure. The findings of the committee shall be utilised in training programmes for junior investigation/prosecution officials.

In *Ankush Maruti Shinde* the court said that the contents of the standing committee findings could be used as a course-content of refresher training programmes for senior investigating/prosecuting officials. The standing committee to review the course-content annually, including emerging scientific tools of investigation and the judgments of the courts. The training program to be initiated within six months.

We further direct that the above training programme is put in place within six months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if they commit any lapses, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

In all acquittal cases, the state must identify the investigating/prosecuting official(s) responsible for the acquittal. In each case the finding must be recorded to find out whether the lapse was innocent or blameworthy. Once identified the lapses on the part of the investigation/prosecution official, appropriate departmental action must be taken on such officer. This direction shall be given effect within 6 months. With these observations and directions, the court acquitted all the accused.

In *Ritesh Sinha* v. *State of Uttar Pradesh*[19] the accused was arrested for collecting money from people to provide jobs in the Police department. The investigative officer requested the chief judicial magistrate to summon the appellant to the court to record his voice sample to verify the voice of a recorded conversation between the accused and another person relating to the case. The chief judicial magistrate accordingly summoned the accused to give a voice sample. This order of the chief judicial magistrate was challenged before the High Court of Allahabad under section 482 of the Code of Criminal Procedure, 1973. The high court dismissed the appeal. An appeal was filed before the Supreme Court and due to split verdict by the division bench appeal was made to a larger bench.

Two main issues were raised in this appeal

i. Compelling an accused to give voice sample during the investigation attracts Article 20(3) of the Indian Constitution.

18 *State of Gujarat* v. *Kishanbhai* (2014) 5 SCC 108.

19 AIR 2019 SC 3592.

ii. If such order is not in violation of article 20(3) can a magistrate summon the accused to give the voice sample in the absence of any provision in Criminal Procedure Code conferring such power to the magistrate.

The Division Bench of the Supreme Court unanimously held that taking voice sample is no violation of the right against self-incrimination under article 20(3). However, with regard to the second issue, there was a difference of opinion between the two judges.

Desai J. was of the opinion that the magistrate has the power to issue such order under section 53 Code of Criminal Procedure, 1973. He observed that explanation (a)[20] to the above section authorises the magistrate to order voice sampling as it can be included in the phrase such other tests.[21] Justice Desai applied the doctrine of *ejusdem generis* to reach such a conclusion.

However, Aftab J. Alam took a different view on an observation that there is no express provision authorising the magistrate to summon the accused's voice sample. Further, the amendments in sections 53, 53A and 311-A of the Code of Criminal Procedure, 1973 by Act No.25 of 2005 also silent about conferring such power to the magistrate. Therefore, he held that in absence of power conferred by the legislation to the magistrate, the magistrate has no authority in summoning the accused for a voice sample.

Section 53 and 53 A had gained importance in the investigation of a criminal charge as it authorised the Magistrate to order medical examination of the accused. The judiciary had widened the scope of section 53 and 53 A through various judgements. In spite of Law Commission of India recommendation, the court observed that the legislature did not take any initiation to bring an express provision relating to a voice sample. Explaining the importance of voice sampling the Supreme Court held that under article 142 of the India Constitution the court is inclined to give such power to the magistrate to summon the accused to give voice sample until the Parliament engrafted the principles in the Code of Criminal Procedure, 1973.

VIII APPOINTMENT OF CHIEF MINISTER: ARTICLE 164

The relation between Judiciary and the other organs, namely executive and legislature, is one area under constant strain. Though the Constitution of India in principle follows the separation of powers, drawing a clear line is always difficult. Because the constitution prescribed checks and balances for all the three organs rather than prescribing separation of powers in its stricter sense. As there is no separation of powers in the strict sense adopted under the Indian Constitution, there are constant instances where the boundaries between the jurisdiction of the courts and legislative independence have been contested. *Shiv Sena* v. *Union of India*[22] is one of such

20 Exp. : In this section and in ss. 53A and 54:

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

21 Emphasis supplied.

22 (2019) 10 SCC 809.

instanceswhere the Supreme Court was asked to interfere with the governor's executive power in inviting a political party to form the government in the State of Maharashtra.

The facts of the case are Bharatiya Janata Party [BJP] and the Shiv Sena (SS), contested the Maharashtra Legislative Assembly elections jointly with a pre-poll alliance. No single party had the requisite majority in the House though BJP and SS together had the majority. Due to differences between these two parties, they could not stake the claim to form the government jointly. The governor invited the BJP to form the government being the single largest party with 105 seats for which BJP declined. After that, the governor asked the SS to form the government. Though the Shiv Sena had shown willingness to form the government, it did not materialise. The governor's effort in inviting the Nationalist Congress Party (NCP) to form the government was also not successful. As a result, the governor recommended Presidents Rule and the same was imposed on the same day.

Shiv Sena and NCP were in talks with the Indian National Congress (INC) to form a coalition government during this period and decided to have a press conference in this matter. However, it was noticed that at 5:47 a.m., on November 23, 2019, the President Rule in Maharashtra was revoked in the exercise of powers conferred by clause (2) of article 356 of the Constitution. Soon after, the governor, by letter dated November 23, 2019 invited Devendra Fadnavis from BJP to form the government and in fact, the oath of office was carried out at around 8.00 a.m. on November 23, 2019 at Raj Bhavan, Mumbai.

In response to the governor's action, a writ petition was filed by Shiv Sena under article 32 of the Constitution of India requesting the Supreme Court to:

a. Pass an appropriate writ/order/direction declaring that action/order of the Governor dated 23.11.2019 inviting Shri Devendra Fadnavis to form the government on 23.11.2019 as unconstitutional, arbitrary, illegal, void"ab"initio, and violative of Article 14 of Constitution of India; and accordingly, quash the same.

b. Pass an appropriate writ/order/direction to the Governor to invite the alliance of Maha Vikas Aghadi comprising of the Shiv Sena, Indian National Congress and the Nationalist Congress Party which has the support of more than 144 MLAs to form the government under the leadership of Shri. Uddhav Thackeray.

Further, the petition also requested for interim directions

i. To summon a special session of Legislative Assembly with a single agenda of administering oath to the MLAs followed by a floor test holding on 24.11.2019.

ii. To issue appropriate directions directing the House to video record the House's proceedings during the administration of oath and the floor test and a copy of the same shall be placed on record before the court.

iii. To issue appropriate directions appointing a pro"tem Speaker to preside over the conduct of the floor test.

