BEFORE THE HON'BLE NATIONAL HUMAN RIGHTS COMMISSION, NEW DELHI

PUBLIC INTEREST LITIGATION (DIRARY) NO. 3046/IN/ OF 2024

Supreme Court and High Court]
Litigants Association **(SCHCLA)**]
through, Sh. Rashid Khan Pathan]
President, having office at]
1/B/3, Nityanand Baug, R. C. Marg,]
Chembur, Mumbai-400 074.] **…Petitioner**

Versus

Supreme Court of India]
through its Secretary General,]
having office at Tilak Marg,]
New Delhi, Delhi: 110001]

Union of India]
Through Ministry of Home Affair]
NDCC-II Building, Jai Singh Road,]
Near Jantar Mantar, New Delhi-110 001]

Ministry of Law & Justice]
Law and Justice Department,]
4th Floor, A-Wing, Shashtri Bhavan,]
New Delhi – 110001]

Attorney General for India]
Sl.No. 1. N-234-A, Greater Kailash-I,]
New Delhi-110048]

Solicitor General of India]
2nd Floor, Supreme Court,]
Chamber No. 25A,Tilak Marg,]
New Delhi, Delhi: 110001] **… Respondents**

Subject: Taking action as per law laid down by Hon'ble Supreme Court in the case of Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 SCC 209, it is gross violation of fundamental Constitutional rights under Article 20 (3), 21 of the Constitution of India, of Shri. Anil Masih, Presiding officer, Chandigarh Mayor Elections.

Ref: Unlawful order dated 20.02.2024 passed by the Hon'ble Supreme Court of India through the Bench of Ld. CJI D.Y. Chandrachud which is against the statutory provisions and laid down by the larger and Constitution benches of the Hon'ble Supreme Court, more particularly in the cases of the **Chandra Deo Singh v. Prokash Chandra Bose, (1964) 1 SCR 639 (1), State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240, Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370.**

MOST RESPECTFULLY SHOWETH:

The Petitioner humbly submits as under:

1. For the sake of convenience, the present petition is subdivided into the following parts:

	violated the fundamental constitutional rights of Shri. Anil Masih, which are guaranteed under Art. 14, 20 & 21 of the Constitution of India.	
7.	Point No. 7: As per law laid down in Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902, and Judgements of United Nations Human Rights Committee, the Union of India is bound to pay compensation to said Sh. Anil Masih for violation of his constitutional rights by the Bench of ld. CJI because Judges of SC are public servant and are the executive branch of the state.	**8**
8.	Point No.: It is a case of Legal Malice and no defence of mistake or good faith or ignorance of law is available to ld. CJI D.Y. Chandrachud and Justices Shri J.B. Pardiwala and Shri Manoj Misra in view of section 52 of Indian Penal Code and law laid down by the Hon'ble Supreme Court in the case of Sama Aruna v. State of Telangana, (2018) 12 SCC 150	**9**
9.	Point No. 9:Ld. CJI D.Y. Chandrachud, is habitual in passing unlawful orders and violating fundamental rights of common citizen and in misusing Supreme Court machinery for unauthorized purposes and thereby undermining the majesty and dignity of Hon'ble Supreme Court and entire Judicial System and already various complaints are filed against him and still under consideration before Hon'ble President of India	**10**

	for action u/s 218, 219, 166, 167, 220, 409, 466, 471, 474, 109, 120(B), 34, etc. of the Indian Penal Code.	
10.	Point no. 10: Double standard of Ld. Chief Justice of India D.Y. Chandrachud in not taking action under section 340 of Cr.P.C. and contempt against Shri Abhishek Banerjee who is nephew of Smt. Mamta Banerjee and co-accused Adv. Abhishek Manu Singhvi despite the fact that their falsity and fraud upon Supreme Court is ex-facie proved.	**11**
11.	Point No. 11: Double standard of Ld. Chief Justice of India D.Y. Chandrachud in not taking action against Justice Soumen Sen despite the complaint of corrupt practices by Chief Justice of Calcutta High Court & other Judges of the High Court because the main accused was Sh. Abhishek Banerjee, nephew of Smt. Mamta Banerjee.	**12**
12.	Point No. 12: Act of Ld. CJI D.Y. Chandrachud, Justices Sh. J.B. Pardiwala & Shri Manoj Mishra also amounts to contempt of binding precedents and they are liable to be punished under section 2(b), 12, 16 of Contempt of Courts Act in view of law laid down in the case of Baradakanta Misra v. Bhimsen Dixit, (1973) 1 SCC 446; In Re M.P. Dwivedi, (1996) 4 SCC 152; C.S. Karnan, In re, (2017) 7 SCC 1.	**13**

13.	Point No. 13: Even otherwise the show cause notice is vitiated in view of specific law laid down by the constitutional bench of Supreme Court and followed in the case of Oryx Fisheries Pvt.Ltd vs Union Of India (2010) 13 SCC 427, because the Ld. Chief Justice of India had already drawn the definite conclusion of guilt and thereafter the show-cause notice is only a formality and vitiated by unfairness and bias.	**14**
14.	Point No.14 : Sr. Adv. Abhishek Manu Singhavi is guilty of gross professional misconduct in view of law laid down in the case of E. S. Reddi Vs. Chief Secretary, Government of A.P. (1987) 3 SCC 258, in not bringing the correct legal position to the notice of the Court and objecting in such unlawful and unconstitutional practice. Therefore his designation as a senior counsel can be withdrawn.	**15**
15.	Point No. 15: As per law settled in catena of decisions the designation of Sr. Counsel given to Adv. Abhishek Manu Singhvi is liable to be withdrawn and he is liable to be prohibited lifetime from appearing in any courts of India.	**16**
16.	Request	**17**

2. Point No. 1: - About the Petitioner:

2.1. The Petitioner, Supreme Court and High Court Litigants Association **(SCHCLA)**, is an organization established for the welfare and educating

the citizens of their fundamental human rights guaranteed in our Indian Constitution. That the Petitioner's primary purpose is to safeguard and promote the fundamental rights of the citizens and also ensures that the law and rules are being observed. The guiding principle of the Petitioner association is to disseminate the knowledge pertaining to the legal entitlement inherent in our judicial framework, and to actively advocate for enhanced transparency, equity, and due process within the various ambit of the administration.

2.2. The Petition is being filed through President Shri. Rashid Khan Pathan, who is dedicated Human Right Activists, who has devoted his life by supporting the rights of individuals and seeking justice for those who have been marginalized. The Petitioner is filing this petition in the interest of public and in good faith.

3. Point No 2: - Declaration about no connection with Sh. Anil Masih and the PIL is only for larger interest of society and preventing wrong precedents being set by Ld. CJI Dr. D. Y. Chandrachud:-

3.1. That at the outset the petitioner declares and clarify that the Petitioner is not having any objection about the proposed action being taken against said Sh. Anil Masih if ex facie he is guilty of misuse and fraud on power

Further, the petitioner is not connected with said Sh. Anil Masih and the present PIL is filed only with the purpose of preventing injustice to anyone and also preventing from bad precedent which is being set by the Bench of ld. CJI, which may be followed by other sub-ordinate Judges and the fundamental rights of citizen will be put in danger.

4. Point No 3: - **Jurisdiction of the National Human Rights Commission in examining the violation of the fundamental rights of citizen by the Judges of the Hon'ble Supreme Court**

4.1. That Honourable Supreme Court in the case of **Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 SCC 209** had ruled as under;

> ***"50.*** *The contrary finding in the judgment under review about the absence of jurisdiction of NHRC to make some recommendations to the Governor is thus vitiated by errors apparent on the face of the record. Of course NHRC cannot intervene in proceeding pending in court without its approval [Section 12(b)] as it is assumed that the court will remedy any case of violation of human rights. The assumption in the judgment under review that there can be no violation of a person's human rights by a judgment of this Court is possibly not correct.*
>
> ***51.*** *This Court in exercise of its appellate jurisdiction has to deal with many judgments of the High Courts and the Tribunals in which the High Courts or the Tribunals, on an erroneous perception of facts and law, have rendered decisions in breach of human rights of the parties and this Court corrects such errors in those judgments. The instances of this Court's judgment violating the human rights of the citizens may be extremely rare but it cannot be said that such a situation can never happen.*
>
> ***54.*** *There is no doubt that the majority judgment of this Court in ADM, Jabalpur case [(1976) 2 SCC 521] violated the fundamental rights of a large number of people in this*

country. Commenting on the majority judgment, Chief Justice Venkatachaliah in the Khanna Memorial Lecture delivered on 25-2-2009, observed that the same be "confined to the dustbin of history". The learned Chief Justice equated Khanna, J.'s dissent with the celebrated dissent of Lord Atkin in Liversidge v. Anderson [1942 AC 206 : (1941) 3 All ER 338 (HL)] . In fact the dissent of Khanna, J. became the law of the land when, by virtue of the Forty-Fourth Constitutional Amendment, Articles 20 and 21 were excluded from the purview of suspension during Emergency.

***55.** But we hasten to add that NHRC cannot function as a parallel seat of justice to rectify or correct or comment upon orders passed by this Court or any other courts of competent jurisdiction. For correcting an order in a judicial proceeding, the aggrieved party has to avail of the well-established gamut of the corrective machinery of appeal, revision, review, curative petition and so on.*

49.** Possibly considering the wide sweep of such basic rights, the definition of "human rights" in the 1993 Act has been designedly kept very broad to encompass within it all the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.* ***Thus, if a person has been guaranteed certain rights either under the Constitution or under an International Covenant or under a law, and he is denied access to such a right, then it amounts to a clear violation of his human rights and NHRC has the jurisdiction to intervene for protecting it."

4.2. Said judgement is upheld by the **Nine Judge Bench** in the case of from **K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (Para 464).**

5. Point No. 4: - Earlier precedents of Hon'ble National Human Rights Commission in forwarding petition of Shri Rashid Khan Pathan against injustice by Supreme Court to Hon'ble Supreme Court regarding violation of fundamental rights of Smt. Kanimozhi Karunanidhi and others and due to which the law of Sanjay Chandra v. CBI, (2012) 1 SCC 40 was laid down by the Hon'ble Supreme Court and Lacs of people got benefitted due to said law.

5.1. That on early occasion Hon'ble Supreme Court violated fundamental rights of various people including **Smt. Kanimozhi Karunanidhi**, Shri A. Raja, Shri Janardan Reddy, Shri Shahid Balwa etc by not granting bail to them.

5.2. At that time on **25/09/2011**, Shri Rashid Khan Pathan had filed petition (**Case No. 5879/30/0/2011**) before Hon'ble National Human Rights Commission.

5.3. The subject & prayer in the said petition reads thus.

> **Subject :-** 1) Violation of Article 14 of the constitution of India in case of Smt. Kanimozi, Shahid Balwa etc in 2-G Scam and in case of Shri. Amar Singh in cash for vote scam, Shri Suresh Kalmadi and others in case of CWG scam, Shri Janardana Reddy of Karnataka & all citizens of India who did not get the bail inspite of clear directions from Hon'ble Supreme court in Siddharam Mehtre's case.

2) Appropriate directions to Union of India to formulate rules and making amendments in I.P.C. by making violation of constitution as cognizable non-bailable offence.

3) Filing of Writ Petition before Hon'ble Supreme Court for implementation and strict compliance of Article 14 of the constitution and law of precedents in its letter and spirit.

4) Granting compensation to the accused as per provision 18 (3) of the Human Rights Protection Act 1993 for violation of their fundamental human rights.

5) Direction to appropriate authority to initiate action against counsel for C.B.I. for not following the directions of Hon'ble Supreme Court and also for not bringing to the notice of Court the law laid down by Hon'ble Supreme Court.

6) Appropriate action against Adv. Prashant Bhushan and Mr. Arvind Kejriwal for their unconstitutional acts.

PRAYER :- It is therefore humble prayed that this Hon'ble National Human Rights commission may please to;

(i) Consider this petition as a public interest Litigation (P.I.L.) and take cognizance of it.

(ii) Call for the explanation from the respondent.

(iii) Appoint committee of expert to formulate guidelines to safeguard the fundamental rights of the accused.

(iv) File appropriate writ before Hon'ble Supreme Court for proper implementation of those guidelines.

(v) Give appropriate suggestions to standing parliamentary committee to include laws of Human Rights in the 'LOKPAL BILL'

(vi) Initiate appropriate proceedings against Mr. Arvind Kejriwal, Adv. Prashant Bhushan and others for their unconstitutional acts.

(vii) File appropriate writ before Hon'ble Supreme Court for violation of Article 14 of the constitution of India and for release of accused like Suresh Kalmadi & others which does not get the bail even if they entitled to the same.

(viii) Give appropriate directions to the respondent No. 6 to take disciplinary action and to initiate appropriate criminal proceedings against the Magistrate/Judges for their willful disregard and disobedience of Hon'ble Supreme Court's direction.

(ix) Form a committee to publish another book for the law relating to prosecution of Judges.

(x) Direct Central Government to provide appropriate Police Protection to the Petitioner.

5.4. The main grounds in the petition reads as under: -

(i) Bail is rule jail is exception.

(ii) Every accused has a presumption of innocence till proved guilty.

(iii) Equality before law & equal protection of law, means when Supreme Court granted anticipatory bail to Siddharam Mehatre in murder case than on the same principle the other accused should also be granted bail.

(iv) Judge have no discretion in rejecting bail when case law/ratio clear.

5.3 The then Chairman of NHRC and Former CJI Shri Justice K.G. Balkrishna vide his order dated **31.10.2011** had forwarded the said petition to the Hon'ble Supreme Court.

