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CONSTITUTIONAL LAW – II

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I INTRODUCTION

GOOD GOVERNANCE is crucial in shaping a nation's socio-political and economic development. Central to modern governance is surrendering people's freedoms to its government, with an expectation that the government will, in turn, provide good governance in accordance with the Constitutional norms. The Constitution serves as a safeguard, protecting the citizen's rights from the potential abuse of power of governance by the State. The Constitutionlegitimises legislative and administrative actions.The effectiveness of a constitution is directly linked to the strength of the institutions it establishes. These institutions are expected to uphold and reflect constitutional values, which evolve over time to address new challenges. The judiciary is responsible for interpreting these values appropriately and ensuring they remain relevant to contemporary issues. Judicial interpretations must be both consistent and adaptable to society's changing needs. At the same time, predictability in governance is essential, as it provides stability to the institutions founded by the Constitution. Strengthening governance through rule-based systems requires the judiciary to balance maintaining stability and adapting constitutional norms. This year's annual survey will focus on how India's judiciary has upheld this balance.

II. GOVERNOR'S POWER TO GRANT PARDON ARTICLE 161

Since the inception of the Constitution, the scope of the powers of the President and the Governor has been a subject of ongoing debate. Questions frequently arise regarding the extent to which the Governor is obligated to act on the advice of the Council of Ministers and under what conditions the Governor can exercise discretion based on personal judgment. These issues have repeatedly been brought before the courts for interpretation. *G. Perarivalan* v. *State, Through Superintendent of Police CBI/SIT/MMDA, Chennai, Tamil Nadu*[1] is one such instance where the power of the Governor in granting pardon was raised before the Supreme Court.

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1 AIR 2022 SC 2608.

The appellant in this case was convicted in the matter relating to the assassination of Rajeev Gandhi, former Prime Minister of India. The appellant filed a mercy petition before the Governor of the State of Tamil Nadu, and the petition was rejected twice by the Governor. His mercy petition before the President was also rejected. An appeal on the rejection of the President was filed before the high court, and the same was transferred to the Supreme Court. In the transferred petition, the Supreme Court commuted the death sentence to life imprisonment. After that, the appellant filed a petition under article 161 for the remission of his sentence. The Cabinet of Tamil Nadu passed a resolution recommending the release of the appellant, and the resolution was sent to the governor. However, the governor did not take any decision on the release of the appellant but referred the same to the President of India. At this juncture, the appellant approached the Supreme Court, contending that the governor is bound by the advice given by the Cabinet and that referringthe advice of the Cabinet to the President would violate the federal structure of the Constitution.

It's well-settled law that the governor is bound by the advice of the Council of Ministers, and wherever the Constitution mentions, the satisfaction of the governor is not his personal satisfaction but is the satisfaction of the Council of Ministers. Therefore, the advice given by the Council of Ministers is binding on the Governor while he exercises his power under article 161. Accordingly, The court held that the Governor could not have referred the issue to the President as no such mechanism wascreated under the Constitution. Further, it was noted that the Governor had not exercised power for more than two and half years, and the matter was referred to the President only when the court asked the reasons for the delay in taking the decision. Though the governor enjoyed the immunity conferred by the Constitution, such immunity would not be extended if he failed to exercise the powers under article 161.

In view of the facts and circumstances of the case, considering the length of the jail term and the delay in disposing of the remission application, the court felt that it was not proper to remand the same to the Governor, and accordingly, the court granted the remission. Further, the court summarised the power of the Governor under Article 161 as follows:

(a) The law laid down by a catena of judgments of this court is well-settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.

(b) Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

(c) The understanding sought to be attributed to the judgment of this Court in *Sriharan* with respect to the Union Government having the power to remit / commute sentences imposed under Section 302, IPC is incorrect, as no

express executive power has been conferred on the Centre either under the Constitution or law made by the Parliament in relation to Section 302. In the absence of such specific conferment, it is the executive power of the State that extends with respect to Section 302, assuming that the subject-matter of Section 302 is covered by Entry 1 of List III.

III LEGISLATIVE PRIVILEGES

The explosion of digital media platforms has brought the issue of regulation to the forefront. Unlike other media, where there is not only self-regulation but also editing and control by the editors present, social media sites such as YouTube, Facebook, and WhatsApp have no editorial checks. This is particularly true in cases of intermediaries. Intermediaries like Facebook claim that they only provide a platform for users to express themselves without any contribution from the platform provider. Therefore, for anything that is shared on their platform, they are not responsible, though, in case of any complaint, they remove the content based on their own internal guidelines. In *Ajit Mohan* v. *Legislative Assembly National Capital Territory of Delhi*,[2] the role of Facebook in Delhi violence is under the scanner.

From February 24-29, 2020, the national capital witnessed communal riots, which had impacted life and property. The Legislative Assembly of the National Capital Territory of Delhi constituted the Committee on Peace and Harmony (LANCTD Committee). The Committee was asked to assess the reasons for such rios and suggest measures to improve the harmony among the religious groups. The Committee invited the public, and during the interaction, it was said that the Committee received several complaints that many users of Facebook used to spread hate and jeopardise communal harmony. Further, the Wall Street Journal, in one of their article titled "Facebook's Hate-Speech Rules Collide with Indian Politics" wrote that Facebook had shown a pattern of favouritism towards the ruling party and Hindu hardliners. It also criticised Facebook for its lack of intent in restricting hate speech posts.

In response to the above, the Parliamentary Standing Committee on Information Technology summoned Ajit Mohan, Vice President and Managing Director of Facebook India Online Services Private,to appear before the Parliamentary. The letter summoning him wanted Mr. Ajit'sviews on "safeguarding citizens' rights and prevention of misuse of social/online news media platforms including special emphasis on women security in the digital space." Ajit Mohan appeared before the Parliamentary Committee and expressed his views.

Meanwhile, the Chairman of the LANCTD Committee, in a press conference while summarising the complaints it received,commented that it appears that Facebook had colluded with a vested interest during the Delhi riots; hence, Facebook need to be treated as a co-accused, and it requires an independent investigation to assess its role in the riots.He also said that Facebook would be

2 (2022) 3 SCC 529.

given a chance to appear before the LANCTD Committee for giving a fair chance. Accordingly, a letter was issued to Ajit Mohan to appear before the LANCTD Committee. The letter clearly states that he has been called as a witness to testify on oath to the LANCTD Committee.

Instead of Ajit, Vikram Langeh, Director of Trust and Safety, Facebook replied, explaining the different steps and mechanisms Facebook developed to address the issue of hate speech. In reply, he also mentioned that, on a similar issue, they had already given testimony to the Parliamentary Committee. Further, he raised a contention that intermediaries like Facebook come under the exclusive authority of the Union of India, specifically under the Information Technology Act, and the subject of law and order in the NCT of Delhi is within the exclusive domain of the Union of India; therefore, the LANCTD Committee has no jurisdiction and as a result he requested to recall the letter.

In response, the LANCTD Committee issued a second letter addressing it to Ajit Mohan and Vikram Langeh, insisting they appearbefore it. At this point, a writ petition under Article 32 was filed before the Supreme Court by petitioners praying for

i. Issue a writ/order or direction in the nature of Mandamus setting aside the Impugned Summonses dated September 10, 2020 and September 18, 2020;

ii. Issue a writ/order or direction in the nature of Prohibition restraining Respondent No.1 from taking any coercive action against Petitioners in furtherance of the Impugned Summons.

This case raised four broad issues.

i. Does a House have the privilege to summon a person to give evidence which is not directly or indirectly part of the executive?

ii. Do powers of privilege extend to summoning an individual and compelling them to give evidence on matters of fact or seek their opinion on any subject matter?

iii. If a privilege exists, how can it be reconciled with an individual's right to privacy and free speech?

iv. Is the House constrained by the subject matter that constitutes a part of the House's business relating to its legislative functions?

The Supreme Court dealt with these four issues under three headings, namely (a) the privileges issue, (b) privilege, right to privacy and free speech and (c) legislative competence.

a) The privileges Issue

First, the court raised an objection to Facebook's claim. It pointed out that in the USA, Facebook claimed that it is in the category of the publisher to take advantage of the First Amendment right to free speech. But the same Facebook in India claims it is purely a social media platform and only an intermediary, not a publisher. The court pointed out that Facebook's primary objective is to serve its business interests. It would appear before the Parliamentary Committee, but once

they feel their business interests are served, they asked to stay before the LANCTD Committee. It was observed that the Legislative Assembly is a local governing body; hence, their concerns about maintaining peace and harmony were legitimate.