The petitioner also requested the court by an affidavit that this matter is urgent and required the hearing on the day, *i.e.,* February 23, 2019. The Chief Justice of

India placed the matter before the Bench, and the same was heard on November 24, 2019 (Sunday) at 11:30 a.m.

The following contentions were raised in the petition:

i. The action of the governor revoking Presidents Rule and administering the oath in such a short time amount to mala fide.

ii. In the absence of any authorisation from NCP to Respondent No.4, his letter of support to respondent no.3 Fadnavis requires that he must prove his majority on the floor of the House.

iii. The floor test must be conducted on an open ballot, and the same must be video recorded to ensure transparency.

However, these contentions were refuted because the governor usually reached his satisfaction based on the material placed before him. BJP has 105 elected MLA'a and the respondent no.4 letter indicated the support of 54 elected members of the NCP and also the support of 11 independent elected members (170 in total). Therefore, the governor had sufficient reasons to form his own opinion as the whom to invite to form the government. This duty was constitutionally conferred on the governor, and his subjective satisfaction cannot be questioned before the court. Further, the governor is not obligated to conduct a roving enquiry but only see whether he had a reasonable ground to believe that a person has majority support. Moreover, article 212 bars the court's jurisdiction in interfering or even monitoring the proceedings of the House. As a result, though the floor test is mandatory the date on which the floor test to be conducted is the speaker's prerogative. Hence, the court cannot act as an appellative authority on the governor's order and set the floor test dates. It was also argued that the present petition under article 32 of the Constitution is not maintainable and the governor's independence should be respected.

Regarding the maintainability of the petition, extent of judicial review and validity of the governor's satisfaction, the court said would not be adjudicated in the present petition and deals with the same at an appropriate time.

Regarding the main contentions, the court opined that the allegations are serious and essential to protect democracy. The court mustuphold the democratic values and ensure that the functionaries adhere to constitutional morality. The court rightly pointed out that delay in the floor test would ultimately result in possible horse-trading. Therefore, it is the court's constitutional obligation to order immediate floor test to promote democratic values.

While giving directions, the Supreme Court referred extensively to several cases where the court was asked to give similar directions. The similarity of these directions was given below to showcase how the governor's constitutional function had become political. These instances also show how constitutional morality/values are wilfully disregarded.

In a nine" judge bench decision *S.R. Bommai* v. *Union of India*, B.P. Jeevan Reddy J., held that:[23]

23 (1994) 3 SCC 1.

> The High Court, in our opinion, erred in holding that the floor test is not obligatory. If only one keeps in mind the democratic principle underlying the constitution and the fact that it is the Legislative Assembly that represents the will of the people and not the Governor the position would be clear beyond any doubt. There could be no question of the Governor making an assessment of his own. The loss of confidence of the House was an objective fact, which could have been demonstrated, one way or the other, on the floor of the House. In our opinion, wherever a doubt arises whether the Council of Ministers has lost the confidence of the House, the only way of testing it is on the floor of the House except in an extraordinary situation where because of all"pervasive violence, the Governor comes to the conclusion and records the same in his report that for the reasons mentioned by him, a free vote is not possible in the House.

In *Jagdambika Pal* v. *Union of India*,[24] while passing an order directed that a special session of the Uttar Pradesh Assembly will be summoned/ convened with the following directions:

i. The only agenda in the Assembly would be to have a composite floor test between the contending parties to see which out of the two contesting claimants of Chief Ministership has a majority in the House.

ii. It is pertinently emphasised that the proceedings in the Assembly shall be totally peaceful and disturbance, if any, caused therein would be viewed seriously.

iii. The result of the composite floor test would be announced by the Speaker faithfully and truthfully.

iv. The result is expected to be laid before us when this Bench assembles again.

v. Ancillary directions are that this order shall be treated to be a notice to all the MLAs, leaving apart the notices the Governor/Secretariat is supposed to issue. In the interregnum, no major decisions would be made by the functioning government except routine matters, not much of any consequence.

In *Anil Kumar Jha* v. *Union of India*,[25] following interim directions were passed

i. The session of the Jharkhand State Assembly has already been convened for 10"3"2005 on which day the newly elected Members of the Legislative Assembly shall be administered oath.

ii. We direct the session to continue and on 11"3"2005 i.e. the next day and on that day the vote of confidence to be put to the test.

iii. The only agenda in the Assembly on 11"3"2005 would be to have a floor test between the contending political alliances in order to see which of the political parties or alliance has a majority in the House and hence a claim for Chief Ministership.

24 (1999) 9 SCC 95.

25 (2005) 3 SCC 150.

iv. It is emphasised that the proceedings in the Assembly shall be totally peaceful, and disturbance, if any, caused therein shall be viewed seriously.

v. The result of the floor test would be announced by the pro-tem Speaker faithfully and truthfully.

vi. This order by the court shall constitute notice of the meeting of the Assembly for 11"3"2005 and no separate notice would be required.

vii. Till 11"3"2005 there shall be no nomination in view of Article 333 of the Constitution and the floor test shall remain confined to the 81 elected members only.

viii. We direct the Chief Secretary and the Director General of Police, State of Jharkhand to see that all the elected Members of the Legislative Assembly freely, safely and securely attend the Assembly and no interference or hindrance is caused by anyone therein.

In *Union of India* v. *Sh. Harish Chandra Singh Rawat*,[26] on an interim order the court ordered floor test should be conducted on a special session of Uttarakhand Legislative Assembly to be summoned/convened in which the only agenda would be the vote of confidence and apart from the said agenda nothing will be discussed.

In *Chandrakant Kavlekar* v. *Union of India*,[27] while addressing the issue whether a political party mislead the governor regarding the number of members the court held that the sensitive and contentious issue could be resolved by a simple direction requiring holding of the floor test at the earliest.

a. By order dated March 14, 2017, the Governor of the State of Goa was requested to ensure that a floor test is held on March 16, 2017.

b. Further, it would be the only agenda for the day so as to determine whether the chief minister administered the oath of office enjoys the support of the majority.

In *G. Parmeshwara* v. *Union of India*,[28] again identical directions were issued in formation of Government in the State of Karnataka.

i. Pro"tem Speaker shall be appointed for the aforesaid purpose immediately.

ii. All the elected members shall take oath tomorrow (19"5"2018) and this exercise shall be completed before 4.00 p.m.

iii. The Pro"tem Speaker shall conduct the floor test on 19"5"2018 at 4.00 p.m. in order to ascertain the majority and it shall not be by secret ballot and these proceedings shall be conducted in accordance with law.