The said order reads thus;

Case No. 5879/30/0/2011

To,

THE REGISTRAR

THE SUPREME COURT OF INDIA, NEW DELHI

Sir/Madam,

The Complaint dated 29/09/2011 received from RASHID KHAN PATHAN, NATIONAL SECRETARY in respect of victims of Judicial, was placed before the commission on 31.10.2011. Upon perusing the complaint, the commission directed as follows.

The complaint be transmitted to the concerned authority for such action as deemed appropriate.

2. Accordingly, I am forwarding a copy of the complaint to you for its disposal at your end.

Yours faithfully
ASSISTANT REGISTRAR (LAW)

5.4 On the basis of said communication by Hon'ble National Human Rights Commission the Hon'ble Supreme Court had taken all the abovesaid grounds in the petition into consideration and within **one month** of rejection of bail by the Supreme Court where accused in 2G case were granted bail. Said judgment is reported as **Sanjay Chandra v. CBI, (2012) 1 SCC 40**.

5.5 Said judgment had helped & still helping Lacs of people in getting bail.

6. Point No. 5: - **Details of the illegality committed by the bench of the Ld. CJI in passing order dated 20.02.2024 against the statue & binding precedents which has violated the fundamental rights of Shri. Anil Masih.**

6.1. That the 3-Judge Bench headed by the ld. CJI Shri D.Y. Chandrachud alongwith Ld. Justices Shri J.B. Pardiwala and Shri Manoj Misra had passed an order dated **20.02.2024** whereby asked Supreme Court registry to issue show cause notice to Shri. Anil Masih calling him to reply as to why action under section 340 of Cr.P.C. should not be initiated against him.

(A copy of the said order dated 20.02.2024 marked and annexed herewith Annexure "A") @ Page No. ____.

The relevant portion of the said order reads thus;

> *"41. The Registrar (Judicial) is accordingly directed to issue a notice to show cause to Shri Anil Masih of the Chandigarh Municipal Corporation who was the Presiding Officer at the election which took place on 30 January 2024, as to why steps should not be initiated against him under Section 340 of the Code of Criminal Procedure 1973. The notice shall be made returnable on 15 March 2024"*

6.2. That, the above said order is against the provisions of code of criminal procedure and binding precedents laid down by the larger benches of the Hon'ble Supreme Court.

6.3. That, the law is very sell very well settled that in an action under section 340 of the Cr.P.C., the Judge/Bench is not going to decide the innocence or guilt of the 'would be' or 'prospective accused'. The prospective accused have no role to participate. Neither he can join the preliminary enquiry nor the Judge/Bench is having any authority to call the prospective accused by issuing show cause notice. [**State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659**]

6.4. That the law is also very well settled that the Judge/Bench cannot take the reply/defence of the prospective accused into consideration for taking decision about initiation of proceedings as per Section 340 of the Criminal Procedure Code. It is beyond the jurisdiction of the enquiry Judge/Bench to call the explanation from the accused and base his decision on the basis

of reply given by the prospective accused even before the stage of section 204 of the Cr.P.C. is reached.**[Al Amin Garments Haat (P) Ltd. v. Jitendra Jain, 2024 SCC OnLine Cal 110 Chandra Deo Singh v. Prokash Chandra Bose, (1964) 1 SCR 639 (1), Ramesh Sobti v. State of W.B., 2017 SCC OnLine Cal 8424, Tushar Galani Vs. Jagdeesh 2001 ALL MR (Cri.) 46, Securities and Exchange Board Of India Vs. Hindustan Lever Ltd.& Anr 2002-ALL-MR-(CRI)-2142, M. Narayandas vs State of Karnataka (2003) 11 SCC 251, State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659, M/s. A-One Industries Vs. D.P. Garg 1999 CRI. L. J. 4743, Devinder Mohan Zakhmi Vs. Amritsar Improvement Trust, Amritsar and another 2002 CRI.L.J. 4485]**

6.5. That a Full Bench of Hon'ble Supreme Court in the case of **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278** had quashed and set aside the conviction of IPS officer under perjury by the two Judge Bench because the two Judge Bench acted in breach of the provisions of section 340 of Cr. P.C.

It is ruled by the full Bench in **M.S. Ahlawat Vs. State of Haryana** *(supra)* it is ruled as under;

> ***Section 340 of Criminal Procedure Code.***
>
> ***Wrong order by Two Judge Bench of Supreme Court convicting petitioner under perjury are se aside.***
>
> ***This Court has always adopted as done in Mohan Singh's case (1998) 6 SCC 686 procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false***

documents or any statement has been found to be false*. The order made by Court convicting the petitioner under S. 193, IPC is, therefore, one without jurisdiction and without following due procedure prescribed under law - We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340, Cr.P.C. were not brought to the notice of the learned Division Bench - To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience."*

6.5. That, section 340 of Cr. P.C. reads this ;

"(1)When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a)record a finding to that effect;

(b)make a complaint thereof in writing;

(c)send it to a Magistrate of the first class having jurisdiction;

(d)take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and

(e)bind over any person to appear and give evidence before such Magistrate.

(2)The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3)A complaint made under this section shall be signed, -(a)where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b)in any other case, by the presiding officer of the Court[or by such officer of the Court as the Court may authorise in writing in this behalf.] *[Substituted by Act 2 of 2006, Section 6, for Cl. (b) (w.e.f. 16-4-2006). Prior to its substitution, Cl (b) read as under : - [(b) in by other case, by the presiding officer of the Court].]*(4)In this section, "Court" has the same meaning as in Section 195."

6.6. That in **Al Amin Garments Haat (P) Ltd. v. Jitendra Jain, 2024 SCC OnLine Cal 110**, it is right as under;

> ***1.*** ***MOUSHUMI BHATTACHARYA, J.****:— The petitioner has taken out an application under section 340 of The Criminal Procedure Code, 1973 for a preliminary enquiry into the alleged fraudulent and illegal acts of the respondents in connection with AP 124 of 2023. AP 124 of 2023 was filed under section 11(6) of The Arbitration and Conciliation Act, 1996 for appointment of arbitrator.*
>
> ***2.*** *The only point which falls for adjudication is whether the respondents have a right to be heard in the proceedings.*
>
> ***3.*** *Learned counsel appearing for the respondents urges, with considerable vehemence and industry that the proceedings under section 340 of the CrPC allows an opportunity of hearing to the proposed accused and places emphasis on the words used in the said provision. According to counsel, the word "inquiry" in section 340(1) contemplates intervention by the Court and hence envisages that the proposed accused be heard before an inquiry is ordered into the offence referred to in section 195(1)(b) of the CrPC.*
>
> ***4.*** *Learned counsel appearing for the petitioner, on the other hand, relies on several decisions of the Supreme Court including that of Pritish v. State of Maharashtra, (2002) 1 SCC 253 to contend that there*

is no scope of granting any opportunity of hearing to the proposed accused at the pre-referral stage.

5. *Before the Court considers the import of the decisions pronounced by the Supreme Court in respect of section 340 of the CrPC, the relevant part of the section should be extracted below:*

> *"340.(1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -*
>
> *(a) record a finding to that effect;*
>
> *(b) make a complaint thereof in writing;*
>
> *(c) send it to a Magistrate of the first class having jurisdiction;*
>
> *(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to the Magistrate; and*

(e) bind over any person to appear and give evidence before such Magistrate."

6. *The Supreme Court comprehensively explained the implications of the provision in Pritish v. State of Maharashtra (supra). The Supreme Court was unequivocally of the opinion that there is no statutory requirement to afford an opportunity of hearing to persons against who the Court might make a complaint and send it to the Magistrate for initiating prosecution proceedings. The primary reason for the opinion was that section 340 of the CrPC does not contemplate deciding the guilt or innocence of the party against who proceedings are to be taken before the Magistrate. At that stage the Court simply considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. The Supreme Court relied on M.S. Sheriff v. State of Madras, AIR 1954 SC 397 where the Constitution Bench of the Supreme Court cautioned that no expression on the guilt or innocence of the persons should be made by the Court while passing an order under section 340 of the CrPC.*

7. *The other reasons expressed by the Supreme Court in Pritish are of equal relevance and are summarised below.*

8. *Section 340(1) essentially envisages formation of an opinion by the Court that it is expedient that an inquiry should be made in the interest of justice into an offence*

which appears to have been committed under section 195(1)(b) of the CrPC. The Court is empowered to hold a preliminary inquiry in order to form such opinion. It is therefore not mandatory that such preliminary inquiry should be held and the Court can form an opinion even without such preliminary inquiry. Second, it is also not mandatory that the Court should make a complaint even where the Court forms the opinion referred to in section 340(1). This is in view of the fact that the provision confers the power on the court to form an opinion. Forming an opinion by itself, might not result in the Court making a complaint but once the Court decides to do so, the Court should make a finding to the effect that it is expedient on the facts and in the interest of justice that the offence should be probed.

9. *The Supreme Court in Pritish further opined that it is always open to the Court to conduct a preliminary inquiry to reach the finding as stated above, though, absence of any such preliminary inquiry would not vitiate a finding reached by the Court regarding its opinion. The Supreme Court concluded that the preliminary inquiry contemplated in section 340(1) is not for finding of guilt or innocence of the particular person but only for deciding whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.*

10. *The ratio of Pritish is that the person against who a complaint is made has a legal right to be heard only when the Magistrate calls the accused to appear before him. The person concerned will thereafter have the right to participate in the pre-trial inquiry envisaged in section 239 of the CrPC and it is open to the accused to satisfy the Magistrate that the allegations against him are without basis and he is entitled to be discharged.*

11. *Besides the dictum of the Court in Pritish, it is important to consider the other decisions of the Supreme Court pronounced on the subject.*

12. *In State of Punjab v. Jasbir Singh, (2020) 12 SCC 96, the Supreme Court relied on the ratio in Pritish but referred the issue to a larger Bench in view of a subsequent decision of the Supreme Court in Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290. Jasbir Singh notes that the 3-Judge Bench in Sharad Pawar did not take note of the dictum in Pritish and proceeded to hold that the proposed accused should be given an opportunity of hearing before the Court directs a preliminary inquiry under section 340(1) of the CrPC.*

13. *The decision in Pritish was affirmed by the larger Bench, in reference, in State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240 (decided on 15.9.2022). The larger Bench in Jasbir Singh relied on the Constitution Bench decision in Iqbal Singh*

Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 to hold that there is no question of opportunity of hearing being given to a proposed accused under section 340(1) of the CrPC. The Supreme Court further opined that the law enunciated by the Constitution Bench in Iqbal Singh Marwah was in line with the dictum in Pritish. The Supreme Court thus answered the reference formulated in Jasbir Singh (Pre reference) as to whether an opportunity of hearing should be given to the would-be accused before a complaint is made under section 195 of the CrPC, in the negative.

14. *This is the law as it stands today. In other words, a proposed accused does not have a right to be heard before the Court sends the complaint to the Magistrate for initiating prosecution proceedings under section 340 (1) of the CrPC. As stated above, section 340(1) does not wipe out the defence of the proposed accused or his/her right to participate in the proceedings before the Magistrate. The principles of natural justice are hence preserved in the proceedings before the Magistrate where the proposed accused has full opportunity to disprove the charges/allegations against him/her.*

15. *The dictum in Pritish was also followed by a Division Bench of this Court in Tarulata Mondal v. State of West Bengal, 2013 SCC OnLine Cal 12913 where the Division Bench set out the relevant*

paragraphs from Pritish on the aspect of natural justice and was of the view that there is no violation thereof.

16. *This Court is bound by the law laid down and is accordingly not inclined to depart from the said view in view of the law pronounced by the Supreme Court in Pritish and the answer given by the larger Bench to the reference in State of Punjab v. Jasbir Singh.*

17. *State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575 relied on behalf of the respondents, did not consider Pritish and was in any event pronounced before the 3-Judge Bench decision in Jasbir Singh. Anil Kumar Agarwal v. State of Jharkhand; CRMP No. 2223 of 2021 cannot be taken into consideration or relied on for the same reasons, that is, for being contrary to the larger Bench decision in Jasbir Singh.*

18. *The above reasons are good grounds to hold that the respondents/proposed accused do not have a right of hearing at the stage of inquiry that is under section 340(1) of the CrPC. The Court accordingly proposes to hear the petitioner in the present proceeding and dispose of the same in accordance with the mandate of section 340(1) of the CrPC. The respondents do not have a right to be heard in this application.*

19. *The petitioner shall be at liberty of mentioning the matter at an early date for hearing on merits.*

20. *Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.*

6.7. That the complete procedure and scope of enquiry under section **340 of Cr. P.C**. is explained in the case of **State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659** as under ;

Section 340,195,200,202,204,239,243,343 of Criminal Procedure Code - Procedure to be followed by all courts -

This court in Pritish Vs. State of Maharashtra and Ors. (2002) 1 SCC 253 a*dverted to the constitutional bench in M.S. Sheriff (AIR 1954 SC 397) to highlight that the court at the stage envisaged in section 340 of the code would not decide the guilt or innocence of the party against whom the proceedings are to be instituted before the Magistrate.* (Para 13)

When complaint is made to the Magistrate having jurisdiction then, the Magistrate, if he thinks fit, can conduct further enquiry by considering the complaint as the Police Report. The Magistrate has to follow procedure under section 200, 202, 203, 204 of Criminal Procedure Code

Under Section 476(2), the Court to which a complaint is made Under Section 476 shall proceed "as if upon complaint Under Section 200". It was suggested during our discussions that since a complaint is made Under