The petitioners contend that the privilege of the Legislature cannot be used to compel a citizen who is not a member of the House to either give an opinion or evidence. However, the court refused the contention and held that the petitioners do not enjoy any privilege from appearing before a LANCTD Committee duly constituted by the Legislative Assembly. Further, it was observed that the letter issued by the LANCTD Committee only asked them toappear before it. The use of power under privilege is not yet in operation. Even if the LANCTD Committee found that there was a breach of privilege by the petitioners, it could only recommend it to the Assembly. Only after receiving such a recommendation does the Assembly need to consider whether there is a breach of privilege based on the opinion of the Privilege Committee. Sufficient checks and balances have been created to exercise the power of privilege. The attempt of the petitioners is nothing but a preventive endeavour. Hence, it was held that the behaviour of the petitioners was nothing but a sidestep and was not acceptable.

(b) Privilege, right to privacy and free speech:

The petitioners contended that the expanded right of free speech and privacy allows them the right to remain silent. The pertinent question to address is whether the premature apprehension of the petitioners that the necessary action as a perceived possible breach of privilege was enough to infringe both the right to free speech and privacy.

The court observed that no coercive action was undertaken, and the summons were issued lawfully. The proceedings are supposed to be broadcast live; hence, the same must be answered. However, the court refused to go into the debate on the citizens' fundamental rights versus the privilege of the Legislature, as the same was referred to the constitutional bench in N. Ravi v. Legislative Assembly[3] and is pending before the court.

c) On legislative competence:

The Legislative Assembly of Delhi is different from the other State Assemblies. Due to its special status as the national capital, some of the entries in List II have been specifically excluded. The legislative power of such entries isconferred on the Central Government. Therefore, the petitioner contends that the Assembly has no legislative power on Entries 1, 2,and 18 in List II. As a result, the Assembly and LANCTD Committee have no constitutional mandate to deal with the aspects relating to these entries. Further, by virtue of I.T.Act

3 (2005) 1 SCC 603. The interplay between the State Legislature's privilege powers under Article 194(3) and a non-member's fundamental rights was pending before a 7-judge Bench of the Supreme Court on account of a perceived conflict between *MSM Sharma* v. *Shree Sri Krishna Sinha* AIR 1960 SC 1186 and Special Reference No.1 of 1964, AIR 1965 SC 745.

2000,Facebook's business is in the exclusive domain of Parliament. Hence, the LANCTD Committee has no jurisdiction to summon the petitioners.

The court, while emphasising the concept of collaborative federalism adopted by the Indian Constitution, stated that thefunctioning of the Union and the States had to be within respective spheres of legislative competence. In the present case, there is a law and order problem created by communal riots; however, the Assembly cannot deal with the issue of law and order, and the police are also quite clear as they are under the Union domain.

Recognising the fact that the LANCTD Committee is not only looking at the law and order problem, the court held that there is an obligation on the petitioners to respond to the summons, but the proceedings of the LANCTD Committee cannot encroach upon the entries listed above. The court held that the Constitution of the LANCTD Committee is legitimate under several Entries in List II and List III without encroaching upon the excluded fields of public order or police. The communal riots that affect the lives of the persons living in Delhi, the contention of the petitioners, and the fact that the Government of NCT of Delhi cannot look into the causal factors in order to formulate appropriate remedial measures.

The court summarised the outcome of this case as under:

i. There is no dispute about the right of the Assembly or the Committee to proceed on grounds of breach of privilege per se.

ii. The power to compel attendance by initiating privilege proceedings is an essential power.

iii. Members and non-Members (like the petitioners) can equally be directed to appear before the Committee and depose on oath.

iv. In the given facts of the case, the issue of privileges is premature. Having said that, the insertion of para 4(vii) of the Terms of Reference taken along with the press conference of the Chairman of the Committee could legitimately give rise to apprehensions in the mind of the petitioners on account of which a caveat has been made.

v. Canvassing a clash between privilege powers and certain fundamental rights is also preemptory in the present case.

vi. In any case, the larger issue of privileges vis-a-vis the right of free speech, silence, and privacy in the context of Part III of the Constitution is still at large in view of the reference to the larger Bench in N. Ravi.

vii. The Assembly admittedly does not have any power to legislate on aspects of law and order and police in view of Entries 1 and 2 of List II in the Seventh Schedule inter alia being excluded. Further, regulation of intermediaries is also subject matter covered by the I.T. Act.

viii. The Assembly does not only perform the function of legislating; there are many other aspects of governance which can form part of the essential functions of the Legislative Assembly and consequently the Committee. In the larger context, the concept of peace and harmony goes much beyond

law and order and police, more so in view of onthe-ground governance being in the hands of the Delhi Government.

ix. Para 4(vii) of the Terms of Reference does not survive for any opinion of the Committee. It will not be permissible for the Committee to encroach upon any aspects strictly within the domain of Entries 1 and 2 of List II of the Seventh Schedule. As such, any representative of the petitioners would have the right to not answer questions directly covered by these two fields.

In the post-truth era, the facts and reasonable deductions are no longer in public debate. The public discourse is based on the manipulation of emotions with utter disregard for factual situations. Preference for personal beliefs over factual accuracy gained momentum, particularly due to the mushroom growth of digital social media. Post-truth propaganda disregards the truth behind any action and tends to sway the public's opinions by appealing to the emotions of the public. The Supreme Court is aware of these facts in the present case. In fact, its introductory note identifies that Facebook has 2.85 billion monthly users, and in India alone, it has 270 million users. With its staggering numbers, Facebook's refusal to appear before the LANCTD Committee would assume importance. The effect of Facebook posts on democracies will have a ripple effect. If not regulated, it would even threaten the foundations of democratic governance. Though one cannot deny the fact that digital social media provide platforms for the voiceless to voice their ideas, it is ironic that the same platforms provide preferential treatment to selective voices of disruptive messages and voices that spread hate speeches. Hiding their responsibility as intermediatory service providers is another way these platforms try to avoid their responsibilities. Itis high time that some kind of regulation was created to prevent these from combating misinformation, protecting users from harmful information, and bringing transparency. At the same time, the State must take care of over-regulation and selective regulation.

IV SPECIAL LEAVE PETITION ARTICLE 136

Article 136 grants the Supreme Court the discretionary power to allow appeals from any court against final judgments and interim orders. Any aggrieved party may approach the Supreme Court through a special leave petition, which the court may accept if a substantial question of law is involved. However, it cannot be claimed as a matter of right, as article 136 is a residuary power conferred upon the Supreme Court by the Constitution. The decision to entertain an appeal under this provision is made on a case-by-case basis, which is why invoking Article 136 often draws attention.

In the case of *State of Odisha.* v. *Sulekh Chandra Pradhan*,[4] one of the questions before the Supreme Court was whether the view of the tribunal and high court was final whenthe Supreme Court dismissed the Special Leave Petition.The facts giving rise to this petition were that the Government of Orissa took over all teachers, including non-teaching staff of the M.E. School, as Government servants except the Hindi teachers. Therefore, their services were automatically terminated.

4 (2022) 7 SCC 482.

The respondent approached the High Court of Orissa through a Writ Petition, raising a grievance that certain facilities were not extended to him despite possessing the requisite qualifications. Some of the teachers filed an original application in the Odisha Administrative Tribunal challenging the decision of the State.

The tribunal allowed the applications and reinstated the teachers. The State of Odisha filed writ petitions before the high court aggrieved by the tribunal's judgement and orders. The high court dismissed the petitions; hence, the present appeals by way of Special Leave Petitionwere filed. The Supreme Court dismissed the special leave petition, and therefore, the State of Odisha preferred an appeal being aggrieved by the dismissal order. On behalf of the respondent, it was argued that since the Supreme Court had dismissed the special leave petition, it had affirmed the decision of the tribunal and the high court.