All the above cases demonstrate that the Supreme Court conceived immediate floor test as an answer for countering the horse-trading and the political decision taken by the governors in case of hung assemblies. This practice seems to be less intrusive of the governor's power and the legislative privileges. In addressing article 212 of the Constitution, the court held that it has no application because no act of any

26 (2016) SCC OnLine SC 442.
27 (2017) 3 SCC 758.
28 (2018) 16 SCC 46.

officer or member of the legislature of the state has been made the subject matter of the present petition before this court.

In view of the observations and the precedents cited the court held in the present case that the elected members are yet to take oath despite a month has elapsed since the declaration of election results. This situation would ultimately lead to horse-trading. To avoid this and also the uncertainty, the court passed the following necessary interim directions.

i. The governor of the State of Maharashtra to ensure that a floor test be held on November 27, 2019.

ii. A pro"tem speaker shall be solely appointed for the aforesaid agenda immediately.

iii. All the elected members shall take oath on November 27, 2019, which exercise should be completed before 5:00 p.m.

iv. Immediately after that, the pro"tem speaker shall conduct the floor test to ascertain whether the respondent no. 3 has the majority, and these proceedings shall be conducted according to law.

v. The floor test will not be conducted by secret ballot.

vi. The proceedings have to be live telecast, and appropriate arrangements must be made to ensure the same.

Constitution being apex law under which all the constitutional functionaries established had an obligation to promote the constitutional morality. It is incumbent on all the constitutional functionaries to uphold constitutional values and principles as they derive the power under the very Constitution. Any undemocratic or anti-constitutional practices by political parties need to be curtailed with an iron hand as the elected political parties' representatives are supposed to uphold the constitutional morality. The directions given by the court, in this case, is to strengthen the democratic values. As observed by the court, it is the legislative Assembly that genuinely represents the people. Any functionary of the Assembly needs to act according to the spirit of the constitution. Collective responsibility of the Legislature is the crux of the democracy. Though interference by the judiciary in the legislature is not desirable, unless the elected members rise to the occasion and set the norms high, the court's interference like in the present case becomes necessary.

IX VACATION OF SEATS: ARTICLE 190

Article 190 of the Indian Constitution deals with the vacation of seats in the state legislature. Under article 190 (3) (b) a member of the state legislature could resign from the membership, and once the speaker accepts his/her resignation, the seat shall be deemed vacant. The Constitution (Thirty Third Amendment) Act inserted a proviso to the effect that the speaker may reject such resignation if he/she satisfied that such resignation is not voluntary or genuine.

In several instances, this proviso was used or rather misused by the speaker in accepting or rejecting the resignation. Speaker being essentially elected from the ruling party, yet times take the decision not fairly but to support the party he/she belongs.

Notably, when there is a possible defection on cards, and the members resigned to join in the opposition party, Speaker delays accepting the resignation. The question, therefore, is can the members whose resignation was pending before the speaker have any legal remedy for the unreasonable delay? Can the courts interfere with the constitutional function to be carried out by the speaker and if so such interference would go against the concept of separation of powers? When members resigned from the membership, pending the speaker's decision, can speaker disqualify the said members under the Tenth Schedule on the grounds of defection? These questions assumed importance in *Pratap Gouda Patil* v. *The State of Karnataka*.[29]

The issue arising in this case is when the members of the legislative assembly submitted their resignation to the speaker and petitions for their disqualification under the Tenth Schedule of the Constitution filed subsequently should be treated separately and thereby issue of resignation should have priority in the decision-making process. Or whether both petitions could be taken up simultaneously or the disqualification proceedings should have precedence over the request(s) for resignation.

The facts of these case were that 15 elected members of the Karnataka State Assembly resigned. The resignation letters were sent to the speaker of the assembly. However, the speaker had not taken any action. Meanwhile, a petition was filed before the speaker for disqualification of certain persons under the Tenth Schedule. The petitioner filed a writ petition before the Supreme Court requesting the court to direct the speaker to consider their resignations. They had submitted resignations before the petition for disqualification under Tenth Schedule was filed. The court held that because of the no-trust vote taking place in the Assembly on the next day, the Supreme Court inclined to deal with the above issue in detail and passed an interim order. The court observed that the speaker of the House could decide the request for resignations by the 15 members within such time frame as the speaker may consider appropriate.

Court also clarified that speaker is not restrained by any direction or observation by this court while deciding on the resignation and the disqualification in accordance with article 190 read with Rule 202 of the Rules of Procedure and Conduct of Business in Karnataka Legislative. Once the speaker passes the order regarding the resignation, the same shall be placed before the court. At the same time the court informed the speaker not to compel those 15 members who submitted resignation to participate in the proceedings of the ongoing session of the House. They shall have an option to participate or to opt-outin the proceedings of the House.Regarding the actual issues raised, the court held that they would be answered only later stage of the proceedings.

X WRIT JURISDICTION: ARTICLE 226

Article 226 confers all high courts to issue the traditional writs and other orders and directions. The power of the high court is not only issuing writs but also appropriate directions and orders. In that sense, the high court enjoys broader powers. High court power under article 226 is wider than that of the Supreme Court under article 32, which restricts the Supreme Court's power to the instances of only violation of

29 (2019) 7 SCC 463.

fundamental rights. The high court can issue writs, directions, and orders for violation of fundamental rights and violation of other constitutional rights or rights under any law. Therefore, exercising such power under article 226 assume greater constitutional significance.

High Courts being a constitutional court like Supreme Court they are not subordinate to Supreme Court. Nevertheless, that does not mean the Supreme Court cannot interfere with the high court's judgment under article 226. Supreme Court under provisions of Constitution act as an appellate court. Time and again Supreme Court was asked to look into the high court's powers in exercising its jurisdiction under article 226.

In *General Manager, Electrical Rengali Hydro Electric Project, Orissa* v. *Giridhari Sahu*[30] the question raised was whether an erroneous decision by the tribunal in respect of a matter which falls within the jurisdiction of the tribunal would be a ground for issuing a writ of *certiorari* by the high court?