Section 476 by a responsible judicial officer (and after inquiry in most cases), the Court to which the complaint is made need not and should not hold another **inquiry under Chapter 16 but should issue process Under Section 204. It was urged that when a superior Court had made a complaint, it was inappropriate that a Magistrate should again hold an inquiry or dismiss it Under Section 203. We, however, felt that there was no justification for totally dispensing with an inquiry Under Section 202. The Court making the complaint Under Section 476 may not have made a thorough inquiry, and the Court taking cognizance of the offence Under Section 195 might like to have more materials before issuing process. The nature of the jurisdiction to be exercised by the Magistrate Under Sections 202 and 203 is not always similar to the nature of the proceedings held by the complaining Court Under Section 476. For instance, Under Section 202, further "investigation" may be ordered, whereas an "inquiry" Under Section 476 is of a limited nature. It would not be correct to assume that one will serve the purpose of the other in every case. (Para 49)**

In response to the view expressed in course of the deliberations that the Court to which the complaint is made need not and should not hold another inquiry under Chapter XVI, a complaint having been made by a responsible Judicial Officer (and after inquiry in most

cases) and that therefore the Trial Magistrate should issue process Under Section 204 without further enquiry, the Commission was of the comprehension that there was no justification for totally dispensing with an inquiry Under Section 202 as the Court making the complaint Under Section 476 might not have made a thorough inquiry and the Court taking cognizance of the offence Under Section 195 might in a given case, like to have more materials before issuing the process. This is more so as in its opinion, the nature of the jurisdiction to be exercised by the Magistrate Under Sections 202 and 203 was not always similar to the nature of the proceedings held by the complaining Court Under Section 476. This is more so, as the inquiry Under Section 476, even if conducted, is of a limited nature and may not serve the purpose of an inquiry Under Section 202 in every case. (Para 50)

The above view of the Commission and the recommendations stemming therefrom, are in accord with the expression "as far as may be" engrafted in Section 343, the salient features whereof can be deciphered as: (i) a Magistrate dealing with a complaint Under Section 340 or Section 341 has to proceed as far as may be to deal with the case as if it were instituted on a police report; (ii) this course the Magistrate would follow notwithstanding anything contained in Chapter XV. (Para 51)

In our view, Sections 200, 202, 204, 238 to 243, 340 and 343(1), when juxtaposed to each other, would endorse the availability of a discretion in the Trial Magistrate to conduct a semblance of inquiry, if considered indispensable for proceeding with the complaint in accordance with law. This is more so, amongst others, as a complaint Under Section 340 or Section 341 may be filed even without holding a preliminary inquiry into the facts, on which it appears to the complainant Court prima facie that an offence, as contemplated, had been committed and that it is expedient in the interests of justice that an inquiry should be made into such offence by a Magistrate. In the event of a complaint being made after a preliminary inquiry, in which sufficient materials are obtained following which a complaint is filed, to reiterate, it may not be necessary for the Trial Magistrate to embark upon any further inquiry to complement the same. However, if no such preliminary inquiry is held and a complaint is filed, in the interest of justice and to obviate unwarranted prosecution, the Trial Magistrate may, to be satisfied, feel the necessity of some inquiry, summary though, to decide the next course of action in law. In other words, if the Trial Court on receipt of a complaint is satisfied that the materials on record are adequate enough, it shall, as per the mandate contained in Section 343(1), deal with the case as if instituted on a police report. On the other hand, if the complaint has been filed without a preliminary inquiry, in our

estimate, having regard to the inbuilt flexibility in the text of Section 343(1), which cannot by any means be construed to be an unnecessary appendage or surplusage, introduced by the legislature, it would be open for the Trial Magistrate to hold a summary inquiry before proceeding further with the complaint. As in any case, the cause of justice would be paramount, the mandate in Section 343(1) to the Trial Magistrate to deal with a complaint Under Section 340 or Section 341 Code of Criminal Procedure as a case instituted on a police report, if construed to be inexorably absolute, would tantamount to neutering the expression "as far as may be", which is impermissible when judged on the touchstone of fundamental principles of justice, equity and good conscience as well as of interpretation of statutes. Though expectedly, a complaint Under Section 340 or Section 341 Code of Criminal Procedure would be founded on materials in support thereof and would also be preceded by a prima facie satisfaction of the complaining Court with regard to the commission of the offence and the expediency of an inquiry into the same in the interests of justice, the plea of unavoidable compulsion of a Trial Magistrate to treat the same, as a case as if instituted on a police report, by totally disregarding the necessity, even if felt, for further inquiry, does not commend acceptance. True it is that the text of Section 343(1) otherwise portrays a predominant legislative intent of treating the complaint Under Section 340 and Section 341 to be a case, as if

instituted on a police report, the presence and purport of the expression "as far as may be" by no means can be totally ignored. This, in our estimate, acknowledges the discretion of the Trial Magistrate to obtain further materials by way of an inquiry even if summary in nature, if genuinely felt necessary in the interest of justice for generating the required satisfaction to proceed in the matter as ought to be in law. However, in exercising such discretion, the Trial Magistrate has to be cautiously conscious of the fact that the complaint pertains to an offence affecting the administration of justice and is preceded by a prima facie satisfaction of the complaining Court that the same might have been committed and that it was expedient in the interests of justice to inquire into the same. In other words, the discretion, as endowed to the Trial Magistrate Under Section 343(1) has to be very sparingly exercised and only if it is genuinely felt that further materials are required to be collected through an inquiry by him only to sub-serve the ends of justice and avoid unwarranted judicial proceedings. This is particularly as the Legislature, while designing Section 343(1) of the Code, was fully conscious of the distinction between cases instituted on police report and otherwise and had amended Section 476(2) of the 1898 Code with due deference to the recommendations of the Law Commission of India. (Para 56)

6.8. In **Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508,** it is ruled as under;

> ***"25.*** *It is a settled proposition of law that* ***whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance*** *on the principle of quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud, which means* ***"whenever a thing is prohibited, it is prohibited whether done directly or indirectly.***
>
> *23. In Jagir Singh v. Ranbir Singh and Anr. MANU/SC/0097/1978 : AIR 1979 SC 381, this Court has observed that* ***an authority cannot be permitted to evade a law by "shift or contrivance."*** *While deciding the said case, the Court placed reliance on the judgment in Fox v. Bishop of Chester (1824) 2 B and C 635, wherein it has been observed as under:*
>
> ***To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined.***

6.9. That, Hon'ble Supreme Court in the case of **Dr. D.C. Wadhwa v. State of Bihar AIR 1987 SC 579**, has ruled as under;

> *"……. It is settled law that* ***a constitutional authority cannot do indirectly what it is not permitted to do directly.*** *If there is a constitutional provision inhibiting the constitutional authority from doing an*

act, such provision cannot be allowed to be defeated by adopting of any subterfuge. That would be clearly a fraud on the Constitution. (emphasis supplied)"

6.10. Hence, the order dated **20.02.2024** passed by the Bench of Ld. CJI D.Y. Chandrachud is ex-facie illegal and issued in contempt of the binding precedents of larger and co ordinate Benches.

7. Point No. 6: - Issuance of show cause notice in proceedings under section 340 of Cr.P.C. had violated the fundamental constitutional rights of Shri. Anil Masih, which are guaranteed under Art. 14, 20 & 21 of the Constitution of India.

7.1. That, the next stage of proceeding under section 340 of the Cr.P.C. after preliminary enquiry is either closing the case or directing the Registrar of the Supreme Court to file a complaint before the Judicial Magistrate having jurisdiction. **[M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278, Sarvepalli Radhakrishnan Vs. Union of India (2019) 14 SCC 761, 2020 case law]**

7.2. That the next stage for the concerned Magistrate is to either conduct preliminary enquiry under section 202 of the Cr.P.C. or to straightaway pass an order u/s 203 or 204 of the Cr.P.C. i.e. either to dismiss the complaint or to order an issue process against the accused. **[State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659]**

7.3. Then only the accused has a right to appear before the court of ld. Magistrate and apply for discharge or to challenge the said order before the higher courts. Either u/s 397 or 482 of the Cr.P.C.

7.4. Then, if the said proceedings before the ld. Magistrate is not closed/dropped or quashed and if the accused is not discharged, then the trial against the accused begins and the accused has to defend the case by producing his defence directly or by cross-examining the prosecution witness like the Registrar of the Supreme Court.

7.5. It is the fundamental constitutional protection guaranteed to every citizen of India under Article 20(3) of the Constitution of India that the accused cannot be compelled to incriminate against himself and has the right of silence till the conclusion of the trial.

7.6. Neither in the proceedings under Cr.P.C. nor under contempt, the courts including Supreme Court are permitted to compel the prospective accused or the alleged contemnor to disclose their defence or to incriminate against themselves. [**Clough Engg Ltd Australa Vs. Oil Natural Gas Corporation Mumbai 2009 Cri. L. J. 2177, Nandini Sathpathy Vs. P. L. Dani (1978) 2 SCC 424, M.P. Sharma v. Satish Chandra, 1954 SCR 1077, Smt. Selvi Vs. State (2010) 7 SCC 263 , High Court of Karnataka Vs. Jai Chaitanya Das 2015 (3) AKR 627**, **Santosh v. State of Maharashtra, (2017) 9 SCC 714, Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244]**

7.7. Constitution Bench of the SC in the case of **Prem Chand Garg Vs. Excise Commissioner, U. P. AIR 1963 SC 996** had quashed the Supreme Court Rules which were violative of fundamental Rights of the citizen.

7.8. In catena of decisions by constitution Benches, it is specifically ruled that the Supreme Court. Cannot exercise it's inherent powers under Article 142, 129 of the Constitution against the statutory provisions or against the constitutional mandates. Many unlawful orders of the Supreme Court are set aside by the larger Benches of the Supreme Court. **[Supreme Court**

Bar Association (1998) 4 SCC 409, **FCI Vs. Jagdish (2017) 8 SCC 670 M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278**, **A.R. Antulay Vs. R.S. Nayak (1988) 2 SCC 602**-, **Nidhi Keim Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1]**

7.9. That a Full Bench of Hon'ble Supreme Court in the case of **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278** had quashed and set aside the conviction of IPS officer under perjury by the two Judge Bench because the two Judge Bench acted in breach of the provisions of section 340 of Cr. P.C.

It is ruled by the full Bench in **M.S. Ahlawat Vs. State of Haryana** *(supra)* it is ruled as under;

> ***Section 340 of Criminal Procedure Code.***
>
> ***Wrong order by Two Judge Bench of Supreme Court convicting petitioner under perjury are se aside.***
>
> ***This Court has always adopted as done in Mohan Singh's case (1998) 6 SCC 686 procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false****. The order made by Court convicting the petitioner under S. 193, IPC is, therefore, one without jurisdiction and without following due procedure prescribed under law - We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340, Cr.P.C. were not brought to the notice of*

the learned Division Bench - To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience."

7.10. That apart from the violation of Art. 20 (3) of the constitution, the another serious prejudice which may be caused to the said Anil Masih or any other person like him, who had been served with such show cause notice before action under section 340 of cr. P. C. , is that, if the defence of said person like Anil Masih is rejected by the Supreme Court then the lower courts will not accept said defence during trial and it will also violate the fundamental rights of being presumed innocent till proved guilty.

7.11. Hence by issuing show cause notice before action under section 340 of cr. P.C. the Bench of ld. CJI had violated fundamental rights, under Art. 14,20,21 of the constitution of India of the said Anil Masih and had set a bad example for other sub-ordinate Judges/Benches/Courts.

8. Point No. 7: - As per law laid down in Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902, and Judgements of United Nations Human Rights Committee, the Union of India is bound to pay compensation to said Sh. Anil Masih for violation of his constitutional rights by the Bench of ld. CJI because Judges of SC are public servant and are the executive branch of the state.

8.1. That law is very well settled that whenever fundamental rights of any citizen are violated by any public servant including Judge of High Court or Supreme Court then state is bound to pay compensation to the said citizen because the Judges including Judges of the Supreme Court and CJI are public servants and are part of execution branch of the state.

[Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC

481, Walmik s/o Deorao Bobde Vs. State 2001 ALL MR (Cri.) 1731, Bharat Devdan Salvi Vs. State of Maharashtra, 2016 SCC OnLine Bom 42, S. Nambi Narayanan Vs. Siby Mathews and Others (2018) 10 SCC 804, D.K. Basu Vs. State (1997) 1 SCC 416]

8.2. That Constitution Bench of the Supreme Court in the of **Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481** had ruled that the Judges of Supreme Court and CJI are public servants.

It is ruled as under;

> *"186[…]**Constitutional functionaries are bound to the oath of their office to discharge their duties in a fair manner in accordance with the principles enshrined in the Constitution**. It cannot be countenanced that public gaze or subsequent disclosure will detract an individual from discharging their duty in an effective manner true to the dignity and ethic associated with their office. Candour and frankness cannot be the reason to preclude disclosures of correspondence between constitutional functionaries which concern the appointment process of Judges.*
>
> ***222**. Article 124(6) and Article 219 of the Constitution of India prescribe that every person who is appointed to be a Judge of the Supreme Court or the High Court respectively, shall, prior to entering office, **make and subscribe to an oath or affirmation set out in the Third Schedule of the Constitution**. The oath for the office reads:*

"I, (name), having been appointed Chief Justice (or a Judge) of the Supreme Court of India, do swear in the name of God (or affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

223. ***Prior to the advent of the Constitution, the oath or affirmation for a person appointed to the Federal Court was prescribed in Schedule IV to the Government of India Act, 1935***. *Significantly, the words "without fear or favour, affection or ill-will", contained in the present Constitution in Form VIII did not find place in the oath prescribed ["I, A.B., having been appointed Chief Justice [or a Judge] of the Court do solemnly swear [or affirm] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my judicial capacity to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."] in Schedule IV to the Government of India Act, 1935. Added to the present Constitution, these are words with significance. The Framers of the Constitution were alive to the need*

for the exercise of judicial power in accordance with the ethics of judicial office. The express inclusion of these words indicates that persons entering judicial office bind themselves to the principles inherent in the effective discharge of the judicial function, in conformity with the rule of law and the values of the Constitution.