The Supreme Court, placing reliance on its own judgement in *Kunhayammed.*v. *State of Kerala*[5]*,* reiterated that neither the doctrine of merger would be attracted where the Special Leave Petitionis dismissed by a non-speaking order, *i.e.*, the court does not assign reasons for dismissal of the special leave petition, nor it would be a declaration of law under article141 of the Constitution by the Supreme Court if no law is declared. Where the court dismisses the Special Leave Petition by way of speaking orders, *i.e.,* it assigns reasons for dismissing the Special Leave Petition, it would not attract the doctrine of merger;however,thereasons stated by the court would be law declared under article 141 of the Constitutionwhere the Supreme Court declares such law which would be binding on all the courts and tribunals in India.The court held that mere dismissal of the special leave petition would not mean that the view of the high court has been approved or accepted by the Supreme Court.

Another issue that frequently arises when the court exercises its jurisdiction under Article 136 is the effect of delay and laches on admitting a case. In *Union of India* v. *N Murugesan*,[6] the Supreme Court explained the distinctions between delay, laches and acquiescence. While observing that all these three expressions overlap, the court explains the differences by first pointing out that delay is the genus, and laches and acquiescence are species. All these three principles, in some form, become part of several legislations that either impose a time limitation or do not consider claims. While noting the same, the court identifies estoppel as one reason for adapting these concepts into the legal regime.

Laches is derived from the French word laschesse. It means "remissness and slackness". Merriam-Webster defines the term as "negligence in the observance of duty or opportunity, *specifically***:** undue delay in asserting a legal right or privilege."[7] Laches, in its general sense, is an unreasonable delay or

5 (2000) 6 SCC 359.

6 (2022) 2 SCC 25.

7 *Available at:* https://www.merriam-webster.com/dictionary/laches. Last visited on Aug. 15, 2024.

negligence in making a claim or seeking relief. Further,if allowed, such delay or negligence would cause prejudice to the part from whom the relief is claimed. The two essential factors in determining the delays are the duration of the delay and the kind of actions that took place during the time. Apart from these two, the acquiescence on the part of the applicant approaching the court also plays a role.

Therefore, the courts have to keep in mind that the party approaching the court had waived his right to approach as there was a delay. Also, the party's behaviour had caused the other party to be in a particular position before giving relief under the principles of equity. The court held that "a man responsible for his conduct on equity is not expected to be allowed to avail a remedy. A defence of laches can only be allowed when there is no statutory bar."

Discussing the second concept of 'Acquiescence', the court describes it as a tacit or passive acceptance. When the party has knowledge of the limitation of time but does not act to enforce it, it amounts to implied and reluctant consent to enforce his right within the limitation period. As a result, not acting within the time frame becomes a passive assent. Thus, when acquiescence takes place, it presupposes knowledge of a particular act.

Acting within the time frame for enforcement of right or obligation becomes part of the original agreement, and in spite of such knowledge, if the party is allowed and ignores enforcing the same result in the new agreement, "Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches."

In *The Chairman, State Bank of India* v. *M.J. James*,[8] the respondent was dismissed from the service for irregularities. The respondent filed an appeal after four years of delay before the Chief General Manager, and the appeal was not heard for nine years. During this period, the respondent did not protest. In an appeal before the High Court of Kerala, the single judge ordered the Chief General Manager to provide an opportunity for the respondent to make his representation. Accordingly, the Chief General Manager allowed the respondent to present his case orally and in writing. The appeal was dismissed after the opportunity for representation was provided. The respondent again approached the high court, and the high court allowed the appeal. The high court observed that the respondent was not allowed to be represented by a representative of a union or association of the employee when the inquiry was conducted by an experienced lawyer and the presenting officer was also a lawyer. The court opined that such refusal had caused prejudice to the respondent. Hence, the court directed the appellants to reconduct the disciplinary proceeding, or the respondent would be given the benefits that he lost due to illegal termination.

The Supreme Court, while dealing with the legal position regarding the choice of representation in domestic inquiry, relied on *Crescent Dyes and Chemicals Ltd*.

8 (2022) 2 SCC 301.

v. *Ram Naresh Tripathi*[9] and *National Seeds Corporation Ltd.* v. *K.V. Rama Reddy*,[10] held that such a right is not an integral part of the principles of natural justice. As a result, denial of such a right would not automatically invalidate the inquiry. Pointing out that several legislations like the Industrial Disputes Act of 1947 do restrict the representations,the court held that the right to legal representation depends on the applicable rules governing such representation, mainly when rules are silent about the representation; the party can claim no absolute right. The court rightly held that the right to representation by a lawyer or an agent by choice is not absolute and is primarily regulated by the applicable rules. Such a right should be considered when the charges are complex and severe.

In the present case, when such a right was denied to the respondent, the respondent did not object to the same and made any appeal about such denial. Even after the dismissal order, the respondent did not challenge the same for four years. It was pointed out that no time frame is mentioned in the rules about the appeal, but the court again rightly held that even in the absence of any time frame, the appeal shall be filed within a reasonable time. Applying the doctrine of delay, laches,and acquiescence, thecourt held that, in this case, there is no justifiable explanation for the unreasonable delay in appealing the dismissal; hence, the appeal was allowed, and the order of the high court was set aside.

In *Union of India* v. *Alapan Bandyopadhyay,*[11] an issue of greater importance was raised in this case about unwarranted observations made by the High Court on the Chairman of the Central Administrative Tribunal. One of the contention of the appellant is that the High Court made very harsh and disparaging remarks on the chairman of the tribunal. In *Braj Kishore Thakur* v. *Union of India*,[12]the Supreme Court categorically held that higher courts should not publicly express their lack of faith in the subordinate judiciary, and any such attempt would gravely impact the public trust in the judiciary. The court advocated for greater restraint as the judicial officer on whom the higher courts made such comments has no chance of defending his/her actions. Justice Gajendragadkar, way back in 1963 in *Ishwari Prasad Mishra* v. *Mohammad Isa*,[13] said the comments of the high court suggesting that the decision of the subordinate judge was based on extraneous considerations and passing strictures on such a decision are uncalled for. While stressing great restraint from such comments, he stressed that "the Judge against whom the imputations are made has no remedy in law to vindicate his position." Echoing the same in *K.P. Tiwari* v. *State of M.P.*,[14] the Supreme Court said that the High Court was empowered to review the judgements of the lower courts, and while exercising this power, the high court may modify or even set aside the judgements of the lower courts. This power was conferred on the high court, keeping in view the

9 (1993) 2 SCC 115.
10 (2006) 11 SCC 645.
11 (2022) 3 SCC 133.
12 AIR 1997 SC 1157.
13 AIR 1963 SC 1728
14 AIR 1994 SC 1031

fallibility of the judges. The appellative and revisional jurisdictions aim to correct the lower courts' judgments. However, such power does not vest any right on the high court to make any disparaging comments against the subordinate judiciary.

In the present case, the court observed that no special circumstances or situations exist to make such scathing remarks and observations against the chairman of the tribunal. The court made it clear that the remarks of the high court were unwarranted and uncalled for; hence, the court held that these comments and observations were unnecessary in deciding the correctness of the order of the Tribunal and expunged the same.

When the high court sets aside a conviction by the fast track court, can the Supreme Court, under Article 136, permit the appeal? In *Rajesh Prasad* v. *The State of Bihar*,[15] the Supreme Court summarised the circumstances in which an appeal can be entertained under Article 136 in the following.