Relying on *T.C. Basappa* v. *T. Nagappa,*[31] the Supreme Court said that it is a well-settled principle that while issuing a writ of *certiorari* the high court does not act as an appellate court. Its power is supervisory. Therefore, the high court cannot review or reweigh the evidence on which the inferior tribunal determined the case. The writ of *certiorari* may be generally granted when the tribunal has acted without or in excess of its jurisdiction.The other grounds on which writ of *certiorari* may be issued are when a tribunal of competent jurisdiction conduct the trial in flagrant disregard of the rules of procedure or in violation of the principles of natural justice. Further, a writ of *certiorari* may also be issued when an error in the decision or determination of a dispute occurs. However, such error must be a manifest error apparent on the face of the proceedings. For example, when it is based on clear ignorance or disregard of the provisions of law.

Thus, once the tribunal has jurisdiction but decides the disputes erroneously, article 226 does not empower the high court to issue the writ of *certiorari* to correct the tribunal's decision. If the legislation makes the decision of tribunal final, using a writ of *certiorari* to correct the wrong decision of the tribunal would defeat the very purpose of the legislation.

The Supreme Court rightly pointed out that writ of *certiorari* could not be used to correct an erroneous decision. If high courts use the power under article 226 for such purpose would nothing but the court act as an appellant court in disguise.

In *Janhit Manch through its President Bhagvanji Raiyani* v. *The State of Maharashtra.*[32] The Supreme Court was asked to review the judgement of High Court of Bombay which examined the policy in detail and issue necessary directions regarding awarding of development rights.

30 (2019) 10 SCC 695.

31 1954 AIR SC 440, 1955 SCR 250.

32 (2019) 2 SCC 505. 2019 AIR SC 986.

Article 19 (d) and (e) protects citizens' right to migrate. The cities mostly feel the pressure of the migration. Migration results in several issues, particularly on access to civil amenities and a result municipal bodies struggle to live up to the expectations of providing basic amenities. The State of Maharashtra tried to tackle this issue by awarding development rights under the Maharashtra Regional and Town Planning Act, 1966. The state envisaged several policies like increased Floor Space Index, Transferable Development Right and Development Rights Certificate. The very idea is to acquire the land for the public purpose the landowners from whom the land was acquired would be allowed a development right by way of increasing the floor space. This right to increase is given in certificate form, which is transferable. The landowners can sell development rights from their land to a developer or other interested parties. The appellants filed public interest litigation before the high court challenging these policies. High court considered the Act and the TDR scrutinised in great detail. In the larger public interest, certain directions have been issued by the high court. The present appeal is preferred asking the Supreme Court to intervene in the policy.

The court held that the Constitution of India recognises the principles of separation of powers. Under the Constitution of India, the elected government that has the mandate of the people is entrusted with making the policies. The respective elected governments take these policies at various levels like village panchayats, nagar palikas, municipal authorities, legislative assemblies and the Parliament. Further, the court pointed out in the present case; there are already efforts to have consultative processes while framing the policies. This court cannot interfere with such policies unless such policies are in direct conflict with the provisions of the constitution.

Court also points out that the high court has already examined the policy in detail and issued necessary directions. Further, the court opined that the high court is also a constitutional court, and it is best equipped to look into local matters. In the matter of development and zoning regulations of the state or the city, state high courts are better positioned to understand the context and its effect. Unless there is a patent irregularity which would contravene the constitutional mandate no writ of *mandamus* could be issued.

In *RoshinaT.* v. *Abdul Azeez K.T.,*[33] the Supreme Court was asked to examine the high court's constitutional propriety in issuing a writ of *mandamus* in a private matter.

The dispute in the case is relating to the possession of a flat. Respondent no. 1 filed a writ petition before the High Court of Kerala seeking a writ of *mandamus* directing the appellants in this case for the restoration of his possession over the flat in question. The appellant, who is the respondent before the high court contended that the writ is not maintainable as the dispute is between private parties. However, the division bench allowed the writ petition and directed the appellant to restore the possession of the flat. Aggrieved by the order of the high court, the appellant approached the Supreme Court under special leave. The question raised in the appeal

33 (2019) 2 SCC 329.

is can a high court entertain a private dispute between private parties under article 226?

The Supreme Court observed that the relief sought from the high court is of possession of the flat. A civil suit between the appellant and the respondent for grant of injunction relating to the same flat was pending before the court of Munsif at Kozhikode. Both the parties to the dispute are private individuals, and both are claiming their rights of ownership and possession over the flat in on various factual grounds. The high court was asked to decide who is the lawful owner of the flat. Such a question needs to be determined based on multiple facts but not on the law; hence only a civil court is competent to decide this matter.

Thus, such matters cannot be decided by the high court under its writ jurisdiction. Article 226 could be used only when a violation of some statutory duty on the part of statutory authority is alleged. Writ jurisdiction cannot be used to circumvent the rights available under civil and criminal laws. The court opined that the jurisdiction under article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly. The high court ought to have dismissed the writ petition *in limine* on the ground of availability of an alternative remedy before a civil court.

Sanjay Kumar Jha Appellant v. *Prakash Chandra Chaudhary*,[34] is yet another case where the question of the high court's role in entertaining the writ petition under article 226 was raised. In the present case, both the appellant and the respondent applied to Indian Oil Corporation for Kisan Seva Kendra (Retail Outlet) dealerships. Indian Oil Corporation indicated various broad parameters for the selection. The appellant was awarded allotment of the dealership. The respondent filed a writ petition in the High Court Judicature at Patna wherein the high court allowed the writ petition and directed the Indian Oil Corporation to grant dealership to the respondent on the ground that there is an error in calculating the marks for one of the parameters.

The Supreme Court while setting aside the judgement held that under "Article 226 of the Constitution of India, the high court cannot sit as a Court of Appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case."

The court held that even if there is an error in calculating the marks, the high court ought to have referred the matter to concerned authorities for re-assessing. When the high court can interfere with administrative decision making the court said that the high court might interfere only

i. if the decision is violative of fundamental or
ii. violative of basic principles of justice and fair play or
iii. suffers from any patent or flagrant error.
iv. an error of law or even an error of fact, when such error breaches fundamental or basic principles of justice or fair play or

34 (2019) 2 SCC 499.

v. if the error is patent and/or flagrant.

Even in case of error apparent, the high court shall refer the matter to the authorities concerned to rectify the error. Rarely high courts may correct the errors when errors which are obvious and that too to prevent delay and consequential denial and/or miscarriage of justice. Therefore, the high court is not the right forum under article 226 to venture into the assessment of the suitability of different candidates for the appointment of a dealer. The high court is not allowed to decide the factual question.