***224**. **The oath of office postulates that the Judge shall discharge the duties of the office without fear or favour, affection or ill-will**. Any action that abridges the discharge of judicial duty in conformity with the principles enunciated in the oath negates the fundamental precept underlying the conferment of judicial power. Commenting on the significance of the inclusion of the term in its application to Judges of the High Courts in Union of India v. Sankalchand Himatlal Sheth [Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193 : 1977 SCC (L&S) 435] , P.N. Bhagwati, J. (as he then was) held : (SCC p. 236, para 49)*

***"49**. ... These words, of course, do not add anything to the nature of the judicial function to be discharged by the High Court Judge because, even without them, the High Court Judge would, by the very nature of the judicial function, have to perform the duties of his office without fear or favour, but they serve to highlight two basic characteristics of the judicial function, namely, independence and impartiality."*

225. *As constitutional functionaries tasked with adjudication, Judges of the High Courts and Supreme Court are bound to discharge their duties in a fair and impartial manner in accordance with law and the principles enshrined in the Constitution. But this indeed is only a restatement of a principle which attaches to all judicial office.* ***The principles embodied in the oath furnish a non-derogable obligation upon the person affirming it to abide by its mandate.***

231. In the view explored above, judicial accountability traces itself from both the oath of office and the nature of the judicial power itself. *In a broader sense however, there is a significant public interest in ensuring the smooth and efficient functioning of the justice delivery system, consistent with the requirements of justice in individual cases. The legitimacy of the institution which depends on public trust is a function of an assurance that the judiciary and the people that work it are free from bias and partiality. Mark Tushnet explores the idea of judicial accountability in the following terms:*

"Under prevailing understandings in liberal democracies, law is a human artefact, so accountability 'to law' must involve accountability to someone. Roughly, 'political accountability' refers to accountability to contemporaneous power-holders as representatives of today's people, whereas 'accountability to law' refers to accountability to the

people and their representatives in the more distant past. Accountability to law is a form of indirect accountability to the people in the past, taking its route through their enactments of law. [Mark Tushnet, "Judicial Accountability in Comparative Perspective", in Accountability in the Contemporary Constitution (Nicholas Bamforth and Peter Leyland eds.) (2013), Oxford Scholarship Online at Tushnet, p. 69.]"

8.3. That, Five Judge Bench of Privy Council in the case of **Ramesh Lawrence Maharaj vs Attorney Generel of Trinidad and Tobago (1978) 2 WLR 902,** had ruled that, if a Judge in a contempt proceeding violates the fundamental rights of the alleged contemnor by not framing specific charge, then the state is bound to pay the compensation to the alleged Contemnor.

It is ruled as under;

"According their Lordships in agreement with Phillips J.A. would answer question (2): "Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant in respect of which he was entitled to protection under s.1(a)."

The order of Maharaj J. committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm of the State. So if his detention

amounted to a contravention of his rights under S.1(a), it was a contravention by the State against which he was entitled to protection.

...This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by S.6(1) and (2) of the Constitution.

.. It is only in the case of imprisonment or corporal punishment already undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on appeal to an appellate court. It is true that instead of, or even as well as, pursuing the ordinary course of appealing directly to an appellate court, a party to legal proceeding who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under.

For these reasons the appeal must be allowed and the case remitted to the high court with a direction to assess the amount of monetary compensation to which the appellant is entitled .The respondent must pay the costs of this appeal and of the proceeding in both Courts below."

8.4. The abovesaid judgement in **Ramesh Maharaj's case** (supra) is approved and followed by the Supreme Court of India in the following decisions: -

(i) Nilabati Behra Vs. State (1993) SCC

(ii) D.K. Basu v. State of W.B., (1997) 1 SCC 416

(iii) People's Union for Civil Liberties v. Union of India, (1997) 3 SCC 433

(iv) Commr. v. Shivakka (2), (2011) 12 SCC 419

(v) Rakesh Kaushik v. B.L. Vig, Supdt., Central Jail, 1980 Supp SCC 183

8.5. In **Walmik Bobde vs State of Maharashtra 2001 ALL MR (Cri.)1731**, it is ruled as under;

> ***"MISUSE OF POWER BY JUDGE IN ISSUING ARREST WARRANT IN CASE WHERE PERSON WAS ACQUITTED*** *- Person who was already acquitted in criminal case some years before was arrested pursuant to a non –bailable warrant of arrest inadvertently prepared by the Court –Held state could not defend this wrongful act by taking a plea of unintentional and bonafide action –State directed to pay Rs.10000/-to the petitioner as compensation and costs quantified at Rs.5000/-"*

8.6. That, in **Bharat Devdan Salvi Vs. State of Maharashtra, 2016 SCC OnLine Bom 42**, it is ruled as under;

"33. We have perused the report and the explanation tendered by the learned Judge, and the same in our view is not satisfactory.

35. Hence we deem it fit to direct an enquiry agianst the errant police officers, as well as the concerned judicial officers, in accordance with the directions of the Apex Court in Arnesh Kumar (para 11.7 and 11.8. supra). The petitioner nos. 3 and 4 are at liberty to file appropriate proceedings for compensation, if they so desire.

***36.** Under the circumstances and in view of discussion supra, we pass the following order:—*

> ***(i)** The petition is partly allowed, with costs of Rs. 50,000/- to be paid to the petitioner nos. 3 and 4.*
>
> ***[…]***
>
> ***(iv)** The respondent no. 1 shall recover the costs of Rs. 50,000/- from the erring police officers.*
>
> ***[…]***
>
> ***(vi) A copy of this order be forwarded to the Registrar General, High Court, to be placed before the Honourable The Chief Justice, Bombay High Court."***

8.7. That in **S. Nambi Narayanan v. Siby Mathews, (2018) 10 SCC 804**, Hon'ble Supreme Court had granted Rs. 50 lakhs interim compensation. It is ruled as under;

> "***37.*** *In Kiran Bedi v. Committee of Inquiry [Kiran Bedi v. Committee of Inquiry, (1989) 1 SCC 494], this Court reproduced an observation from the decision in D.F. Marion v. Davis [D.F. Marion v. Davis, 55 ALR 171 : 217 Ala 16 (1927)] : (SCC pp. 515, para 25)*
>
> > *"25. ... 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.'"*
>
> ***38.*** *Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two-Judge Bench of this Court in Vishwanath Agrawal v. Sarla Vishwanath Agrawal [Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288 : (2012) 4 SCC (Civ) 224 : (2012) 3 SCC (Cri) 347] has observed : (SCC pp. 307, para 55)*
>
> > *"55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."*
>
> ***40.*** *If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no*

scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant.

> ***41.*** *In Sube Singh v. State of Haryana [Sube Singh v. State of Haryana, (2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54] , the three-Judge Bench, after referring to the earlier decisions, has opined : (SCC pp. 198-99, para 38)*
>
> *"38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will*

not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

42. *In Hardeep Singh v. State of M.P. [Hardeep Singh v. State of M.P., (2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684] , the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted [Hardeep Singh Anand v. State of M.P., 2008 SCC OnLine MP 501 : 2008 Cri LJ 3281] compensation of Rs 70,000. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.*

43. *In the instant case, keeping in view the report of CBI and the judgment rendered by this Court in K. Chandrasekhar [K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223 : 1998 SCC (Cri) 1291] , suitable compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with*

the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit.

44. *Mr Giri, learned Senior Counsel for the appellant and the appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that the authorities who have been responsible to cause such kind of harrowing effect on the mind of the appellant should face the legal consequences. It is suggested that a committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken. The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its*

business including the secretarial staff by the Central Government.

45. *Resultantly, the appeals stand allowed to the extent indicated hereinabove. There shall be no order as to costs.*"

8.8. That the Constitution Bench in the case of **Anita Kushwaha V/S Pushap Sadan (2016) 8 SCC 509,** has ruled that;

"18… *Bose, J. emphasised the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said: (Prabhakar Kesheo case [Prabhakar Kesheo Tare v. Emperor, AIR 1943 Nag 26 : 1942 SCC OnLine MP 78] , SCC OnLine MP para 1)*

"1. ... ***The right is prized in India no less highly than in England, or indeed any other part of the Empire****, perhaps even more highly here than elsewhere; and it is zealously guarded by the courts."*

8.9. In **Devilal V/S M.P State Through Chief Secretary 2017 SCC OnLine MP 2322, i**t is ruled as under;

"11. *The research conducted by WHO also establishes that the paralysis can be one of the side effects of Oral Polio Vaccine. The Doctor examined before the trial Court has also supported the aforesaid view and, therefore, the appeal filed by the plaintiff, keeping in view the facts and circumstances of the case, deserves to be allowed.*

12. *This Court is of the considered opinion that once the factum of side effect of Polio drops was established on the basis of statement given by the defence witness,*

in all fairness, the proper compensation towards treatment and mental sufferings should have been granted in the peculiar facts and circumstances of the case.

13. *……. The plaintiff shall be entitled for a sum of Rs. 10,00,000/- (Rs. Ten lacs) along with interest @ 12% p.a., w.e.f. 20/11/1996, towards the treatment and the mental sufferings and the amount shall be paid by the State of Madhya Pradesh within a period of 90 days from the date of receipt of certified copy of this order. In case the amount is not paid within a period of 90 days, it shall carry interest @ 15% p.a., w.e.f. 20/11/1996."*

8.10. Honourable Bombay High Court in granting interim compensation in the case of **Veena Sippy V/S Mr. Narayan Dumbre 2012 SCC OnLine Bom 339**. It is observed as under;

"20…. *We must state here that the Petitioner in person has relied upon an interim order passed by this Court in First Appeal arising out of a decree passed in a suit. The decree was passed in a suit filed by a retired Judge of the Apex Court wherein he claimed compensation on account of act of defamation. Considering the evidence on record, the Trial Court passed a decree for payment of damages of* ***Rs. 100/- crores****. While admitting the Appeal and while considering the prayer for grant of stay, this Court directed the Appellant-Defendant to deposit a sum of Rs. 20/- crores in the Court and to furnish Bank Guarantee for rest of the decretal amount as a condition of grant of stay. However, this Court*

directed investment of the amount of Rs. 20/- crores till the disposal of the Appeal. The interim order of this Court has been confirmed by the Apex Court.

23….

i. *We hold that the detention of the Petitioner by the officers of Gamdevi Police Station from 5th April, 2008 to 6th April, 2008 is illegal and there has been a gross violation of the fundamental right of the Petitioner guaranteed by Article 21 of the Constitution of India.*

ii. *We direct the 5th Respondent-State of Maharashtra to pay compensation of Rs. 2,50,000/- to the Petitioner together with interest thereon at the rate of 8% per annum from 5th April, 2008 till the realization or payment. We direct the State Government to pay costs quantified at Rs. 25,000/- to the Petitioner. We grant time of six weeks to the State Government to pay the said amounts to the Petitioner by an account payee cheque. It will be also open for the fifth Respondent - State Government to deposit the amounts in this Court within the stipulated time. In such event it will be open for the Petitioner to withdraw the said amount.*

iii. *We clarify that it is open for the State Government to take proceedings for recovery of the amount of compensation and costs from the officers responsible for the default, if so advised.*

iv. *Petition stands dismissed as against the Respondent No. 4.*

vi. *We make it clear that it will be open for the Petitioner to adopt a regular remedy for recovery of*

compensation/ damages in addition to the amount directed to be paid under this Judgment.

8.11. The Honourable Bombay High Court in the case of **Sanjeevani V/S State MANU/MH/0469/2021,** has ruled as under;

***"13….** Apex Court in the case of D.K. Basu Vs. State of West Bengal reported in MANU/SC/0157/1997: AIR 1997 Supreme Court 610(1) wherein it has been held thus: -*

55.** Thus, to sum up, it is now a well-accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. **The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages

which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them*. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."*

9. Point No. 8: - **It is a case of Legal Malice and no defence of mistake or good faith or ignorance of law is available to ld. CJI D.Y. Chandrachud and Justices Shri J.B. Pardiwala and Shri Manoj Misra in view of section 52 of Indian Penal Code and law laid down by the Hon'ble Supreme Court in the case of Sama Aruna v. State of Telangana, (2018) 12 SCC 150**

9.1. That the statutory provisions and binding precedents were overlooked by the ld. CJI D.Y. Chandrachud and Justices Shri JB Pardiwala and Shri Manoj Misra.

9.2. That law is very well settled by the Hon'ble Supreme Court that such Judges are not allowed to take defense of ignorance of law or bonafide mistakes.