A) Ordinarily, this court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed upto the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this court, exercising jurisdiction under Article 136 of the Constitution.[16]

Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court.[17]

An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal.[18]

B) However, this court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

i) Where the approach or reasoning of the High Court is perverse:

a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic.[19]

b) Where the intrinsic merits of the testimony of relatives, living in the same House as the victim, were discounted on the ground that they were 'interested' witnesses;[20]

15 (2022) 3 SCC 471

16 *State of U.P.* v. *Sahai,* AIR 1981 SC 1442

17 *Arunachalam* v. *Sadhananthan*, AIR 1979 (SC) 1284

18 *State of Haryana* v. *Lakhbir Singh*, (1990) CrLJ 2274 (SC)

19 State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207

20 *State of UP* v. *Hakim Singh*, AIR 1980 SC 184

c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter.[21]

d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of 24 occurrence of the crime. [22]

e) Where the High Court applied an unrealistic standard of 'implici proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner. [State of UP v. Ranjha Ram, AIR 1986 SC 1959]

f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused;[23] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused.[24]

g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it 25 unnecessary on the part of the prosecution to establish 'motive.[25]

ii) Where acquittal would result is gross miscarriage of justice:

a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence,[26] or based on extenuating circumstances which were purely based in imagination and fantasy.[27]

b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay 26 in conducting trial relating to an offence which is not of a trivial nature.[28]

V EXTENT OF JUDICIAL REVIEW ON VALIDITY OF THE PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY ARTICLE 212

The principle of separation of powers suggests that one branch of government should not interfere with the functioning of another. However, the

21 *State of Rajasthan* v. *Sukhpal Singh*, AIR 1984 SC 207
22 *Arunachalam* v. *Sadhanantham*, AIR 1979 SC 1284
23 *State of Maharashtra* v. *Champalal Punjaji* Shah, AIR 1981 SC 1675
24 *Gurbachan* v. *Satpal Singh*, AIR 1990 SC 209.
25 *State of AP* v. *Bogam Chandraiah*, AIR 1986 SC 1899
26 *State of UP* v. *Pheru Singh*, AIR 1989 SC 1205
27 *State of Uttar Pradesh* v. *Pussu* 1983 AIR 867 (SC)
28 *State of Maharashtra* v. *Champalal Punjaji Shah*, AIR 1981 SC 1675.

Indian Constitution does not adhere to a strict separation of powers. Instead, it envisions a system of checks and balances. Judicial review serves as one such check on the Legislature and Executive. While legislative proceedings are considered internal matters of the Legislature, article 212 protects this autonomy by barring the courts from reviewing the validity of such proceedings on the grounds of procedural irregularities. However, the question is, when such alleged irregularity violates fundamental rights, can the court enquire into it?

In *Ashish Shelar*v. *The Maharashtra Legislative Assembly,*[29] the petitioners are the elected members of the Maharashtra Legislative Assembly belonging to theBhartiya Janata Party(BJP). During the proceedings of the House, there were heated exchanges between the members of the ruling party and the opposition. Allegations were made against the ruling party that the opposition leader was not allowed to speak in the House and also trying to reduce the Assembly session by two days. The Minister for Parliamentary Affairs moved a resolution against 12 members belonging to the BJP for contempt of the House. A majority passed the resolution,suspending the 12 members for one year. The petitioners requested the Deputy Speaker to furnish the video footage and recordings of the House. As there was no response, they approached the Supreme Court under article 32 of the Indian Constitution, challenging the suspension as a violation of their fundamental rights under articles 14 and 21. They contended that the suspension was imposed in haste and was politically motivated without giving any reasonable opportunity for them to represent themselves. The primary intention of the suspension was to reduce the number of people in the House who were opposed. Further, introducing the motion for unruly behaviour and subjecting it to voting would impactthe wiping out of the opposition as the ruling party will always have a majority in the House. Therefore, the Speaker, not the House, shall exercise the power to suspend the members. Rule 53 of the House makes it very clear that a suspension can be extended to the maximum term of the existing session of the House.

The question that needs to be answered first is the maintainability of the writ petition and the scope of judicial review over the resolution passed by the Legislative Assembly. The Supreme Court in Raja Ram Pal[30] summarised the following.

(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi judicial decision;

29 AIR 2022 SC 721.

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

(c) The expediency and necessity of exercise of power or privilege by the Legislature are for the determination of the legislative authority and not for determination by the courts;

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(e) Having regard to the importance of the functions discharged by the Legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the Legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the Legislature trespassing on the fundamental rights conferred on the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(j) If a citizen, whether a non¬Member or a Member of the Legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to the claim of bar of exclusive cognisance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the Legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognisance of the Legislature in England of exclusive cognisance of internal proceedings of the House rendering irrelevant the case law that

emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in Legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the Legislature;

(p) Ordinarily, the Legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the Legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may 35 examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the Legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution; (r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the Legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

The respondents contended that the court must limit its judicial review only to the parameter 's' specified above. As in this case, the proceedings cannot be said to be tainted on account of substantive or gross illegality; hence, the court has no power to interfere with suspension. However, the court held that each parameter expressed by the court in the said case isimportant; it is necessary to look at each parameter as it deals with the permissible area of judicial review, particularly points (f), (g), (s) and (u). Emphasising the importance of point (u), the court held that it is a comprehensive parameter articulated by the Constitution Bench.

Further, the court pointed out that in the absence of any specific limitation on the privileges enjoyed by the Legislature, these privileges are subject to the other provisions of the Constitution as article 194(1) and Article 208(1) expressly mention that these privileges are subject to other provisions of the Constitution. Therefore, any procedure followed by the House of the Legislature or making any rules thereof ought to include the rights guaranteed to the citizens under Part III of the Constitution.If the procedure is unreasonable or arbitrary, any decision made by the House under such procedure would violate articles 14 and 21 of the Constitution.

The court also observed that the suspension of the members also has an impact on the people of that constituency as they lose representation through their elected members in the House. In view of the above, the court held that the procedure followed by the House violates the fundamental rights of the members as there is no fair hearing. The resolution is grossly illegal and unconstitutional. The resolution is also irrational to the extent of a period of suspension beyond the remainder of the House session. The court viewsthis as not a mere procedural irregularity as envisaged by article 212(2); hence,this court must interfere with the resolution passed by the House.

Though courts are described as the temple of justice, the Legislature is the first temple of justice as it has the direct mandate from the people and enacts policies and legislations to protect citizens' rights. The range of activities that are supposed to take place in the Legislature is the essence of democracy and representative government. The Constitution recognises the Legislature's importance and confers privileges on the Legislature so that such deliberations take place in the Legislature without fear. However, the recent trend shows how the time of the Legislature is wasted in discussing and debating personal insults, and irrelevant debates marred the very purpose of the Legislature. There is a need to take corrective steps to reinvent the Legislative debates to have robust, dispassionate discussions to improve the conditions of the citizens. This case reignites the debate that we need to create good practices and regulate the unruly behaviour of members of the Legislature.

VI WRIT JURISDICTION OF HIGH COURT: ARTICLE 226

What is the power of the high court under article 226? Can the court interfere with the findings of the domestic enquiry and substitute the punishment under article 226? These are the issues raised in *Union of India* v. *Ex. Constable Ram Karan*.[31] In this case, the respondent was charged with misbehaving and abusing and injuring a Doctor while on official duty and also filed a false case of sexual harassment. Based on the doctor's complaint, a departmental inquiry was ordered. The charges against the respondent were proven, and the disciplinary Committee recommended the punishment of removal from the services. The respondent was accordingly removed from the service. His appeal and revision were also dismissed. The respondent approached the high court under article 226, challenging his

31 (2022) 1 SCC 373.

removal. The high court, while agreeing with the findings of the disciplinary committee, held that the punishment imposed was disproportionate to the charges and reduced the punishment from removal to confinement from 1.00 p.m. to 1.00 p.m. in quarter jail and directed the appellant to reinstate the respondent with immediate effect.

In an appeal to the apex court, it was contended that the high court erred in substituting the punishment as the scope of judicial review under article 226 is limited. As per section 11 of the Central Reserve Police Force Act, only a competent authority can substitute the punishment. Further, it was contended that the respondent is employed in CRPF, which requires high discipline, and his conduct amounts to gross misconduct and is unpardonable.

After a careful examination of the submissions and relying on *B.C. Chaturvedi* v. *Union of India*[32] and *Lucknow Kshetriya Gramin Bank* v. *Rajendra Singh*,[33] the Supreme Court held that when the disciplinary authority and the appellate authority decide the nature of punishment, it is not open for the courts to substitute the punishment.If at all the court finds the punishment is disproportionate and shocking to the conscience of the court, the court may ordinarily direct the disciplinary authority to reconsider the nature of the penalty. Only in rare and exceptional cases can the court substitute the punishment to shorten the litigation after providing cogent reasons. The judgment of the High Court of Delhi was quashed and set aside.