In *Serious Fraud Investigation Office* v. *Rahul Modi,*[35] the apex court was asked to judge the high court's power to issue the writ of *habeas corpus*. The brief facts of the case are as follows. On June 20, 2018 the Central Government in the exercise of powers conferred by the Companies Act, 2013 and the Limited Liability Partnership Act, 2008 directed Officers of Serious Fraud Investigation (SFIO) to investigate into Adarsh Group of Companies affairs. As per the order SFIO is to complete the investigation within three months. However, the SFIO was unable to complete the investigation before the expiry of three months *i.e.,* September 19, 2018. Meanwhile, the SFIO placed a request before the Director of SFIO to arrest the three accused. The director of SFIO after due verification of the provisions of the law granted permission to arrest on December 10, 2018.

Accordingly, the accused were arrested and produced before the Judicial Magistrate. The Judicial Magistrate remanded them to custody till December 14, 2018 and directed that they be produced before the special court on December 14, 2018.On December 13, 2018 SFIO requested an extension of time for completing the investigation.On December 12, 2018 the accused were presented before the Special Court, and the Special Courtremanded the accused to custody till December 18, 2018.On the same date *i.e.,* on December 14, 2018 the proposal for extension was accepted by the Central Government and extension was granted upto June 30, 2019.

On December17, 2018 the accused preferred a writ petitions before the High Court of Delhi on December 18, 2018 requesting court to issue a writ of *habeas corpus*. On December 18, 2018 the special court remanded the accused till December 21, 2018.The high court granted *habeas corpus*, and according to its order all the accused were released on bail. The appellant file an appeal before the Supreme Court by way of special leave. The principal issues that arise in the matter are whether the high court was right and justified in entertaining the petition and issuing the writ of *habeas corpus*?

The Supreme Court, while ruling that the high court erred in issuing the writ of *habeas corpus* discussed the power of constitutional courts in issuing the *habeas corpus* writ against the orders of detention by a competent court. Court identified that a summary of its previous judgements creates three views on when the *habeas corpus* writ could be issued.

First view

The Federal Court in *Basanta Chandra Ghose* v. *King Emperor*[36] held that once the order of the competent court detained a person the constitutional court cannot

35 (2019) 5 SCC 266.

direct the release of the detenue merely on the ground that at some prior stage there was no valid cause for detention.

Second view

The second view was that in a habeas corpus petition, the court must consider the legality of detention the day on which the application for habeas corpus is made to the court. In *A.K. Gopalan* v. *Government of India*[37]court observed that it is well-settled principle that in habeas corpus petitions the detention on the date when the application is made to the court is valid. Further, the court also need to see whether there are any intervening factors between the date of petition and the date of hearing the petition.

The Supreme Court expressed a slightly different view in *Naranjan Singh* v. *State of Punjab*[38] and *Ram Narayan Singh* v. *State of Delhi*[39]and the same was reiterated in *B.R. Rao* v. *State of Orissa*.[40] In these cases the court said that the legality or otherwise of the detention need to be considered at the time of the return and not with reference to the institution of the proceedings.

Third view

In *Talib Hussain* v. *State of Jammu & Kashmir*[41] it was held that in *habeas corpus* proceedings the court has to consider the legality of the detention on the date of the hearing.

Among these three views taken by the court at different times, The Supreme Court in the present case is of the view that the second view appears to be more appropriate considering the law and practice in England. To a large extent, this practice also got approval in India even though the third view also cannot be discarded as incorrect. In a *habeas corpus* petition is also very important to see whether the detention is illegal on the day of the hearing. The reason behind such view is the very purpose of the habeas corpus is to release the accused if his/her detention is illegal.

In the present case, however, the question raised was not only the legality of detention but also the high court's power in entertaining habeas corpus petition against the order of a competent court. In *Manubhai Ratilal Patel through Ushaben* v. *State of Gujarat*[42] and others, this court's division bench had considered the above issue. In *Manubhai* case, it was held that the detention's validity to be decided at the time of the return and not to the institution of proceedings. A similar connotation was made by the Constitution Bench decision in *Sanjay Dutt* v. *State through CBI, Bombay (II)*[43] In this case the court held that a petition for the writ of *habeas corpus* on the

36 (1945) 7 FCR 81.
37 (1966) 2 SCR 427, Also see, *Pranab Chatterjee* v. *State of Bihar* (1970) 3 SCC 926.
38 (1952) SCR 395.
39 (1953) SCR 652.
40 (1972) 3 SCC 256.
41 (1971) 3 SCC 118.
42 (2013) 1 SCC 314.
43 (1994) 5 SCC 410.

ground of absence of a valid order of remand or detention of the accused, cannot be entertained if on the date of return detention is proved to be based on a valid order.

Therefore, any infirmity in the accused's detention at the initial stage cannot be a ground to invalidate the subsequent detention. A habeas corpus writ cannot be issued when a competent court detained the detenue by order, and such order appear to be without jurisdiction or wholly illegal.

Further, the court explained that a remand order by a magistrate is a judicial function. Therefore, the magistrate is expected to reach the decision judiciously by considering the materials place before him/her. The magistrate is expected to decide whether there are reasonable groundsfor remanding the accused to the custody or extending the remand. The magistrate is supposed to judicially decide whether the grant or extension of remand is really necessary.

Therefore, a writ of habeas corpus usually not to be entertained when a magistrate ordered the accused person to judicial custody or police custody unless it appears that *prima facie* without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. In view of the above, the legality, validity and correctness of the remand order could only be challenged by filing an appropriate proceeding before the competent appellate or revisional forum.

In the present case, the high court was asked to consider whether the initial order of arrest is valid and thereby the legality of the extension of the subsequent remands. In principle, the habeas corpus petition was also asking the high court to determine the validity of the extension order passed by the Central Government and the judicial orders passed by the judicial magistrate and the special court.

As it was discussed above the high court can only decide whether the detention of the accused is legal or not at the time of the hearing, the high court was not justified in entertaining the petition and passing the order. It was observed by the court that if the act of directing remand is fundamentally a judicial function, correctness or validity of such orders could, if at all, be tested in a properly instituted proceedings before the appellate or revisional forum but not under habeas corpus petition.

In *Meera Mishra* v. *Satish Kumar*[44] the dispute regarding the right to run a fair price shop was entertained by the sub divisional magistrate. By an order, the magistrate cancelled the license of the respondent. An appeal to the Commissioner, Lucknow Division was dismissed. The respondent filed a writ petition before the high court. The single judge of high court passed an order cancelling the order on the ground that the magistrate failed to give a reasoned decision. An appeal was preferred to Supreme Court. The court held that when the high court felt that the magistrate failed to give a reasoned decision, it has two options. One, the high court itself should have decided the case on merits. Second, remand the case to the Commissioner for reasoned decision. Parties are entitled to a reasoned decision. As in this case the high court followed

44 (2019) 2 SCC 375.

neither of the options, the court remands the case to Commissioner, Lucknow Division for examining the case on merit in accordance with law.