9.3. In the case of **Sama Aruna v. State of Telangana, (2018) 12 SCC 150,** Hon'ble Supreme Court it is ruled as under;

> ***"24.*** *The extent of staleness of grounds in this case compel us to examine the aspect of malice in law. It is not necessary to say that there was an actual malicious intent in making a wrong detention order. In S.R. Venkataraman v. Union of India [S.R. Venkataraman v. Union of India, (1979) 2 SCC 491 : 1979 SCC (L&S) 216] , this Court cited Shearer v. Shields [Shearer v. Shields, 1914 AC 808 (HL)] , where Viscount Haldane observed as follows : (S.R. Venkataraman case [S.R. Venkataraman v. Union of India, (1979) 2 SCC 491 : 1979 SCC (L&S) 216] , SCC p. 494, para 5)*
>
> > ***"5. … 'A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently.' (Shearer case [Shearer v. Shields, 1914 AC 808 (HL)] , AC p. 813)"***
>
> ***25. This Court then went on to observe in S.R. Venkataraman [S.R. Venkataraman v. Union of India, (1979) 2 SCC 491 : 1979 SCC (L&S) 216] as follows : (SCC pp. 494-95, paras 6-7)***

"6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. *As was stated by Lord Goddard, C.J. in Pilling v. Abergele Urban District Council [Pilling v. Abergele Urban District Council, (1950) 1 KB 636 (DC)] where a duty to determine a question is conferred on an authority which state their reasons for the decision, and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.*

7. The principle which is applicable in such cases has thus been stated by Lord Esher, M.R. in Queen on the Prosecution of Richard Westbrook v. Vestry of St. Pancras [Queen on the Prosecution of Richard Westbrook v. Vestry of St. Pancras, (1890) LR 24 QBD 371 (CA)] : (QBD pp. 375-76)

> ***"… If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.'***

This view has been followed in Sadler v. Sheffield Corpn. [Sadler v. Sheffield Corpn., (1924) 1 Ch 483] **"**

9.4. That Section 52 of the Indian Penal Code reads thus;

"***52. "Good faith".—***

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

9.5. In **New Delhi Municipal Council v. Prominent Hotels Limited, 2015 SCC OnLine Del 11910**, it is ruled as under;

*"**30.26.** The impugned judgement and decree is vitiated on account of conscious disregard of the well settled law by the Trial Court. The Trial Court, who was obliged to apply law and adjudicate claims according to law, is found to have thrown to winds all such basic and fundamental principles of law. The Trial Court did not even consider and apply its mind to the judgments cited by NDMC at the time of hearing. The judicial discipline demands that the Trial Court should have followed the well settled law. The judicial discipline is one of the fundamental pillars on which judicial edifice rests and if such discipline is routed, the entire edifice will be affected. It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse. The Trial Court has dared to disregard and deliberately ignore the following judgments : -*

……..

22.9. *In Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare, (2013) 11 SCC 404, the Supreme Court held as under : -* ***"12.*** *The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial*

system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. East India Commercial Co. Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943].) (SCC p. 57, paras 90-91).”

9.6. Hon’ble Supreme Court in **Superintendent of Central Excise Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975**, ruled as under;

“(A) Contempt of Courts Act (70 of 1971), S.2 – Misinterpritation of judgment of Hon’ble Supreme Court. ***The level of judicial officer's understanding can have serious impact on other litigants-***

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand –

Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. ".

9.7. The Hon'ble Supreme Court in the case of **Medical Council of India Vs. G.C.R.G Memorial Trust 2018 12 SCC 564** has ruled as under;

"8…. *One cannot but say that the adjudication by the Division d Bench tantamounts to a state as if they dragged themselves to the realm of "willing suspension of disbelief". Possibly, they assumed that they could do what they intended to do. A Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law.*

9. *In this context, we may note the eloquent statement of Benjamin Cardozo who said:*

"The Judge is not a knight-errant roaming at will in pursuit of his own ideal of beauty and goodness."

10. *In this regard, the profound statement of Felix Frankfurter is apposite to reproduce:*

"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

The learned Judge has further stated:

"What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude toward law, the habits of the mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called dominating humility."

11. *In Shiv Mohan Singh v. State (UT of Delhi), the Court has observed:*

(SCC p. 239, para 2)

"2.... 'a Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not

a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles'."

12. *In this context, we may refer with profit the authority in Om Prakash Chautala v. Kanwar Bhan9 wherein it has been stated: (SCC p. 426, para 19)*

"19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum."

And again: (SCC p. 426, para 20)

"20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics."

13. *In Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd. 10, the three-Judge Bench observed: (SCC p. 463, para 32)*

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order

which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

14. *The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging. A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.**"*

9.8. In **Sundarjas Kanyalal Bhatija v. Collector, Thane, (1989) 3 SCC 396**, it is ruled as under;

"18[...] *One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.**"***

9.9. In the case of **State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85**, it is ruled as under:-

> *15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law […]*
>
> *17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd. [Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd., (1997) 6 SCC 450] , observing: (SCC p. 463, para 32)*
>
> > *"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."*
>
> *18. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the*

Constitution and unsustainable. They are therefore set aside and the appeal is allowed.

9.10. In the case of a mistake of Sessions Judge in **Smt. Prabha Sharma V. Sunil Goyal (2017) 11 SCC 77**, it is ruled that;

Article 141 of the Constitution of India disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision."

10. Point No. 9: - **Ld. CJI D.Y. Chandrachud, is habitual in passing unlawful orders and violating fundamental rights of common citizen and in misusing Supreme Court machinery for unauthorized purposes and thereby undermining the majesty and dignity of Hon'ble Supreme Court and entire Judicial System and already various complaints are filed against him and still under consideration before Hon'ble President of India for action u/s 218, 219, 166, 167, 220, 409, 466, 471, 474, 109, 120(B), 34, etc. of the Indian Penal Code.**

10.1. That, details of complaint are filed against Ld. CJI D.Y. Chandrachud.

Sr. No.	**Complaint Details**

[1]	**Date of Complaint: 05.10.2022** **Complainant:** Shri. Rashid Khan Pathan **Authority:** Hon'ble President of India Case No. **PRSEC/E/2022/30960** **Prayers of the Complaint:** **i)** Direction to appropriate authority and CBI to complete the formality of consultation with Hon'ble Chief Justice of India (CJI) as per the law laid down in the case of **K.Veeraswami Vs. Union of India (1991) 3 SCC 655,** and register an F.I.R. against accused Judge Dr. D.Y. Chandrachud and others**:-** **(a)** under **Section 52, 109, 385, 409, 218, 219, 166, 385, 192, 193, 511, 120 (B), 34, Etc.** of Indian Penal Code for corruption and misusing the machinery of Supreme Court and public property and passing an extremely bogus order in to help his son's client even if he was disqualified to hear the case but he took the matter to himself and passed an unlawful order in a non existent issue with ulterior motive to facilitate the extortion in a multi crore scam; **(b)** under **Section 52, 115, 302, 109, 304-A, 304, 409, 218, 219, 166, 201, 341, 342, 323, 336, 192, 193, 120 (B), 34, Etc.** of Indian Penal Code for their various acts of corruption, misuse of power as a Supreme Court Judge for giving wrongful profits of thousands of crores to vaccine companies causing wrongful loss

	of public money and abating, promoting, facilitating the offences of murders and other injuries causing lifetime disability to Lacs of people with full knowledge of his unlawful acts. **ii)** Directions to appropriate authority to file a contempt petition in the Supreme Court as per law and ratio laid down in **Re: C.S. Karnan (20170 1 SCC 1,** against Justice Dr. D.Y. Chandrachud and others for their willful disregard and defiance of the binding precedents of Hon'ble Supreme Court. **iii)** Directions to Directorate of Enforcement(E.D.), Income Tax Department, **Central Vigilance Commission**, **Intelligence Bureau,** and all other agencies to investigate the links and commercial transactions of the accused with anti-national elements like Bill Gates, George Soros, and others who by their systematic and well-orchestrated conspiracy are involved in damaging the progress and wealth of the country with a further plan to commit mass murders (Genocide) and make people sicker and ultimately to make them slaves; **iv) OR IN ALTERNATIVE: -** To grant sanction and permission to the complainant to prosecute accused Judges Shri D.Y. Chandrachud and others for the offences disclosed in the present

	complaint or may be disclosed on the basis of further evidences disclosed; **v)** Direction to appropriate authorities to make a request to the Hon'ble Chief Justice of India to exercise the powers as per **'In-House-Procedure'** as laid down in the case of **Additional District and Sessions Judge 'X' Vs. Registrar General (2015) 4 SCC 91,** and to forthwith withdraw the judicial works assigned to accused Judges and forward a reference of impeachment to dismiss the accused Judges; **vi)** Direction to authorities of the department of law & justice the of Union of India to complete the formalities of sanction within three months as per the time limit given in the case of **Vineet Narain Vs. Union of India (1998) 1 SCC 226** and **Subramanian Swamy Vs. Arun Shourie (2014) 12 SCC 344**; **vii)** Appropriate consultation and request to Hon'ble Chief Justice of India to ask accused Judges to resign from their post as per 'In-House-Procedure' and as per the directions given and law laid by the Constitution Bench in the case of **K. Veeraswami Vs. Union of India (1991) 3 SCC 655**; **viii)** Appropriate representation and request to Hon'ble Chief Justice of India to not to recommend the

	name of Justice D.Y. Chandrachud for the post of Chief Justice of India.

(A Copy of the complaint dated **05.10.2022** are marked and Annexed herewith Annexure "B") @ Page No. _____

11. Point no. 10: - **Double standard of Ld. Chief Justice of India D.Y. Chandrachud in not taking action under section 340 of Cr.P.C. and contempt against Shri Abhishek Banerjee who is nephew of Smt. Mamta Banerjee and co-accused Adv. Abhishek Manu Singhvi despite the fact that their falsity and fraud upon Supreme Court is ex-facie proved.**

11.1. That Hon'ble Supreme Court time and now had ruled that there cannot be double standard in the court. That mandate of Article 14 of the Indian Constitution guarantees that everyone is equal before the court and has to be treated equally. Like people must be treated alike.

11.2. That, in **Nand Lal Mishra Vs Kanhaiya Lal Mishra AIR 1960 SC 882** it is ruled as under;

> ***"Double standard and biased conduct of Judge- In the courts of law, there cannot be a double-standard -one for the highly placed and another for the rest: theJudge should have no concern with personalities whoare parties to the case before him but only with its merits.***

The record discloses that presumably the Magistrate was oppressed by the high status of the respondent, and instead of making a sincere attempt to ascertain the truth proceeded to adopt a procedure which is not warranted by the Code , and to make an unjudicial approach to the case of the appellant. In the courts of law, there cannot be a double-standard-one for the highly placed and another for the rest; the Magistrate has no concern with personalities who are parties to the case before him but only with its merits.

10. *After carefully going through the entire record, we are satisfied that the appellant was not given full opportunity to establish his case in the manner prescribed by law."*

11.3. That, Article 14 of the constitution of India makes it mandatory to give equal treatment to all citizens **,** Hon'ble Bombay High Court in the case of **Arunachalam Swami Vs. State (AIR 1956 Bombay 695)** held that,

"(Para 4) *Mr. Kavelkar is right when he urges that Article 14 assures to the citizen equality not only in respect of a 0substantive law but also procedural law, and if any procedure is set up which deprives a citizen of substantive rights of relief and defence the citizen is entitled to complain of this procedure if two persons equally situated the older procedure is still available where these substantive rights of relief and defence were secured."*

11.4. In Nanha S/o Nabhan Kha Vs. State Of U.P 1992 SCC OnLine ALL 871 it is ruled as under ;

> ***EQUALITY OF STATUS AND OPPORTUNITY - The preamble of the Constitution states that the people of India gave to themselves the Constitution to secure to all its citizens amongst other things "Equality of status and opportunity." Thus the principle of equality was regarded as one of the basic attributes of Indian Citizenship.***
>
> ***The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. If the argument of the learned State Counsel is carried further it would mean that even the same Judge while deciding bail application moved by several accused, whose cases stand on the same footing, is free to reject or grant bail to any one or more of them at his whim. Such a course would be wholly arbitrary.***
>
> ***The public, whose interests all judicial and quasi judicial authorities ultimately have to serve, will get a poor impression of a court which delivers contrary decisions on identical facts. Hence for the sake of judicial uniformity and non-discrimination it is essential that if the High Court granted bail to one co-accused it should also grant bail to another co-***

accused whose case stands on the same footing. Alexis de Toqueville remarked that a man's passion for equality is greater than his desire for liberty.

SUPREME COURT OBSERVED

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be. It is all the more improper and undesirable to expose the precious rights like the right of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy the high seats of power.

38. The preamble of the Constitution states that the people of India gave to themselves the Constitution to secure to all its citizens amongst other things "Equality of status and opportunity." Thus the principle of equality was regarded as one of the basic attributes of Indian Citizenship.

43. In a democracy the judiciary, like any other State organ, is under scrutiny of the public and rightly so because the people are the ultimate masters of the country and all State organs are meant to serve the people. Hence the people will feel disappointed and dismayed if courts give contrary decisions of the same facts.

11.5. That in the case of **Sandeep Rammilan Shukla Vs. The State of Maharashtra and Ors. 2009 ALL MR (CRI.) 2991 it is ruled as under;**

> **Equality Before Law** – *Article 14 of the constitution – Guarantee of equality before law and equal protection of law. This guarantee has to be meaningful and purposeful. It can be such if every day is treated equally before the law, without any discrimination or favorable treatment. The concept is that Justice is "not only be done '" but "seen to be done". Secondly, when material is produced demonstrating strong suspicion that protectors of law are themselves involve in crime, then, no different yardstick or criteria can be applied to their cases.*

11.6. In **Shrirang Waghmare Vs. State of Maharashtra (2019) 9 SCC 144,** it is ruled as under;

> ***"5.*** *The first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity. This Court in Tarak Singh v. Jyoti Basu [Tarak Singh v. Jyoti Basu, (2005) 1 SCC 201] held as follows: (SCC p. 203)*
>
> *"Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack*

from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside."