Article 14 aims at preventing arbitrariness in state action. The judiciary is reluctant to extend this principle in purely commercial matters. However, outsourcing several governmental functions through commercial contracts to private persons complicates such distinction. Granting economic larges to the private sector created what is popularly known as 'tender jurisdiction'. Conferring tenders to private persons has come under judicial scrutiny quite often. The requirement of fairness and transparency in governmental action, even in the case of commercial contracts, created a corresponding right for the aggrieved party to invoke jurisdiction under article 226. Further, recognition of public interest litigation extended the right even to the parties not part of the tendering process.

Even though enforcement of contractual rights is a civil jurisdiction, the element of State conferring the tender and consequent application of the requirement of fairness, rationality and reasonableness and absence of mala fide makes the litigation amenable to the judicial review. Two principles emerged from this: the State is bound by the concept of reasonableness, not whimsical as envisaged under article 14, and the tender conditions are tailor-made to suit a particular party. *Uflex Ltd.* v. *Government of Tamil Nadu,*[34] the court was called to address the second principal.

32 (2013) 12 SCC 372.
33 1995(6) SCC 749.
34 (2022) 1 SCC 165.

The contention was that the State evolved a reverse engineering process, thereby making the tender conditions suitable for one party. This has been categorised as "Decision Oriented Systematic Analysis" (DOSA). As a result, only two parties are eligible to submit the tenders. The question is whether the Statehas tailor-made the conditions to suit only a few players, and if so, can the court interfere with such action? The court relied on *Tata Cellular* v. *Union of India*,[35] where the principles regarding judicial review over administrative action were as identified as follows:

i. The modern trend points to judicial restraint in administrative action.

ii. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

iii. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

iv. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts

v. The government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

vi. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on the above, the court held that every tender process will have certain qualified criteria such as technology and turnover, and the court cannot judge the requirements. Less participation in the tender process cannot be said to be DOSA. Similar qualifications were imposed in many tenders by different states. Accordingly, the court held that there is no evidence to show the parameters prescribed by the State amounts to DOSA.

In *Union of India* v. *Bharti Airtel Ltd*.,[36] the issue raised was whether central legislation could be challenged in a High Court. The facts of the case show Bharati Airtel filed a writ petition in the High Court of Delhi, under article 226, challenging a circular issued by the Commissioner (GST) and prayed for rectification of Form GSTR in respect of the period in which an error had occurred. The high court

35 (1994) 6 SCC 651.

36 (2022) 4 SCC 328.

permitted the respondent to rectify by allowing the writ petition. In an appeal, the appellant challenged the decision on the ground that the high court has no jurisdiction to permit the rectification. The fundamental argument is that levying and collecting GST under the law are vested in both central and state governments. Hence, the high court cannot decide on the issue without making all the states party to the litigation.

Hence, the writ petition also suffers from non-joinder of necessary parties. It was further argued that introducing GST heralding a new era of cooperative federalism as a combined reading of article 246A with article 279A fortifies that position. GST enables both central and State governments to be joint partners in taxing goods and services, making them equal partners, and the power to tax is simultaneous and coextensive.

However, the Supreme Court held that the respondent's registered office is in Delhi, thesame as the appellant's. In the writ petition before the high court, the respondent challenged the provisions of the Act and the circulars issued by the authority whose office is in Delhi. As a result, there is no doubt about the territorial jurisdiction of the High Court of Delhi. Therefore, there is no need to take the matter any further regarding the no-joinder of State and Union Territories as necessary parties. The reason behind such a stand is that in the writ petition, the petitioner did not challenge any individual decision of the States or the Union Territories but a policy decision of a Centralauthority, the Commissioner (GST).

In The *State of Andhra Pradesh* v. *Raghu Ramakrishna Raju Kanumuru*,[37] the question that arose was whether the tribunals were bound by the high court orders. In the present case, the appellant, who runs a resort in Rishikonda Hill, demolished the resort and started constructing a new one with additional facilities. The respondent challenged this in a writ petition before the High Court of Andhra Pradesh. He also wrote a letter to the National Green Tribunal (NGT) Delhi about the same before filing the writ petition. The high court, by an order, directed the appellant to carry out the construction in accordance with the permission granted by the Ministry of Environment, Forestand Climate Change.

Meanwhile, the NGT initiated the proceedings based on the letter written by the respondent. The Expert Committee constituted by the NGT reported no violations about the construction. The NGT constituted a second Expert Committee, and before it could submit the report, the NGT ordered the appellant to stop the construction. An application for a vacation stay was refused. The appellant appealed to the Supreme Court, contending that when the high court granted permission for construction, NGT was bound by such order. The Supreme Court reiterated that the Tribunals are subordinate to the high court as far as the territorial jurisdiction is concerned. Therefore, the NGT could not have continued with the case when the high court's judgement had already permitted the construction. The order issued by the NGT is accordingly quashed, and the proceedings before the NGT are set aside.

37 (2022) 8 SCC 156.

In *Dr. NTR University of Health Sciences* v. *Yerra Trinadh,*[38] the Supreme Court was asked to decide whether the high court, under article 226, direct the University to revalue the question papers in the absence of any such provisions. In the present case, in an original writ petition, a single judge of the High Court of Andhra Pradesh issued certain directions on how to evaluate the answer scripts of the petitioner (respondent in the present case) who appeared in a post-graduation diploma course conducted by the University. Not satisfied with the evaluation, the respondent again approached the single judge, seeking a revaluation of his answer scripts. On verification of the records submitted to the court, the single judge was of the opinion that the University did not follow his directions. Hence, the University was directed to re-evaluate the answer scripts as per the existing MCI norms by identifying four new examiners. The University, on an appeal before the division bench, contended that there is no provision for re-evaluation and that the order of the single judge in the absence of such a rule is unjustified. The division bench dismissed the appeal. The University preferred an appeal before the Supreme Court. The main issue raised in this case is whether, in the absence of any provision for re-evaluation, the high court was justified in ordering re-evaluation while exercising powers under Article 226 of the Constitution of India.

It is a well-established principle that the students have no right to re-evaluate in the absence of any rule.[39] The courts should not re-evaluate or scrutinise the answer scripts, and this, being an academic matter, must left to the academicians to decide. High courts have no power under article 226 to call for the answer scripts to satisfy whether the assessment of the answer scripts is proper, thereby deciding the need for re-evaluation. The Supreme Court categorically held that in the absence of a revaluation provision in the University Rules, passing an order for re-evaluation is wholly impermissible. Relying on *Ran Vijay Singh* v. *State of U.P.*,[40] the court held that "sympathy or compassion does not play any role in directing or not directing re-evaluation of an answer sheet".

In the *Gambhirdan K. Gadhvi* v. *State of Gujarat*[41] case, the petitioner had prayed for a writ of *quo warranto* challenging the appointment of one of the Respondents as the Vice-Chancelllor of Sardar Patel University. The petitioner's case was that the University Grants Commission (UGC) framed UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (UGC Regulations, 2010). As per the UGC Regulations, 2010, a search committee was provided to recommend the candidates' names for the appointment of vice chancellor of a university. The Sardar Patel University Act under Section 10(3) provided that the Search Committee shall recommend three names of the candidates for the appointment as Vice-Chancellor. Furthermore, the

38 AIR 2022 SC 5711.

39 See *Pramod Kumar Srivastava* v. *Chairman, Bihar Public Service Commission, Patna* (2004) 6 SCC 714 and *Vikesh Kumar Gupta* v. *State of Rajasthan* (2021) 2 SCC 309.

40 (2018) 2 SCC 357.

41 (2022) 4 SCC 179.

UGC Regulations, 2010 provided the eligibility criteria, *i.e.,* a person shall have at least ten years of teaching experience as a professor in the university system.

In the present case, the Search Committee recommended only one name, and the respondent further did not possess the qualifications laid down under the UGC Regulations, 2010.The petitioner challenged the said appointment of the respondent before the High Court of Gujarat by way of a Special Civil Application, which the high court dismissed. The high court held that the State of Gujarat did not adopt the UGC Regulations and were, therefore, not binding upon the Respondent University. Aggrieved by the high court's judgement, the petitioner filed a special leave petition to the Supreme Court. The same was dismissed as only one month remaining in the vice-chancellor's first term by the time the Supreme Court heard the special leave petition. Hence, the petitioner filed a writ of *quo warranto* under article 32 of the Constitution of India as the appointment of the respondent as the Vice-Chancellor was against the statutory provisions.