In *Shree Shree Ram Janki Ji Asthan* v. *The State of Jharkhand,*[45] the high court's power to order CBI inquiry was questioned. In this case Public interest litigation was filed before the High Court of Jharkhand at Ranchi alleging that the property of Deity Shree Shree Ram Janki Ji AsthanTapowan Mandir at Ranchi was transferred illegally against the mandate of the Trust Deed of Shree Ram Janki Tapowan Mandir Trust. The high court directed the CBI to investigate the allegations of irregularities. An appeal was filed before the Supreme Court challenging the order of the high court. Two issues were raised in the case. First, whether there is any public interest in vesting of the property in the religious endowment? Second, whether the high court justified in directing CBI inquiry?

Answering the first issue in negative the Supreme Court held that the vesting of the property in *Deity* is a religious endowment but has no public element in it. Therefore, the high court should have refrained from entertaining the public interest litigation.

Regarding directing CBI enquiry, the court referred its earlier judgements on this point. It explained that though articles 32 and 226 of the Constitution provides wider powers, the constitutional courts are expected to maintain self-restraint on exercising these powers. The extraordinary powers need to be exercised only in exceptional circumstances. Courts must use them sparingly and cautiously. Such powers must be used to instil credibility and confidence in the investigation; where the disputes have national or international ramifications; or where such an order is necessary to complete justice and enforce fundamental rights.[46]

The court also pointed out that because of Entry 2 of List II of VII Schedule of the Constitution, the Union Government may provide police force of one state to deal with investigations outside its jurisdiction only with the government of that particular State's consent where the investigation to be carried.

Referring to *Secretary, Minor Irrigation & Rural Engineering Services, U.P.* v. *Sahngoo Ram Arya*[47] the Supreme Court opined that the high court under article 226 has the power to direct inquiry to be conducted by CBI. But such power shall be limited only to cases where there is sufficient material to establish a *prima facie* conclusion that there is a need for CBI inquiry. Further, the court must weigh whether CBI enquiry is necessary, keeping in mind that a person has the right to live under article 21 without being pursued by the police or CBI regarding his criminality or innocence.

Therefore, an order to conduct CBI enquiry or investigation cannot be passed as a matter of routine or simply based on the allegation made by a party. In *Sujatha*

45 (2019) 6 SCC 777.

46 In *State of West Bengal* v. *Committee for Protection of Democratic Rights, West Bengal* (2010) 3 SCC 571.

47 (2002) 5 SCC 521.

Ravi Kiran v. *State of Kerala,*[48] the Supreme Court again reiterated that the constitutional courts' extraordinary power, particularly ordering CBI investigation, must be exercised only in rare and exceptional circumstances. Such an order could be issued only when there is no confidence in the State investigating agencies or where the national interest is involved.

Similarly, in *K.V. Rajendran* v. *Supt. of Police,*[49] the Supreme Court identified the following circumstances where the court could transfer investigation from State Police to CBI.

i. Where high officials of state authorities are involved,
ii. where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation,
iii. Where investigation *prima facie* is found to be tainted/biased.

After analysing various judgements, the court held that the high court's findings that the *Deity* cannot transfer land are not correct. Further, the high court's remarks against the government and its officials who are the members of the Trust are without any basis. The court held that, "the High Court has thus travelled much beyond its jurisdiction in directing investigations by CBI in a matter of sale of property of the Deity. Still, further, the High Court has issued directions without their being any complaint to the local police in respect of the property of the religious Trust."

Hence, the Supreme Court was right in holding that the high court has completely misdirected itself in its order entrusting the CBI the investigation wherein the matter was essentially relating to a civil dispute.

NGT not a tribunal

In *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.,*[50] the question raised was whether NGT is a tribunal within the meaning of article 323A or article 323B of the Constitution so that NGT decide the jurisdiction by itself?

The residents of nearby areas of the respondent industry complained about health hazards. Tamil Nadu Pollution Control Board (TNPCB) issued a show-cause notice to the respondents after inspecting the premises of the industry and later on directed for the closure of the unit. This order was stayed by the National Green Tribunal (NGT). In the appeal, the appellant raised the issue of maintainability of the appeal before the NGT, on the ground that as per the statutory provisions appeal lies before

48 (2016) 7 SCC 597 9. See also *K.V. Rajendran* v. *Superintendent of Police, CBCID South Zone, Chennai* (2013) 12 SCC 480 the court gave instances such as where high officials of state authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and to instil confidence in the investigation a CBI inquiry is justified. *Bimal Gurung* v. *Union of India* (2018) 15 SCC 480 power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases.

49 *Ibid*.

50 AIR 2019 SC 1074.

the appellate authority and NGT has no jurisdiction to deal with the appeal. In response, the ground of maintainability was decided against the appellants by the NGT.

TNPCB filed a Civil Appeal before the Supreme Court. While the appeal is pending before the Supreme Court, the NGT set aside the TNPCB order. As a result, TNPCB again filed another appeal before the Supreme Court. The issues raised before the Supreme Court are whether NGT is a tribunal within the meaning of article 323A or article 323B of the Constitution and can NGT decide the jurisdiction by itself?

It was held that NGT is not a tribunal set up under article 323A or article 323B of the Constitution. It is only a statutory tribunal set up under the NGT Act. Tribunals set up under article 323A, or article 323B of the Constitution can exercise jurisdiction of all courts except the Supreme Court. However, NGT cannot exercise such jurisdiction as it is only a statutory tribunal. This very much clear from a reading of section 29 of the NGT Act.

The Supreme Court while explaining the difference between the Tribunal and NGT relied on Gajendragadkar, C.J., in *Re: Special Reference*[51]

> We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. Prima facie, says Halsbury, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court [Halsburys Laws of England, vol. 9, p. 349].

Therefore, NGT cannot exercise the power of judicial review like a high court under article 226. Similarly, NGT cannot decide its own jurisdiction like high courts. Once the statutory provision confers appeal to a particular appellate authority, NGT has no jurisdiction to entertain an appeal in contravention to the statutory provision. The NGT has no such power like the high court could entertain such appeals under article 226.