6 [Ed.: Para 6 corrected vide Official Corrigendum No. F.3/Ed.B.J./105/2019 dated 6-11-2019.] . *The behaviour of a Judge has to be of an exacting standard, both inside and outside the court. This Court in Daya Shankar v. High Court of Allahabad [Daya Shankar v. High Court of Allahabad, (1987) 3 SCC 1 : 1987 SCC (L&S) 132] held thus: (SCC p. 1)*

> *"Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."*

7. *Judges are also public servants. A Judge should always remember that he is there to serve the public. A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges.*

8. *Judges must remember that they are not merely employees but hold high public office.* ***In R.C.***

Chandel v. High Court of M.P. [R.C. Chandel v. High Court of M.P., (2012) 8 SCC 58 : (2012) 4 SCC (Civ) 343 : (2012) 3 SCC (Cri) 782 : (2012) 2 SCC (L&S) 469] *, this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant: (SCC p. 70, para 29)*

> *"29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like*

Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."

9. *There can be no manner of doubt that a Judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a Judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law.*

10. *In our view the word "gratification" does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc. In this case the officer decided the cases because of his proximate relationship with a lady lawyer and not because the law required him to do so. This is also gratification of a different kind.*

11. *The judicial officer concerned did not live up to the expectations of integrity, behaviour and probity expected of him. His conduct is as such that no leniency can be shown and he cannot be visited with a lesser punishment.*

12. *Hence, we find no merit in the appeal, which is accordingly, dismissed.***"**

11.7. In the case of **Noida Entrepreneurs Assn. v. Noida, (2011) 6 SCC 508,** it is ruled as under;

> *" 34. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee. State actions required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favoritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law. The Public Trust Doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as*

it would only be a case of colorable exercise of power. The Rule of Law is the foundation of a democratic society. (Vide: Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr. MANU/SC/0061/1974 : AIR 1975 SC 266; Ramana Dayaram Shetty v. The International Airport Authority of India and Ors. MANU/SC/0048/1979 : AIR 1979 SC 1628; Haji T.M. Hassan Rawther v. Kerala Financial Corporation MANU/SC/0516/1987 : AIR 1988 SC 157; Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. and Ors. MANU/SC/0504/1991 : AIR 1991 SC 537; and M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors. MANU/SC/0999/1999 : AIR 1999 SC 2468).

35. Power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. "Public Authorities cannot play fast and loose with the powers vested in them". A decision taken in arbitrary manner contradicts the principle of legitimate expectation. An Authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. (Vide: Commissioner of Police, Bombay v. Gordhandas Bhanji MANU/SC/0002/1951 : AIR 1952 SC 16; Sirsi Municipality v. Ceceila Kom Francis Tellis MANU/SC/0066/1973 : AIR 1973 SC 855; The State of Punjab and Anr. v. Gurdial Singh and Ors.

MANU/SC/0433/1979 : AIR 1980 SC 319; The Collector (Distt. Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal MANU/SC/0270/1985 : AIR 1985 SC 1622; Delhi Administration (Now NCT of Delhi) v. Manohar Lal MANU/SC/0713/2002 : (2002) 7 SCC 222; and N.D. Jayal and Anr. v. Union of India and Ors. AIR 2004 SC 867).

36. In view of the above, we are of the considered opinion that these allegations being of a very serious nature and as alleged, the Respondent No. 4 had passed orders in colorable exercise of power favoring himself and certain contractors, require investigation. Thus, in view of the above, we direct the CBI to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, may proceed in accordance with law. ”

Please see also:-

(i) <u>Prof. Ramesh Chandra Vs. State of U.P. 2007 SCC OnLine All 2508</u>

11.8. But Ld. Chief Justice of India D.Y. Chandrachud acted in utter disregard and defiance of the abovesaid constitutional mandate & given different treatment to different persons.

11.9. That Ld. Chief Justice of India D.Y. Chandrachud vide his order dated **20.02.2024** had issued notice to Shri Anil Masih for alleged false submissions before the Supreme Court said Anil Masih is alleged to have helped the Bhartiya Janta Party (BJP).

11.10. On the other hand, in **SLP No. 15883 of 2023**, when it is proved that the Abhishek Banerjee who is nephew of Mamta Banerjee (anti BJP leader) along with Adv. Abhishek Manu Singhvi (Congress MP) are guilty of making false and baseless allegations on affidavit before Supreme Court against Hon'ble High Court Judges Shri Abhijit Gangopadhyay then no action is taken against them.

Needless to mention that despite filing of contempt petition **(Diary No. 15883 of 2023)** Ld. Chief Justice of India had not taken the action against them.

11.11. Furthermore, for similar drafting by another advocate action is taken by the Supreme Court in following cases: -

(i) Adv. Virendra Singh Vs. State (Diary No)(Crl. Appeal No. 1960 of 2024.

(ii) Municipal Council Tikamgarh v. Matsya Udyog Sahkari Samiti, 2022 SCC OnLine SC 1900

11.12. This ex-facie proves that Ld. CJI D.Y. Chandrachud is acting selectively and not taking action even if written request is made to him by advocates, Judges, activists, Bar Associations, Litigants Associations etc. against people who are acting against BJP and who are close to him either directly or indirectly.

On the other hand, Ld. CJI is acting proactively against people like Anil Masih.

11.13. Needless to mention that a detailed investigations and action by CBI is required and surveillance from IB, CVC, RAW & other agencies is required to unearth the complete conspiracy and to ensure people of this country that however, high he may be, no one should be allowed to pollute

the pure fountain of judicial system. **[Nirmal Yadav v. Central Bureau of Investigation, 2011 SCC OnLine P&H 15415, Raman Lal v. State of Rajasthan, 2000 SCC OnLine Raj 226, Jagat Jagdishchandra Patel v. State of Gujarat, 2016 SCC OnLine Guj 4517, Shameet Mukherjee v. C.B.I, 2003 SCC OnLine Del 821]**

12. Point No. 11: - Double standard of Ld. Chief Justice of India D.Y. Chandrachud in not taking action against Justice Soumen Sen despite the complaint of corrupt practices by Chief Justice of Calcutta High Court & other Judges of the High Court because the main accused was Sh. Abhishek Banerjee, nephew of Smt. Mamta Banerjee.

12.1. That, the order dated 25.01.2024 passed by Hon'ble Justice Abhijit Gangopadhya ex-facie revealed that Justice Soumen Sen had acted like agent of political party 'Trinamool Congress' (TMC)

12.2. Said tainted Justice Soumen Sen personally asked another Judge Smt. Amrita Sinha to exonerate TMC leader Abhishek Banerjee from serious charges of corruption. A detailed representation in this regard is sent to Ld. Chief Justice of India D.Y. Chandrachud by Chief Justice of Calcutta High Court. sent to Ld. CJI D.Y. Chandrachud was bound to take action of contempt against said Justice Soumen Sen and also start enquiry as per In-house procedure and to order withdrawal of judicial work from Justice Soumen Sen and then forward a reference of impeachment. But he didn't do it for the reasons which could only be extraneous.

12.3. Said tainted Justice Soumen Sen then misused his Position in staying the orders directing CBI investigation against TMC leader Abhishek Banerjee without there being any appeal or jurisdiction to do that.

12.4. Due to failure by Ld. CJI D.Y. Chandrachud to take immediate necessary action the confidence of Justice Soumen Sen got boosted and he dared to do this unlawful act.

12.5. Law is very well settled that omission to take action in preventing offence is an act of abatement of that offence. Please see Section **107 of IPC** which reads thus;

> **"107. Abetment of a thing.—**
>
> A person abets the doing of a thing, who:
>
> 1. Instigates any person to do that thing; or
>
> 2. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> **3. Intentionally aids, by any act or illegal omission, the doing of that thing."**

12.6. Hon'ble Supreme Court in the case of **State of Odisha Vs. Pratima Mohanty 2021 SCC OnLine SC 1222,** has ruled as under;

> "***20.*** *It is further observed after referring to the decision of this Court in the case of Common Cause, A Registered Society (supra) that* ***if a public servant abuses his office whether by his act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant.*** *It is further observed that no public servant can arrogate to himself powers in a manner which is arbitrary. In this regard*

we wish to recall the observations of this Court as under:

> *"The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities." [See Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354]*
>
> *"The higher the public office held by a person the greater is the demand for rectitude on his part." [See Charanjit Lamba v. Army Southern Command, (2010) 11 SCC 314]*
>
> *"The holder of every public office holds a trust for public good and therefore his actions should all be above board." [See Padma v. Hiralal Motilal Desarda, (2002) 7 SCC 564]*
>
> *"Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of*

public duty meant ultimately for public good." [See Shrilekha Vidyarthi (Kumari) v. State of U.P., (1991) 1 SCC 212]

"Public authorities should realise that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency." [See ICAI v. Shaunak H. Satya, (2011) 8 SCC 781]"

12.7. Needless to mention here that the Ld. CJI Sh. D. Y. Chandrachud had taken a suo moto cognizance in Manipur violence and offences against women but had discouraged the more serious and heinus offences against women in Sandeshkhali in the State of West Bengal, for the obvious reason that in Manipur the party in power is BJP and in the state of West Bengal the ruling party is TRINAMOOL Congress and not BJP.

There are many such instances which are sufficient to draw an inference that ld. CJI Dr. D. Y. Chandrachud is not fair, honest and impartial but he is acting with ulterior purposes and mission and there are sufficient proofs of his malafides, fraud on power and corrupt practices. These proofs also strengthens the earlier allegations that the ld. CJI Dr. D. Y. Chandrachud is acting at the behest of anti national foreign elements like George Soros and also acting like a political leader.

13. Point No. 12: - Act of Ld. CJI D.Y. Chandrachud, Justices Sh. J.B. Pardiwala & Shri Manoj Mishra also amounts to contempt of binding precedents and they are liable to be punished under section 2(b), 12, 16 of Contempt of Courts Act in view of law laid down in the case of

Baradakanta Misra v. Bhimsen Dixit, (1973) 1 SCC 446; In Re M.P. Dwivedi, (1996) 4 SCC 152; C.S. Karnan, In re, (2017) 7 SCC 1.

Therefore, Attorney General should file a contempt petition in the Supreme Court against said Judges.

13.1. That it is clear that the Ld. CJI D.Y. Chandrachud, Justice J.B. Pardiwala & Justice Manoj Mishra had acted in utter disregard & defiance of the binding precedents of the Supreme Court in following cases: -

(i) Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430

(ii) Iqbal Singh Marwah vs. Meenakshi Marwah (2005) 4 SCC 370

(iii) Pritish v. State of Maharashtra, (2002) 1 SCC 253

(iv) State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240

13.2. In **Official Liquidator Vs. Dayanand (2008) 10 SCC 1,** it is ruled as under;

> ***78.*** *There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches.* ***In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system.***

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. *We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional*

ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

13.3. In **Sundarjas Kanyalal Bhatija Vs. Collector, Thane, (1989) 3 SCC 396,** it is ruled as under;

"Constitution of India, Art.141- PRECEDENTS *- Judges are bound by precedents and procedure.* ***Judges could use their discretion only when there is no declared principle to be found, no rule and no authority."***

13.4. In **Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673**, it is ruled as under;

"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) ***The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength****.*
(2) ***A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum****. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration.* ***It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.”***

13.5. That, in **Barad Kanta Mishra vs. State of Orissa (1973) 1 SCC 446**, it is ruled as under;

‘‘15. The conduct of the appellant in not following the previous, decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to

the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a p"

13.6. That, in **Legrand Pvt. Ltd . 2007 (6) Mh.LJ 146,** it is ruled as under;

"9(c). *If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971."*

13.7. In **Garware Polyester Ltd. Vs State 2010 SCC OnLine Bom 2223**, it is ruled as under;

"Contempt of Courts Act — All the officers /authorities are bound to follow the procedure laid down by Court in its judgment - The legal proceeding initiated by the officer against the judgment of High Court amounts to contempt of High Court - show cause notice is issued to Mr. MoreshwarNathuii Dubev, Dy. Commissioner, LTU, Aurangabad, returnable after four weeks to show cause, as to why action under the provisions of the Contempt of Courts Act should not be initiated against him."

13.8. In **Re: M.P. Dwivedi, (1996) 4 SCC 152,** it is ruled as under;

"17. As laid down by this Court

"Contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute". (See: Baradakanta Mishra, Ex-Commr. of Endowments v. Bhimsen Dixit [(1973) 1 SCC 446 : 1973 SCC (Cri) 360 : (1973) 2 SCR 495] , at p. 499 SCC p. 449, para 11.)

Wilful disregard or disobedience of the court's order presupposes an awareness of the order that has been disregarded or disobeyed. In view of the affidavits filed by Contemners 1 to 5 stating that they were not aware of law laid down by this Court in Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] and Sunil Gupta v. State of M.P. [(1990) 3 SCC 119 : 1990 SCC (Cri) 440] , we refrain from taking action to punish them for contempt of this Court.