The argument put forth by the Respondent University was that the High Court had dismissed the writ petition and did not interfere with the appointment of the respondent as the Vice-Chancellor of the Sardar Patel University, and the Special Leave Petition was dismissed by the Supreme Court. Therefore, it was not open for the petitioner to challenge the same again for the second term. The submission of the Respondent (Vice-Chancellor) was that the UGC Regulations, 2010, were substituted by the UGC Regulations, 2018.

The respondent university further submitted that the writ of *quo warranto* would not lie as there was an absence of statutory breach as the appointment of the respondent as vice-chancellor was made according to the Sardar Patel University Act, 1955, which did not prescribe for any eligibility criteria. It was further argued on the part of the respondents that the petitioner had no *locus standi* to file the present writ petition.

The Supreme Court placed reliance on para 19 in the case of *Rajesh Awasthi* v. *Nand Lal Jaiswal*[42] and observed that:

> "19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Society Ltd.* v. *Govt. of Haryana* [(2002) 6 SCC 269] held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy* [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , this court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bansh Lal* [(2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules."

42 (2013) 1 SCC 501

Furthermore, the court placed reliance on *Retd. Armed Forces Medical Association* v. *Union of India*[43]observed that the court has relaxed the rules with respect to locus standi where a writ for Quo Warranto is filed as it is a judicial remedy whereby any person who holds a public office or franchise or liberty can be called upon to show by what rights he holds the same, in order to determine his title over the said public office or franchise or liberty.

The court further observed that any person who files for the writ of Quo Warranto has to satisfy the court that the office in question is a usurper who holds a public office and the same without any legal authority, and that would lead to legal enquiry determining whether the usurper's appointment is made according to the law or not.

The court found that the appointment of the Vice-Chancellor in the present case satisfied the conditions mentioned above as the Vice-Chancellor holds a public office and the appointment was contrary to the statutory provisions laid down in the UGC Regulations, 2018 and found that it was a fit case to issue the writ of Quo Warranto. The court allowed the petition and,as a consequence of the same, set aside the appointment of the respondent as the Vice-Chancellor of Sardar Patel University.

VII LEGISLATIVE COMPETENCE AND REPUGNANCY. ARTICLE 246:

The question of repugnancy arises when there is a contradiction or inconsistency between the legislation made by the State and the Union. In *Nedumpilli Finance Company Limited* v. *State of Kerala*[44], the Supreme Court was asked to decide on the repugnancy between two legislations passed by the State of Gujarat and Kerala with the RBI Act.

The Reserve Bank of India regulates Nonbanking Financial Companies (NBFCs) under the Reserve Bank of India Act, 1934 (RBI Act). However, there are two state legislations,the Kerala Money Lenders Act, 1958 (Kerala Act) and Gujarat Money Lenders Act, 2011 (Gujarat Act),which also have provisions regulating NBFCs. The question was raised about the vires of the respective Acts in the High Courts, and Kerala and Gujarat High Courts took opposite views. As a result, the present appeal was made before the Supreme Court.

The State Legislative Assembly passed the Kerala Act to regulate the money lenders, restrict the percentage of the interest to be charged, and provide protection to borrowers. When the said Act is passed,NBFCs are not commonly operated in India. However, when the number of NBFCs grew, the Kerala government insisted that they obtain licenses under the Kerala Act and threatened penal consequences if NBFCs failed to obtain the license. When NBFCs' attempt to convince the State failed, they approached the High Court of Kerala, requesting the court to issue a direction that NBFCsregistered under the RBI Act will not come within the purview of the Kerala Act. The High Court dismissed the writ petitions.

43 (2006) 11 SCC 731.
44 (2022) 7 SCC 394.

The Bombay Money Lenders Act is also applicable to Gujarat State and, under the Act, the Registrar of the Prevention of Money Lenders regulates NBFCs. When NBFCs approached the Gujarat High Court, the court took a contrary view to the Kerala High Court and quashed the notices issued by the Registrar. Later, the Legislative Assembly of Gujarat passed the Gujarat Act. As a result, the NBFCs filed new petitions before the Gujarat High Court seeking the direction that the Gujarat Act's provisions do not apply to NBFCs registered under the RBI Act. Allowing the petitions, the High Court held that the Gujarat Act is ultra vires for lack of legislative competence to the extent of its control over NBFCs registered under the RBI Act.

A close look at the seventh schedule reveals that the State is competent to enact any matter dealing with money lending under Entry No. 30 of List II. Hence, both the Kerala Act and the Gujarat Act are constitutionally valid enactments. Both enactments' primary goal is the protection of borrowers' interests, whereas the RBI Act provides a holistic approach to the NBFCs. The court held that Chapter III of the RBI Act regulates the NBFCs from their inception to dissolution. Hence,Chapter III of the RBI Act subsumes the intended protection of the borrowers by the state Acts.

Explaining the concept of repugnancy under Article 254, the court held that the RBI Act is enacted under List-I. In contrast, the state Acts were enacted under List -II, so the question of repugnancy does not arise. The non-obstante clause under Article 246(1) governs the current situation. In *State of West Bengal* v. *Committee for Protection of Democratic Rights, West Bengal*[45] and *UCO Bank* v. *Dipak Debbarma*,[46] in a similar situation, the court held that the parliamentary legislation is dominant legislation and will have supremacy over the state enactments. Based on the above findings, the court held that NBFCs registered under the RBI Act cannot be regulated by the Kerala or Gujarat Act.

VIII RIGHT TO PROPERTY

In *Laxmikant &Ors.* v. *State of Maharashtra &Ors*[47]*.,* the Supreme Court dealt with land acquisition. The present case pertains to an appeal filed against an Order passed by the High Court of Bombay, Aurangabad Bench, which held that the reservation of land in the Development Plan stands lapsed as no declaration under Section 126 of the Maharashtra Regional and Town Planning Act, 1966 was published. The Planning Authority was given a period of one year to acquire the land once reserved as per the judgement of the Supreme Court in the case of *Municipal Corporation of Greater Mumbai &Ors.* v. *Hiraman Sitaram Deorukhar&Ors.*[48] Under the Final Development Plan under Section 31(6) of the Act, the land owned by the appellants was included. The Final Development Plan

45 (2010) 3 SCC 571.
46 (2017)2 SCC 585.
47 (2022) 7 SCC 252.
48 (2019) 14 SCC 411.

was never implemented, nor was any action taken to acquire the land under the Land Acquisition Act 1894.

After the expiry of ten years, the appellants issued notice to purchase the land within one year of the date of notice, and the Respondent Municipal Corporation acknowledged the same. Since the Respondents failed to acquire the land, the appellant filed a writ before the High Court for a writ of Mandamus directing the Respondents to treat the land of appellants as released from the Development Plan and further that the reservation site be declared to have lapsed to the extent of the land owned by the Appellants and the land is available for the residential use of appellants.

The court allowed the appeal and held that a landowner cannot be deprived of the use of land for years together. Once an embargo has been put on a landowner not to use the land in a particular manner, such restriction cannot be kept indefinitely. The court further held that the Maharashtra Regional and Town Planning Act, 1966, provided ten years to acquire the land and an additional one-year period to acquire the land, which contravened the statute. In view of the same situation where the State has been inactive in acquiring the land for a long number of years, the courts cannot issue a direction for the acquisition of land.

IX RATIO

Ratio is the reason for arriving at a certain decision. The ratio is the part that becomes judicial precedents. Judicial precedents are binding on the subordinate courts. Hence, identifying the ratio becomes important for future guidance to other subordinate courts and ensures legal certainty. In *Kotak Mahindra Bank Ltd.* v. *A. Balakrishnan*[49], the court explained the meaning of ratio decidendi.

The court relied on its own judgements in the Union of India v. Dhanwanti Devicasesand *The Regional Manager* v. *Pawan Kumar Dubey*[50] to explain what a ratio decidendi is. The court had observed it in the cases mentioned above and reiterated the same in the present case that not everything that a judge says while pronouncing a judgment would constitute a precedent. Every decision contains three basic postulates:

i) Findings of material facts, direct and inferential. An inferential finding of facts is the inference which the judge draws from direct or perceptible facts;

ii) Statements of the principles of law applicable to the legal problems disclosed by the facts and

iii) Judgement based on the combined effect of the above.