XI HIGH COURT'S CONTROL OVER THE SUBORDINATE COURTS: ARTICLE 235

It is well-known that the independence of judiciary is a fundamental requirement for the rule of law. But the issue of independence of judiciary is discussed taking the provisions of the constitution relating to the constitutional courts only. In a country, which follows the rule of law, independence of the judiciary is sacrosanct. Nevertheless, the common man rarely confronted before these constitutional courts. Most of the litigations end at magistrate level or maximum at the district and sessions court level.

51 (1965) 1 SCR 413.

Therefore, to have the true rule of law, the subordinate judiciary must be independent, honest and fearless.

There need to be given equal importance to the independence of the lower Judiciary along with constitutional courts. Article 235 of the Constitution of India conferred the control of the subordinate courts upon the high courts. It's the high court's constitutional obligation to exercise such disciplinary powers over the subordinate courts to strengthen them.

In *Krishna Prasad Verma* v. *State of Bihar,*[52] the Supreme Court was confronted with the high court's role in dealing with the complaints against subordinate judiciary.

The facts of this case are that the appellant, who was an additional district and sessions judge was charged with misconduct on the following two charges.

i. Granted a bail in a case in contravention to the high court order.
ii. Acquitted a main accused in an NDPS case by closed the proceeding in great haste,

The high court acting under article 235 held that "The aforesaid act of yours is indicative of some extraneous considerations which tantamount to gross judicial impropriety, judicial indiscipline, lack of integrity, gross misconduct and an act of unbecoming of a Judicial Officer."

In an appeal, the Supreme Court reversed the high court's order by observing that high courts must protect the interest of the lower court by acting as guardian of the judges. High court cannot take action on judges merely on the grounds of wrong orders were passed. The court observed that to err is human and none of the judges, including judges of high court and Supreme Court can claim that they have never passed a wrong order.

Regarding the first charge, the court observed that the Judge granted the bail without noticing the high court order and when it was brought to his notice, he immediately cancelled the bail, and the accused were re-arrested. Therefore, the oversight of the relevant portion of the high court order may be treated as negligence because he did not carefully go through the case file. Negligence cannot be termed as misconduct particularly when the enquiry found no extraneous reasons in granting the bail. Regarding the second charge again, the court observed that the Judge closed the proceedings before the prosecution examined the material witnesses; consequently, the accused was acquitted. The court considers that the judge had closed the proceeding as the Prosecutor unable to produce the witness. It is also pertinent to note that 18 adjournments were given to the prosecution for production of the witnesses. As the prosecution failed to produce the witness, the Judge has to close the proceedings. The court also pointed out that if the judge keeps on adjourning the case the high court can take action against him because he does not dispose of his cases efficiently.

Article 235 imposes a constitutional responsibility on the high court to protect the independence of the district judiciary and also act as a guardian and protector of

52 AIR 2019 SC 4852.

the district judiciary. The appropriate action for high court in case of wrong judgements by the lower judiciary is to record such material on the administrative side and place it on the service record of the judicial officer. In case of any extraneous influences leading to the passing of such orders then the high court can take disciplinary action on the erring judge.

The Supreme Court correctly interpreted the scope of article 235. No tolerance can be shown on the judges in cases of corruption and any act unbecoming of judicial officers. Such cases need to be tackled strictly. Considering the number of cases that the lower judiciary entertains, it is possible that wrong orders could be at times be passed. To rectify such orders other mechanisms under legislative and constitutional provisions are in place. Therefore, the disciplinary action on lower judiciary could be restricted to cases where there is evidence of passing the orders on extraneous reasons.

XII THE PANCHAYATS ARTICLE 243 C

73rd Amendment provides constitutional status to self-government to decentralise democracy and establish democracy at the grassroots. In *Seema Sarkar* v. *Executive Officer*[53] the issue raised before the Supreme Court was when in the absence of any express provision, whether a Member of Parliament (MP) who not elected by people from a *panchayat* area but a representative in the *panchayat samiti* by virtue of law made in terms of article 243C (3), is entitled to participate in no confidence motion meeting and eligible to vote?

A careful reading of article 243C[54] makes it clear that members elected from the respective constitutions of the *panchayat* and other persons referred to in sub"clauses

53 (2019) 6 SCC 559.

54 Art. 243C Composition of Panchayats reads:

(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayts: Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State,

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area

(3) The Legislature of a State may, by law, provide for the representation

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level

(a) to (d) of clause (3) of article 243C. Elected members of the former category alone entitled to be elected as a chairperson. The Constitution only provides the chairperson's election but did not provide any provision regarding the chairperson's removal. However, the constitution empowers the states to make provisions relating to the *panchayat* subject to Part IX of the Constitution. The court pointed out that even the regulations[55] expressly mentioned that the *pramukh* and *up-pramukh* could be elected by the elected members of the *panchayat samiti*. The other members who are not elected directly though participate in the meeting and can vote only in other matters.

Section 117 of the regulation deals with no-confidence motion but has no provision regarding who can participate in the meeting and vote. Therefore, the court says that in the absence of any express provision and considering the whole, the MP or any other member who is not directly elected are continued to be members of the Panchayat and are treated as *pradhans*. Therefore, they are entitled to participate in the meeting of No-confidence motion and vote. The express provisions under article 243C and the regulations permitting only elected members for voting in electing cannot be read as only elected members can to vote in no-confidence motion when the regulations are silent.

Further, Andaman and Nicobar Islands (Panchayats Administration Rules) 1997expressly mentioned that the other member(s) of the *panchayat samiti* who are not directly elected could participate in the special meeting to consider a motion of no confidence against the *pramukh*. Rule 21 says explicitly that the notice of no-confidence shall be sent to all the members of the *panchayat samiti*. Further, the quorum specified to pass the no-confidence motion mentioned that not less than two"thirds of the total membership.[56] The expression 'total membership' includes all the members, whether elected or nominated. Therefore, the court rightly held that once all members can participate in no-confidence motion irrespective of the fact whether they are elected or nominated have the right to vote.

XIII LEGISLATIVE POWER ARTICLE 245

Article 245 confers legislative powers to the Parliament and legislatures of the state. By virtue of this article, State can pass any law subjected to constitution provisions, especially the division of powers under Schedule VII of the Constitution. Once a legislation falls within the domain of the state to make laws, can such a legislation be challenged before the court on the ground that it interferes with the previous judgement of the court? Conferring the legislature with such power, would

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats

(5) The Chairperson of

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

55 Andaman and Nicobar Islands (Panchayats) Regulation, 1994.

56 *Emphasis supplied*.

undermine the very purpose of judiciary and would constitute an encroachment on judicial review.