21. Contemner 7, B.K. Nigam, was posted as Judicial Magistrate First Class, Alirajpur, at the relevant time. In the order dated 4-6-1993 it is stated that the undertrial prisoners were produced before him but he did not take any action against handcuffing of those prisoners by the police. In the said order, reference has also been made to the rejoinder affidavit of Dr Amita Baviskar filed on 1-6-1993 wherein it is stated that the contemner was apprised about the decisions of this Court and he is reported to have stated that "... the

Supreme Court decision has no application there and that the police has the right to transport the accused as they want, with or without handcuffs". The contemner has filed two affidavits in response to the notice. In the affidavit dated 31-7-1993, he has denied having made the statement as alleged by Dr Amita Baviskar in her affidavit dated 1-6-1993 regarding handcuffing of the undertrial prisoners and has said that on 8-2-1993, two complaints were made before him by accused Ravi and Rahul Narsimha Ram about the handcuffing of prisoners and that on these applications he had passed orders on the same day for Incharge of Police Station Alirajpur to submit explanation and that besides these two complaints, no complaint whatsoever, orally or in writing, was made to him regarding handcuffing of the undertrial prisoners. In support of his aforesaid submission, the contemner has also filed the affidavits of Shri Betulla Khan and Shri Girdhari Lal Vani, Advocates who were representing the accused persons before him in those cases and who had appeared in his court on 8-2-1993. In these affidavits the deponents have stated that no decision of this Court was cited before the contemner on that date regarding handcuffing of undertrial prisoners and that the contemner did not say that the decision of this Court has no application and the police has the right to transport the accused as they want, with or without handcuffs. In the second affidavit dated 18-9-1993 the contemner has tendered his unconditional and

unqualified apology for the lapse on his part that when undertrial prisoners in Crimes Nos. 11, 12, 17 and 19 of 1993 of Police Station Sondwa, who were agitating against the construction of Sardar Sarovar, were produced in handcuffs in his court, immediate action was not taken by him for the removal of their handcuffs and against the escort party for bringing them in court or taking them away from court in handcuffs. The contemner has submitted that he is a young judicial officer and that the lapse was not intentional.

22. We have carefully considered the two affidavits of the contemner as well as the affidavits of Shri Betulla Khan and Shri Girdhari Lal Vani, Advocates. We would assume that on 8-2-1993 the contemner did not make the statement about the judgments of this Court having no application there and the police having the right to transport the accused as they want, with or without handcuffs. But the contemner, being a judicial officer, is expected to be aware of law laid down by this Court in Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] and Sunil Gupta v. State of M.P. [(1990) 3 SCC 119 : 1990 SCC (Cri) 440] Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855] was decided in 1980, nearly 13 years earlier. In his affidavits also he does not say that he was not aware of the said decisions. Apart from that, there were provisions in Regulation 465 of the M.P. Police Regulations prescribing the conditions in which

undertrial prisoners could be handcuffed and they contain the requirement regarding authorisation for the same by the Magistrate. It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.

23. In the result, the contempt notices issued against the contemners are discharged subject to the directions

regarding disapproval of the conduct of Contemners 1 to 5 and 7 and directions regarding placing the note of the said disapproval in the personal files of all of them. The contempt proceedings will stand disposed of accordingly. A copy of this order be sent to the Chief Secretary to the Government of Madhya Pradesh and the Registrar, Madhya Pradesh High Court."

13.9. Hon'ble Supreme Court in the case of **Re: C.S. Karnan (2017) 7 SCC 1**, it is ruled as under;

"1**. The task at our hands is unpleasant. It concerns actions of a Judge of a High Court. The instant proceedings pertain to **alleged actions of criminal contempt, committed by Shri Justice C.S. Karnan**. The initiation of the present proceedings suo motu, is unfortunate. In case this Court has to take the next step, leading to his conviction and sentencing, the Court would have undoubtedly travelled into virgin territory. This has never happened. This should never happen. **But then, in the process of administration of justice, the individual's identity, is clearly inconsequential. This Court is tasked to evaluate the merits of controversies placed before it, based on the facts of the case. It is expected to record its conclusions, without fear or favour, affection or ill will.

***60.** Faced with an unprecedented situation resulting from the incessant questionable conduct of the contemnor perhaps made the Chief Justice of India*

come to the conclusion that all the abovementioned questions could better be examined by this Court on the judicial side. ***We see no reason to doubt the authority/jurisdiction of this Court to initiate the contempt proceedings. Hypothetically speaking, if somebody were to move this Court alleging that the activity of Justice Karnan tantamounts to contempt of court and therefore appropriate action be taken against him, this Court is bound to examine the questions. It may have accepted or rejected the motion. But the authority or jurisdiction of this Court to examine such a petition, if made, cannot be in any doubt.*** *Therefore, in our opinion, the fact that the present contempt proceedings are initiated suo motu by this Court makes no difference to its maintainability."*

13.10. In **New Delhi Municipal Council Vs. M/S Prominent Hotels Limited 2015 SCC Online Del 11910,** it is ruled as under;

"***22. Consequences of the Trial Court disregarding well settled law***

22.1. *If the Trial Court does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts. The consequence of the Trial Court not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below.*

22.2. *In* ***East India Commercial Co. Ltd. v. Collector of Customs, Calcutta, AIR 1962 SC 1893****, Subba Rao, J. speaking for the majority observed reads as under:*

*"**31**. ……This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared under Art. 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience*

would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. ***We, therefore, hold that the law declared by the highest Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.”***

(Emphasis supplied)

22.3. *The above legal position was reiterated in* ***Makhan Lal v. State of Jammu and Kashmir, (1971) 1 SCC 749****, in which Grover, J. observed (at page 2209)—*

“6. The law so declared by this Court was binding on the respondent-State and its officers and they were bound to follow it whether a majority of the present respondents were parties or not in the previous petition.”

(Emphasis supplied)

22.4. *In Baradakanta Mishra Ex-Commissioner of Endowments v. Bhimsen Dixit, (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State*

of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under : -

"15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing

uncertainty and confusion in the administration of law"

(Emphasis supplied)

22.5. *In Re : M.P. Dwivedi, (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court against handcuffing of under-trial prisoners. The Supreme Court held this to be a serious lapse on the part of the Magistrate, who was expected to ensure that basic human rights of the citizens are not violated. The Supreme Court took a lenient view considering that Judicial Magistrate was of young age. The Supreme Court, however, directed that a note of that disapproval to be placed in his personal file. Relevant portion of the said judgment is reproduced hereunder : -*

"22. *... It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure*

that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. ***We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field."***

(Emphasis supplied)

22.6. *In T.N. Godavarman Thirumulpad v. Ashok Khot, (2006) 5 SCC 1, the Supreme Court held that disobedience of the orders of the Court strike at the very root of rule of law on which the judicial system rests and observed as under : -*

"5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which

they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with."

(Emphasis supplied)

22.7. *In Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273, the Supreme Court held as under : -*

"26. *...* ***Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests.*** *The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs…*

29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. *Inordinate delay in complying with the orders of the courts has also received judicial criticism. ... Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of*

this Court certainly amounts to disobedience. ... Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance with the orders of the court at the earliest and within stipulated period."

(Emphasis supplied)

22.8. *In Mohammed Ajmal Mohammed Amir Kasab v. State of Maharashtra (2012) 9 SCC 1, the Supreme Court directed that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, it should be provided to him from legal aid at the expense of the State. The Supreme Court further directed that the failure of any magistrate to discharge this duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings. The relevant portion of the judgment is reproduced hereunder:*

*"**484.** We, therefore have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. We, accordingly, hold*

that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. ***We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings****."*

(Emphasis supplied)

22.9. *In* ***Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare, (2013) 11 SCC 404****, the Supreme Court held as under : -*

"12. *The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to*

their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. East India ***Commercial Co. Ltd. v. Collector of Customs [AIR 1962 SC 1893]*** *and* ***Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943].)*** *(SCC p. 57, paras 90-91)*

13. *These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of*

discipline in order to maintain the dignity of institution and ensure proper administration of justice.

19. *It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court.* ***To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the court, is an argument which does not impress the court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained.*** *Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of*

a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. Such distinction, if permitted, shall be opposed to the basic rule of law.

23. *... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified…"*

(Emphasis supplied)

22.10. *In Subrata Roy Sahara v. Union of India (2014) 8 SCC 470, the Supreme Court held that the decisions rendered by the Supreme Court have to be complied*

with by all concerned. Relevant portion of the said judgment is as under : -

*"**17.** There is no escape from, acceptance, or obedience, or compliance of an order passed by the Supreme Court, which is the final and the highest Court, in the country. Where would we find ourselves, if the Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court, in exercise of its original jurisdiction, is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the concerned government or instrumentality, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though preposterous, is not far-fetched. In view of the functional position of the Supreme Court depicted above, non-compliance of its orders, would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning, It would be a mayhem of sorts.*

185.2**. **Disobedience of orders of a Court strikes at the very root of the rule of law on which the judicial

system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order. Judicial orders cannot be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders, and also, the power to punish for contempt*."*

22.11. *In* ***State of Gujarat v. Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya, 1982 CriLJ 2255****, the Division Bench of the Gujarat High Court summarized the principles as under : -*

"11. *From the above four decisions, the following propositions emerge:*

(1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State;

(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971."

[…]

"Conscious disregard of well settled law by the Licensee as well as by the Trial Court.

30.26. *The impugned judgement and decree is vitiated on account of conscious disregard of the well settled law by the Trial Court. The Trial Court, who was obliged to apply law and adjudicate claims according to law, is found to have thrown to winds all such basic and fundamental principles of law. The Trial Court did not even consider and apply its mind to the judgments cited by NDMC at the time of hearing. The judicial discipline demands that the Trial Court should have followed the well settled law. The judicial discipline is one of the fundamental pillars on which judicial edifice rests and if such discipline is routed, the entire edifice will be affected. It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse. The Trial Court has*

dared to disregard and deliberately ignore the following judgments."

13.11. In **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450**, it is ruled as under;

> ***"29. It is unfortunate that the High Court did not consider it necessary to refer to various judicial pronouncements of this Court in which the principles which have to be followed while examining an application for grant of interim relief have been clearly laid down.*** *The observation of the High Court that reference to judicial decisions will not be of much importance* ***was clearly a method adopted by it in avoiding to follow and apply the law as laid down by this Court***.
>
> ***30****. We are constrained to make these observations with regard to the manner in which the High Court had dealt with this case because this is not an isolated case where the courts, while disobeying or not complying with the law laid down by this Court.*
>
> ***31****. It is unfortunate, that notwithstanding the authoritative pronounce-ments of this Court, the High Courts and the courts subordinate thereto, still seem intent on affording to this Court innumerable opportunities for dealing with this area of law, thought by this Court to be well settled.****"***

13.12. That the Hon'ble Supreme Court in the case of **Hari Singh Vs State of Haryana,** *(Supra)* it is ruled as under;

"10. It is true that system of the justice which is being administered by the Courts, one of the basic principles which has to be kept in view, is that Courts of co-ordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on question of law. If Courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy.

12. It is a basic principle of the administration of justice that like cases should be decided alike. It is a very sound rule and practice otherwise on same question of law or same set of facts different persons *approaching a Court can get different orders.*

13.13. That. in **Nanha S/o Nabhan Kha Vs. State of U.P 1992 SCC OnLine All 871**it is ruled as under;

If the contrary course is adopted by the Judges of same court the public will loose confidence in the administration of justice.

The public, whose interests all judicial and quasi-judicial authorities ultimately have to serve, will get a poor impression of a court which delivers contrary decisions on identical facts.

The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. […] Such a course would be wholly arbitrary.

Hence the people will feel disappointed and dismayed if courts give contrary decisions of the same facts.

It is trite to say that individuals are not and do not become wise because they occupy the high seats of power.

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be.

*"**43**. In a democracy the judiciary, like any other State organ, is under scrutiny of the public and rightly so because the people are the ultimate masters of the country and all State organs are meant to serve the people.* ***Hence the people will feel disappointed and dismayed if courts give contrary decisions of the same facts***.

36. *The argument of the learned State Counsel is that it is open to different Judges to reject or grant bail to accused even if their cases stand on same footing. I am unable to persuade myself to accept this submission of the learned State Counsel. The High Court is one Court and each Judge is not a separate High Court.* ***It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts.*** *[...] Such a course would be wholly arbitrary.*

37. ***The public, whose interests all judicial and quasi-judicial authorities ultimately have to serve, will get a poor impression of a court which delivers contrary decisions on identical facts***. *Hence for the sake of*

*judicial uniformity and non-discrimination it is essential that if the High Court granted bail to one co-accused it should also grant bail to another co-accused whose case stands on the same footing**. Alexis de Toqueville remarked that a man's passion for equality is greater than his desire for liberty.***

***38.** The preamble of the Constitution states that the people of India gave to themselves the Constitution to secure to all its citizens amongst other things "Equality of status and opportunity. "Thus **the principle of equality was regarded as one of the basic attributes of Indian Citizenship**.*

***42.** The High Court also performs sovereign functions and cannot discriminate with persons similarly situated.*

***44.** In this connection a reference may be made to the decision of the Supreme **Court in Beer Bajranj Kumar v. State of Bihar, AIR 1987 SC 1345 in which the Supreme Court had set aside the order of the Patna High Court, dismissing the writ petition when on identical facts another writ petition had earlier been admitted.** The same view was expressed in another case of Sushil Chandra Pandey v. New Victoria Mills, 1982 UPLBEC 211. These decisions lend support to the view I am taking. In Been Bajranj Kumar's case (supra) the Supreme Court observed :*

"This, therefore, creates a very anomalous position and there is a clear possibility of two contrary

judgments being rendered in the same case by the High Court."