The court further explained that the concrete decision given by the court was binding on the parties. In contrast,the abstract ratio decidendi alone has the force of law, which only when it is clear has a binding effect.The essence of a decision is the ratio, and not every observation or any logical deduction follows

49 (2022) 9 SCC 186.

50 (1976) 3 SCC 334.

from such observations. The court further observed that where the rule is deductible from applying the law to the facts and circumstances of the case, it would constitute its ratio decision. Only the principle laid down by the court in a judgement is binding law under Article 141 of the Constitution of India.

X HIGH COURT POWER TO PRESCRIBE AGE QUALIFICATION /ARTICLE 233

High Court of Delhi v. *Devina Sharma*[51] raised the issue of the high court's power to prescribe the age qualification for Judicial Service examinations. In the present case, the appeals arose under Article 136 of the Constitution from the orders of the High Court of Delhi, which postponed the Delhi Judicial Services examination. The petitions in the high court had raised two issues pertaining to the validity of:

(i) The upper age limit of 32 years for appearing for the Delhi Judicial Service (DJS) examination and

(ii) The minimum age requirement of 35 years for appearing for the Delhi Higher Judicial Service (DHJS) examination.

The grievance with respect to the minimum age qualification was that the High Court had amended the DHJS rule in 2019, and a notification deleted the minimum age of 35 years. In 2022, the rule was again amended to stipulate the criteria of a minimum age of 35 years for the candidate appearing for the DHJS examination. It also provided for an upper age limit of 45 years.

The submissions on behalf of the petitioners were that Article 233 of the Constitution does not contain any minimum requirement and only prescribes that in order to qualify for appointment of district judge, a person should have been an advocate or pleader for not less than seven years. Further, no minimum age requirement is specified for the appointment to the judicial service. Hence, a candidate who completes ten years in practice can apply for the same even before he attains the required age. Lastly, the high court itself had removed the minimum age requirement in 2019 and that such petitioners should be, therefore, given an opportunity to appear for the examination on the ground that the said rules were modified in February 2022 and as such, the petitioners would be eligible to appear for the examination if the same were conducted in 2020 and 2021 if the minimum age criteria of 35 years of age existed at the relevant point of time. The Supreme Court considered the case of *Hirandra Kumar* v. *High Court of Judicature at Allahabad* [52] and held that the prescription of a rule providing for a minimum age requirement or a maximum age for entry into a service is essentially a matter of policy.

The Supreme Court did not accept the submissions of the appellants that such prescription would be contrary to the provisions under Article 233 of the Constitution and observed that Article 233(1) provides that the appointment of persons, posting and promotion of District Judges shall be made by the Governor

51 (2022) 4 SCC 643.

52 (2020) 17 SCC 401

of the State in consultation with the High Court of that State. Furthermore, Article 235 entrusts to the High Court control over the District and subordinate courts, which would include the posting and promotion of and the grant of leave to persons belonging to the judicial service to the State and holding any post inferior to the post of District Judge.

The court further held that where the Constitution is silent on such aspects, the appropriate authorities must supplement for the same. In the present case, where the Constitution is silent on the minimum age criteria, the High Court had/ has the authority to prescribe any such criteria in the exercise of their rule-making authority.

XI ELECTION. ARTICLE 324

The pertinent question raised in *S. Rukmini Madegowda*v. *The State Election Commission*[53] is whether the Supreme Court judgements in *Union of India* v. *Association for Democratic Reforms*[54] and *Lok Prahari* v. *Union of India*[55] would apply to municipal elections. In the present case, the appellant contested an election to the municipal corporation as a councillor. She furnished her movable and immovable properties, her husband, and the dependents by way of an affidavit. She was elected as a Councillor and chosen as a Mayor of the Mysore City Corporation. Respondent no 4, who lost the election against her, filed an Election Petition in the Court of Principal District and Sessions Judge, Mysuru, under Sections 33 and 34 of the Karnataka Municipal Corporations Act (KMC Act).

The contention of the respondent is that the appellant falsely declared that her husband has no immovable properties,and as a result, she got the benefit of reservation under the Category of Backward Class (women). The Principal District Judge rejected the election petition. The respondent appealed to the High Court.

The High Court remanded the Election Petition back to the trial court, ordering the trial to be conducted by applying the decision of the Supreme Court in the *Association for Democratic Reforms* and *Lok Prahari.* Upon conducting the retrial, the trial court set aside the appellant's election. The appeal before the High Court was dismissed; hence, the present appeal was made before the Supreme Court. The appellant raised two important questions.

(i) Could a duly elected candidate serving as the Mayor of Mysore City Corporation after the election be unseated in the absence of any statutory provision requiring disclosure of assets in the affidavit filed with the nomination form?

(ii) Would non-disclosure of assets constitute corrupt practice in the absence of any statutory provision requiring disclosure of assets?

The major contention of the appellant is that the high court erred in directing the trial court to consider the judgements of the *Association for Democratic*

53 AIR 2022 SC 4361.

54 (2002) 5 SCC 294.

55 (2018) 4 SCC 699.

Reforms and *Lok Prahari* to decide a Municipal Election. Both cases are covered under the Representation of Peoples Act, whereas the Municipal Elections are held under the KMC Act.

A cursory look at the *Lok Prahari* decision reveals that non-disclosure would amount to undue influence defined under the Representation of People Act, 1951. Hence,non-disclosure of assets by the appellant amounts to undue influence, and such no-disclosure would amount to corrupt practices under the KMC Act. Further, two notifications in 2003 and 2018 were issued by the State Election Commission, making it mandatory for the contesting candidates to disclose the assets of their spouses.

The Supreme Court already addresses the power to issue such notification by the Election Commission in affirmative in *Association for Democratic Reforms* wherein the court held that "the Constitution has made comprehensive provision under Article 324 to take care of surprise situations and it operates in areas left unoccupied by legislation."

The court pointed out that the language of Article 243-ZA(1) is in *parimateria* with Article 324(1) of the Constitution. As a result, the court's interpretationof Article 324 (1) relating to the elections of the Parliament and the State Legislatures would apply to 243-ZA(1). Therefore, Article 243-ZA(1) confers similar powers on the State Election Commission to conduct elections for municipalities.

In light of the above observations, the court held that the State Election Commission notifications about disclosing the assets of the spouses do not amount to encroaching on the state legislative power. While explaining the importance of uniformity in election laws, the court said that purity of election at all levels is important; hence, the High Court's judgement was upheld.

XII ARTICLE 341

In *Bhadar Ram* v. *Jassa Ram*[56] the issue is that a person who is a Scheduled Caste in one State can claim a similar status in another State. The respondent's father, Mr. Chunilal, a landless individual belonging to the Scheduled Caste, was allotted a piece of land in Rajasthan. He borrowed Rs. 5000 from Puran Singh, who belongs to a higher caste. It was alleged that, under the pretence of completing documentation, Puran Singh deceitfully had Chunilal sign a sale deed in favour of both Puran Singh and Bhadar Ram, a resident of Punjab.

Mr. Chunilal subsequently filed a suit for eviction against Bhadar Ram under Section 42 of the Rajasthan Tenancy Act, 1955, and Section 13 of the Rajasthan Colonization Act, 1954. The trial court ordered the eviction, ruling that since Puran Singh does not belong to the Scheduled Caste, the sale deed violated both Section 13 of the Rajasthan Colonization Act, 1954, and Section 42 of the Rajasthan Tenancy Act, 1955.

Aggrieved by the trial court's judgment, the appellant appealed to the Revenue Appellate Tribunal, which subsequently dismissed the appeal. The

56 AIR 2022 SC 322.

appellant then approached the Board of Revenue, which allowed the appeal granting the appellant the benefit of compounding upon payment of fees under Section 13 of the Rajasthan Colonization Act, 1954.

The respondent filed a writ petition before the Single Judge of the High Court, which was dismissed. Hence, the respondent appealed to the Division Bench. The Division Bench, in its impugned judgment, allowed the appeal and set aside the decision of the Single Judge, ruling that the appellant, being a resident and Scheduled Caste member of Punjab, could not claim the benefits of Scheduled Caste status in Rajasthan. As a result, the appellant preferred an appeal to the Supreme Court. The fundamental question arose in this case whether the land transaction in favour of the appellant was unlawful and in violation of Section 42 of the Rajasthan Tenancy Act, 1955, and Section 13 of the Rajasthan Colonization Act, 1954, given that the appellant is a Scheduled Caste member from the State of Punjab?