On the other hand, Legislature being supreme in making the legislation, a court interference with curative legislation passed by the State would seriously violate the very concept of separation of powers.

In *B.K. Pavitra* v.*Union of India*[57] the issue raised in this case wasregarding the legislative power of the State Legislature in enacting curative legislation and whether curative legislation constitutes an encroachment on judicial power? The facts of the case relate tothe promotion of the employees under Karnataka Determination of Seniority of the Government Servants Promoted based on the Reservation (to the Posts in the Civil Services of the State) Act, 2002. The constitutional validity of this Act was challenged in *B K Pavitra* v.*Union of India*.[58]The Division Bench of the Supreme Court held that the Act is unconstitutional as it violates article 14 and 16. The main reason is that the government failed in determining the inadequacy of the representation and the overall impact on efficiency. The court pointed out that the constitutional bench decision in *M Nagaraj* v. *Union of India*[59] mandates the collection of quantifiable data on the three parameters such as backwardness, the inadequacy of representation and effect on administration. In the absence of the State of Karnataka having collected measurable data on the above three parameters, the Reservation Act, 2002 was held to be invalid.

In response to *Pavitra I* judgment, the Karnataka Legislature enacted Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act 2018. The petitioners challenged the 2018 Act on the ground that the State re-enacted the earlier legislation without curing its defects as the 2018 Act is similar to 2002 Act and adds section 9 which overrules all decisions of the pastand pre-empts challenges in the future.

However, the State contended that they had constituted Ratna Prabha Committee to fulfil all the three mandatory parameters prescribed in Nagaraj case. Apart from other contentions, one of the issues for determination in the present was the legislative powerof the Legislature in legislating curative legislation.

The court held that the state legislature's curative legislation could not be viewed as an encroachment on judicial power. It was held that article 245 and 246 of the Indian Constitution confers plenary powers on the legislature and the legislature in exercising of such power can legislate any law rendering a judicial decision ineffective. Such law shall be treated a valid law.

Further, it was opined that the judgement of *B.K. Pavitra, I* in any way, restrained the state from fulfilling the mandate of *M. Nagaraj* decision. The Legislature has an option of enacting a law prospectively or retrospectively. When legislation was held unconstitutional, the legislature could in all its power amend or re-enact the same law

57 AIR 2019 SC 2723.
58 (2017) 4 SCC 620.
59 (2006) 8 SCC 212

with such modification to cure the unconstitutionality identified by the court. The court opined that the state by law could not overrule the judicial decision but certainly amend or enact a new law removing the constitutional blemishes identified by the judiciary in its previous judgements. Such a power cannot be understood as an encroachment on judicial power. Such an attempt could be viewed as remedying the cause that was the basis for the declaration of invalidity. The new law is, in fact, removing or addressing the causes of unconstitutionality.

XIV CONCLUSION

Indian democracy is built upon the Constitution of India that we adopted in the year 1949. Constitution envisages a democratic and equitable society. The legislature and executive have to play a pivotal role in promoting the constitutional values of democracy and equitable society. The principle of constitutional morality encompasses that the authorities must act within the boundaries of the constitution. Therefore, the public authorities must follow appropriate constitutional values to uphold constitutional morality. However, it is quite but possible to subvert the constitution without expressly violating the provisions by simply not following its spirit. The text will not have any value if the spirit of the constitution is not upheld.

Constitution only creates the organs and institutions, but the working of such organs and the institutions depend on the people who occupy them. Therefore, observing constitutional morality is not only the task of Judiciary but all who occupy the constitutional positions. *Justice K.S.Puttaswamy* and *Shiv Sena* exemplify such a notion that the constitutional functionaries, elected members and even political parties must uphold constitutional morality. Even if the legislator may have a different personal view, he/she must adhere to the constitutional morality once he/she takes oath and pledges allegiance to the constitution.

Supreme Court's decision particularly in *Shiv Sena* may look like interfering with the Legislature as the court gave directions on how to conduct themselves and elect the Chief Minister. But such directions seem more in consonance with the constitutional principles rather than encroaching into the legislative sphere. This case reminds us of the necessity of imbibing constitutional morality by the political parties and constitutional functionaries.

B.K. Pavitra brings the issue of distortion of separation of powers. One must understand that the Indian Constitution does not follow strict separation of powers. Most of the democratic constitutions adopt checks and balances as part of separation of powers, as strict compliance of separation of powers is difficult though not impossible for a modern government. The legislature enjoying the legislative supremacy under the constitution can undoubtedly make any law albeit within the constitution's parameters. Therefore, the Supreme Court is right in upholding the legislatures right in bringing curative legislation.

Supreme Court observation in *Surjeet Singh* has a long way to travel in achieving the brevity in judgements. It is laudable that the court has taken cognisance of this problem. If followed strictly, it would bring relief to all the stakeholders. Like the previous years the Supreme Court used its jurisdiction effectively under Article 142

to provide complete justice. The decision of *Ankush Maruti Shinde* would provide the much-required impetus in strengthening the investigation.

Defection is another area where constitutional morality needs to be strengthened among political parties and constitutional functionaries. *Pratap Gouda Patil* typifies the political role of Speaker in matters of defection. It is a well-established constitutional principle that once elected as a Speaker, he/she must resign from the political party from which he/she was elected. The constitution envisages such a practice to make the Speaker apolitical. Once elected as Speaker, the Speaker must follow the constitutional values. Unless the Speaker imbibed the constitutional morality, Judiciary needs to step in. These kinds of instances reinforce the need for imbibing constitutional morality by all the functionaries.

The constitution is dynamic. Though the popular belief is that constitutional interpretation is the Judiciary's monopoly, everyone interprets it in reality. Therefore, inculcating constitutional values in all the stakeholders is a necessity. Different organs of the State have different roles to play. The varying differences in selecting the people to occupy these positions often require them to interpret the constitutional values differently. However, Judiciary is the final authority in the interpretation of the constitution. It is incumbent on the Judiciary to keep the public officers and constitutional functionaries within the constitution's boundaries.

Without a doubt, the constitutional courts of India carried such task gracefully. However, over-reliance only on Judiciary for constitutional governance of the country is arisk. Imbibingof constitutional morality in the authorities' public and private life would be essential in the long run if we want this great nation to achieve the goals and aspirations of its constitution. Such an endeavour would truly promote separation of powers and thereby strengthen the very foundations of the three organs of the State.