Relying on *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra*v. *Union of India*[57] wherein the Supreme Court observed that after considering the decision in *Marri Chandra Shekar Rao*[58], the question arose whether a person belonging to a caste or tribe recognised as a Scheduled Caste or Scheduled Tribe in State A, upon migrating to State B, where a caste or tribe with the same name is also recognisedas a Scheduled Caste or Scheduled Tribe, would be entitled to claim the benefits and privileges available to such groups in State B. It was held that a person recognised as a Scheduled Caste or Scheduled Tribe in their original State of permanent or ordinary residence cannot be deemed to hold that status in another state after migrating for employment, education, or similar purposes.

The court observed that Articles 341 and 342 empower the President to specify the castes and tribes to be deemed to be Schedule Castes and Schedule Tribes in relation to a State or a Union Territory. The criteria adopted for the identification of S.C., S.T., and OBC to be included in the list in a specific state depends on the nature and extent of the social disadvantages and hardships faced by that group in that State. Therefore, these factors may or may not exist at all in another State to which individuals from that group might migrate. It may happen that a caste or tribe with the same name is recognised in two different states, but the reasons for their inclusion in each State may be entirely different.

However, the contention of the appellant was that the above judgements apply to matters relating to employment or education, but in the present case, it is relating to the sale of property; hence, the decision in the above cases does not apply. Rejecting the argument, the court held that the reasons given by the court in the above cases are on the interpretation of Articles 341 and 342, and there is no

57 (1994) 5 SCC 244.

58 *Marri Chandra Shekar Rao* v. *Dean, Geth G. S. Medical College*, (1990) 3 SCC 130.

reason to restrict such interpretation only to education and employment. Hence, the above judgements would apply to the present case.

In light of the above reasons, the court held that the appellant, being a permanent resident of the State of Punjab though belonging to the Schedule caste in Punjab, cannot claim the benefits of Scheduled Caste status in the State of Rajasthan for the purpose of purchasing land belonging to a Scheduled Caste individual from Rajasthan. Hence, the court held that the sale deed in favour of the appellant is in breach of Section 13 of the Rajasthan Colonization Act, 1954 and Section 42 of the Rajasthan Tenancy Act, 1955.

XIII SCHEDULE IX

In *Shri Kshetrimayum Biren Singh* v. *The Hon'ble Speaker, Manipur Legislative Assembly*,[59] the question raised before the court is, can the Speaker decide the disqualification of the members of the Assembly on the basis of newspaper reports, and also is it a requirement that the parties shall be given adequate time to represent themselves before the Speaker?

The fact of the case establishes that the appellant was elected as an MLA of the Manipur Assembly as an official candidate of the Indian National Congress (INC). Two electorates from the same constituency filed two different petitions before the Assembly Speaker, alleging that the appellant joined the Bhartiya Janata Party(BJP) by voluntarily giving up his membership from INC. Both the petitioners relied on the local newspapers and the T.V. channels. Another MLA from INC filed a third petition on similar grounds. The appellant denied the allegation that he joined the BJP and contended that newspaper reports cannot be relied on and did not join the BJP.

The Speaker informed the petitioners that the hearing would take place on June 22, 2020 but was preponed to June 18, 2020. This action of preponement was challenged before the High Court. The High Court held that the preponement of the date of the hearing without giving any reasons was unfair and unreasonable and directed the Speaker not to deliver the order. Later, the Speaker passed an order allowing the petitions and disqualified the appellant. Aggrieved by the order of the Speaker, the appellant filed an appeal before the high court. The high court dismissed the petition by affirming the order of the Speaker. An appeal was made to the Supreme Court.

The court observed that the record does not exhibit any urgency in hearing the case to prepone. Further, it is clear that none of the parties were represented before the Speaker. It is also clear that this case required adducing evidence. In the absence of any representation and evidence adduced by any party, the Speaker cannot make the decision on merit. Hence, the appeal was allowed, and the Speaker was asked to provide adequate representations to both the parties and dispose of the issue. Till the disposal of the case, the appellant shall be continued as an MLA.

59 (2022) 2 SCC 759.

XIV CONCLUSION

The Constitution is the supreme law of the land, and its norms act as pre-contractual obligations on the State. It is the State's fundamental duty to abide by these constitutional norms. Constitutional courts are entrusted with ensuring that the State remains within these boundaries.In *Perarivalan,*the court rightly interpreted the power of the governor as subservient to the advice given by the Council of Ministers. The Council of Ministers is a democratically elected group and constitutionally empowered to make policy decisions. The governor's decision to refer the matter to the President would violate the very basic tenet of the Parliamentary Democracy form of government. The essence of Parliamentary Democracy is that the President and Governor are nominal heads, and the Prime Minister and the Chief Ministers are the real heads of governance. In parliamentary democracy, the legislative and Executive separation is often blurred, as the system merges their roles for effective governance.

Facebook is a classic example of how corporate giants could impact public opinion. Recognising the impact of social media giants, the court in *Ajit Mohan* warned of the ill impacts of the post-truth phenomenon. This case brings back the longstanding issue of imposing restrictions on digital social media. The rapid growth of digital media has made communication at the fingertips. The biggest challenge is controlling the misinformation, hate speech and fake news. Digital media ensures the rapid dissemination of information. Further, algorithms subtly provide the content to suit the choice of the reader, which reinforces their beliefs and leads to confirmation bias. The content creator's anonymity also fuels the spreading of the content without verification, as speed rather than accuracy is the primary concern. One of the biggest drawbacks is the lack of editorial ship in digital platforms, which is the hallmark of traditional media. Platforms like YouTube, where the number of hits is more important than providing accurate information, encourage Clickbait[60] culture and financial incentives based on the number of viewers, encouraging content creators to sensationalise the information with utter disregard for the truth. The influential digital platforms also prominently display posts that receive the maximum number of viewers, which could potentially harm the social fabric by promoting hate speech. Media like Facebook, which has its own internal parameters for what content can be removed when a complaint is received, becomes an extra-constitutional authority on speech and expression, which is a fundamental right guaranteed by the Constitution of India.

The power of the Supreme Court under Article 136 remains ever-relevant. This year's annual survey also shows no exception to this. Several important issues have come up before the court. In *Murugesan,* the court explained in detail what constitutes delay, laches and acquiescence. *Alapan Bandyopadhyay* raised concerns of unwarranted comments by the high court. With the rise of digital media platforms contributing to the sharing of information at a greater speed, the

60 Content whose main purpose is to attract attention and encourage visitors to click on a link to a particular web page.

judge's comments during judicial proceedings become viral and often lead to the creation of narrations that are not the true intentions of the Judge. Therefore, the judgment assumes importance and underscores the need to preserve the dignity and decorum of the judiciary.

Ashish Shelar's case is a prime example of a judicial review of the internal proceedings of the State Assembly. Elected representatives are expected to live up to the expectations of the constitutional principles and values. The constitutional privileges granted to the Legislature and its members are well intended to allow them to function without fear and favour. However, if such a privilege is used to violate the basic rights of its members, the judicial intervention is justified.

Free and fair elections are fundamental to democracy, with transparency being a key element of such electoral processes. Recognising this, the Supreme Court initiated electoral reforms beginning with the Association for Democratic Reforms case, where several mandatory reforms were introduced for elections to Legislative Assemblies and Parliament. In *Rukmini Madegowda*, the court appropriately extended the same reforms to elections for municipal corporations. This move towards uniformity across all levels of election is a positive step by the court. Right to information, which plays a critical role in ensuring transparency and enables voters to make informed decisions when selecting candidates, is essential for upholding the principles of free and fair elections.

The central idea of having a written constitution is observing constitutional norms in governance by the state functionaries. The principal obligation of ensuring such compliance with constitutional norms by the State squarely rests upon the judiciary. The judiciary is entrusted with preventing any erosion of constitutional values and safeguarding the integrity of the constitutional framework. This year's annual survey clearly reflects the judiciary's commitment to fulfilling that role.