46. *In the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101 : (1991 Lab 1C 91) the Supreme Court observed at page 173 :- -*

*"**There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be**. It is all the more improper and undesirable to expose the precious rights like the right of life, liberty and property to the vageries of the individual whims and fancies. **It is trite to say that individuals are not and do not become wise because they occupy the high seats of power."***

49. *In the light of the discussion made in the preceding paragraphs, the view expressed by K.K. Chaubey, J. does not hold ground. Judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all it is settled law that judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi-judicial authorities have not only to serve the public but also to create confidence in the minds of the public. Hence for the sake of uniformity and non-discrimination it is essential that uniform orders should be passed even in bail matters in case of persons who stand on the same*

footing. ***If the contrary course is adopted the public will loose confidence in the administration of justice.***

51. [……] *Thus accused whose cases stand on the same footing are entitled to equal treatment. In Ajai Hasia v. Khalid Muzib Sehravardi, 1981 (2) SCR 79 : (AIR 1981 SC 487) the Supreme Court held that equality is directly opposed to arbitrariness. In a more recent case of Miss. Mohini Jain, reported in 1992 (4) JT(SC) 292: (AIR 1992 SC 1858) the Supreme Court after considering large number of cases quoted with approval the following passage from the case of Ajai Hasia at page 1866:-- Unfortunately in early stages of evolution of our Constitutional Law Article 14 came to be identified with the doctrine of classification... In Royappa v. State of Tamil Nadu this Court laid bare a new dimension of Article 14 and pointed out that article has highly activist magnitude and it embodies a guarantee against arbitrariness."*

13.14. That prosecution of offender is an obligation of the state. The society cannot permit such Judges committing offences and having prejudices are allowed to go Scot free and allowed to continue on the post of a Supreme Court Judge and thereby put the rights of crores of citizen in the jeopardy.

13.15. That this Hon'ble Court in the case of **Manohar Lal v. Vinesh Anand reported in 2001 AIR SCW 1590,** it is ruled that: -

"5. *Before adverting to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence :* ***To***

pursue an offender in the event of commission of an offence, is to sub-serve a social need Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence."

13.16. Hon'ble Supreme Court in the case of **K. Veeraswamy Vs. Union of India (1991) 3 SCC 655**, ruled as under;

" **The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command** ***confidence of the public. He must voluntarily withdraw fromthe judicial work and administration.***

*The emphasis on this point should not appear superfluous Prof. Jackson says "****Misbehaviour by a Judge, whether it takes place on the bench or off the bench, undermines publicconfidence in the administration of justice, and also damages public respect for the law of the land; if nothing isseen to be done about it, the damage goes unrepaired. This must be so when the***

judge commits a serious criminaloffence and remains in office". *(Jackson's Machinery of Justice by J.R. Spencer 8th ed. p.p. 369-370)*

The proved "misbehaviour" which is the basis for removal ofa Judge under clause (4) of Article 124 of the Constitu- tion may also in certain cases involve an offence of crimi- nal misconduct under section S(1) of the Act. But that is ***no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a Criminal Court. Both are mutually exclusive. "Even a Government servant who is answerable for his misconduct which may also constitute an offence under the IPC or under Section 5 of the Act is liable to be prose- cuted in addition to a departmental enquiry****. If prosecuted in a criminal court he may be punished by way of imprison- ment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a Court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively.* ***It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the prosecution of aJudge for criminal misconduct before his removal by***

> ***Parliament for proved misbehaviour is unobjectionable**."*

13.17. Therefore, Attorney General for India or Solicitor General should have filed contempt petition against the guilty Judges.

13.18. Since they failed to perform their duty, therefore, it is just and necessary that the National Human Rights Commission should direct them to take steps to protect the rights of the citizen.

14. Point No. 13:- Even otherwise the show cause notice is vitiated in view of specific law laid down by the constitutional bench of Supreme Court and followed in the case of Oryx Fisheries Pvt.Ltd vs Union Of India (2010) 13 SCC 427, because the Ld. Chief Justice of India had already drawn the definite conclusion of guilt and thereafter the show-cause notice is only a formality and vitiated by unfairness and bias.

14.1. That in order dated **20.02.2024** the bench of Ld. CJI had already decided the guilt of the said Sh. Anil Masih and then issued show cause notice to him.

This procedure is against the very basic principle of natural justice.

The order dated 20.02.2024 passed by the Bench of Ld. CJI reads thus;

> ***"30……..**it is evident that the Presiding Officer is guilty of a serious misdemeanour in doing what he did in his role and capacity as Presiding Officer.*
>
> ***26…….**During the course of the hearing yesterday, the Presiding Officer informed this Court that he did so because he found that the ballots had been defaced. Before recording the statement of the Presiding Officer in the above terms, we had placed him on notice of the serious consequences which*

are liable to ensue if he was found to have made a statement before this Court which was incorrect.

27. *The eight ballots which have been perused before the Court have also been perused by the counsel appearing on behalf of the appellant and for the successful candidate among others. It is evident that in each of the eight ballots, the vote had been duly cast in favour of the appellant. Further, the Presiding Officer has evidently put his own mark on the bottom half of the ballots to create a ground for treating the ballot to have been invalidly cast.*

28. *In doing so, the Presiding Officer has clearly acted beyond the terms of his remit under the statutory regulations……..*

31……*It is evident that the Presiding Officer in the present case has made a deliberate effort to deface the eight ballots which were cast in favour of the appellant so as to secure a result at the election by which the eighth respondent would be declared as the elected candidate.*

32. *Before this Court yesterday, the Presiding Officer made a solemn statement that he had done so because he found that each of the eight ballots was defaced. It is evident that none of the ballots had been defaced. As a matter of fact, it is also material to note that after the votes are cast, the ballot is folded in a vertical manner to ensure that if the ink on the rubber stamp appears on the corresponding half of the ballot it will appear alongside the name of the candidate for whom the vote has been cast. The conduct of the Presiding Officer must be deprecated at two levels. Firstly, by his conduct, he*

has unlawfully altered the course of the Mayor's election. Secondly, in making a solemn statement before this Court on 19 February 2024, the Presiding Officer has expressed a patent falsehood, despite a prior warning, for which he must be held accountable."

14.2. That, the law of show cause notice is very well settled that the person has to be given a reasonable opportunity to deny his guilt and prove his innocence. At that stage the court cannot already decide the guilt and then issue show cause notice. If that is done then such show – cause notice and consequence notice and consequential proceedings get vitiated.

14.3. In **Amar Aaron vs. State 2013 SCC OnLine Pat 456**, it is ruled as under;

" *The issuance of a show cause notice is not an empty ritualistic formality. It is a facet of natural justice and the first opportunity.*

The importance of a show cause notice was observed in ***(2010) 13 SCC 427 (Oryx Fisheries (P) Ltd. v. Union of India)*** *as : -*

"26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is:

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;"

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. ***It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.***

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. ***Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against."***

14.4. In **Arichit Goyal vs State of Punjab (2005) 140 PLR 375**, it is ruled as under;

"9. It is true that the word "Prima facie" has been used time and again by the Division Bench but the reproduction of the allegations and ***the tenor of the order clearly reveals that the Bench had already found him guilty.*** *Mr. S.P.Gupta, the learned Senior Counsel, has, however, urged that it was open to the*

Court to devise its own procedure in a contempt matter. ***Undoubtedly, this is true but to our mind, the procedure that is adopted must have a semblance of fair play.***

11. We are, therefore, of the opinion that in light of what has been held above, it is clear that the Division Bench had in effect in its order dated 9.2.2005 held Mr, Munjal guilty of Contempt of Court. ***In this view of the matter, we are further of the opinion that it would indeed be unfair to call upon him to show cause to the charge at this stage.***

14.5. In **Windsor Vs. Mcevigh 93 US 274 (1876),** it is ruled as under;

" In common sense and common honesty, that the sentence of the tribunal which first punishes and then hears the party, castigatque, auditque.

Such verdict 'as mere mockeries, and as in no just sense judicial proceedings;' and are charecterized they 'ought to be deemed, both ex directo in rem and collaterally, to be mere arbitrary edicts or substantial frauds.'

Such proceedings would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'

It is equally applicable and pertinent to proceedings in rem of a domestic court, when they are taken without any monition or public notice to the parties.

In any Case constructive notice at least should appear to have been given as that actual notice should appear upon the record of a judgment in personam. 'A proceeding,' 'professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'

All courts, even the highest, are more or less limited in their jurisdiction: they are limited to particular classes of actions, such as civil or criminal; or to particular modes of administering relief, such as legal or equitable;

It must act judicially in all things, and cannot then transcend the power conferred by the law. If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant.

Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications. The judgments mentioned, given in the cases supposed, would not be merely erroneous: they would

be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases.

The decree of a court of equity upon oral allegations, without written pleadings, would be an idle act, of no force beyond that of an advisory proceeding of the Chancellor. And the reason is, that the courts are not authorized to exert their power in that way.

"9. *The principle stated in this terse language lies at the foundation of all well-ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.*

13. *...But the learned judge added, that* ***it was an essential ingredient in every case, when such effect was sought to be given to the sentence, that there should have been proper judicial proceedings upon which to found the decree; that is, that there should have been some certain written allegations of the offence, or statement of the charge for which the seizure was made, and upon which the forfeiture was sought to be enforced; and that there should be some personal or public notice of the proceedings,*** *so that*

the parties in interest, or their representatives or agents, might know what the offence ***was with which they were charged,*** *and might have an opportunity to defend themselves, and to disprove the same. 'It is a rule,' said the learned judge, 'founded in the first principles of natural justice,* ***that a party shall have an opportunity to be heard in his defence before his property is condemned, and that charges on which the condemnation is sought shall be specific, determinate, and clear.*** *If a seizure is made and condemnation is passed without the allegation of any specific cause of forfeiture or offence, and without any public notice of the proceedings, so that the parties in interest have no opportunity of appearing and making a defence, the sentence is not so much a judicial sentence as an arbitrary sovereign edict. It has none of the elements of a judicial proceeding, and* ***deserves not the respect of*** *any foreign nation. It ought to have no intrinsic credit given to it, either for its justice or for its truth, by any foreign tribunal. It amounts to little more,* ***in common sense and common honesty, than the sentence of the tribunal which first punishes and then hears the party, castigatque, auditque.*** *It may be binding upon the subjects of that particular nation. But, upon the eternal principles of justice, it ought to have no binding obligation upon the rights or property of the subjects of other nations; for it tramples under foot all the doctrines of international law, and is but a solemn*

fraud, if it is clothed with all the forms of a judicial proceeding.'

14. *In another part of the same opinion the judge characterized such sentences 'as mere mockeries, and as in no just sense judicial proceedings;' and declared that they 'ought to be deemed, both ex directo in rem and collaterally, to be mere arbitrary edicts or substantial frauds.'*

15. *This language, it is true, is used with respect to proceedings in rem of a foreign court, but it is equally applicable and pertinent to proceedings in rem of a domestic court, when they are taken without any monition or public notice to the parties.*

… constructive notice at least should appear to have been given as that actual notice should appear upon the record of a judgment in personam. 'A proceeding,' continued the court, 'professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'

17. *The doctrine invoked by counsel, that, where a court has once acquired jurisdiction, it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition, but, like all general propositions, is*

subject to many qualifications in its application. ***All courts, even the highest, are more or less limited in their jurisdiction: they are limited to particular classes of actions, such as civil or criminal; or to particular modes of administering relief, such as legal or equitable;***

Though the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. ***It must act judicially in all things, and cannot then transcend the power conferred by the law. If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant.***

…Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications. The judgments mentioned, given in the cases supposed, would not be merely erroneous: they would be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases.

18. *So a departure from established modes of procedure will often render the judgment void; thus, the sentence of a person charged with felony, upon conviction by the court, without the intervention of a jury, would be invalid for any purpose.* ***The decree of a court of equity upon oral allegations, without written***

> ***pleadings, would be an idle act, of no force beyond that of an advisory proceeding of the Chancellor. And the reason is, that the courts are not authorized to exert their power in that way.***
>
> ***19.*** *The doctrine stated by counsel is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend."*

14.6. Hence the show- cause notice & the procedure adopted by the Bench of Ld. Chief Justice of India even otherwise is against the principles of natural justice and gets vitiated by unfairness and bias.

14.7. In **State of Punjab Vs Davinder Pal Singh Bhullar (2011) 14 SCC 770**, it is ruled that when initial action is bad then all subsequent action and procedure gets vitiated based on the principle of ***Subla Fundamento cadit opus*** meaning thereby that the foundation had been removed the structure collapses. It is ruled as under;

> ***"107.*** *It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim* ***sublato fundamento cadit opus*** *meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.*
>
> ***108.*** *In Badrinath v. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] and State of*

Kerala v. Puthenkavu N.S.S. Karayogam [(2001) 10 SCC 191] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. *Similarly in Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422] this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.*

110. *In C. Albert Morris v. K. Chandrasekaran [(2006) 1 SCC 228] this Court held that a right in law exists only and only when it has a lawful origin. (See also Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381 : 1998 SCC (L&S) 872] , Satchidananda Misra v. State of Orissa [(2004) 8 SCC 599 : 2004 SCC (L&S) 1181] , SBI v. Rakesh Kumar Tewari [(2006) 1 SCC 530 : 2006 SCC (L&S) 143] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823])*

111. *Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained.*

105. *The FIR unquestionably is an inseparable corollary to the impugned orders which are a nullity. Therefore, the very birth of the FIR, which is a direct*

consequences of the impugned orders cannot have any lawful existence. The FIR itself is based on a preliminary enquiry which in turn is based on the affidavits submitted by the applicants who had filed the petitions under Section 482 CrPc."

15. Point No.14 : - Sr. Adv. Abhishek Manu Singhavi is guilty of gross professional misconduct in view of law laid down in the case of E. S. Reddi Vs. Chief Secretary, Government of A.P. (1987) 3 SCC 258, in not bringing the correct legal position to the notice of the Court and objecting in such unlawful and unconstitutional practice. Therefore his designation as a senior counsel can be withdrawn.

15.1. That, in this case Sr. Adv. Abhishek Manu Singhavi appeared for the petitioner Sh. Kuldeep Kapur.

15.2. That, as being Sr. Counsel and as being officer of the Court he was duty bound to point out the correct legal position and should not have obtained the order of show cause notice under sec 340 of Cr. P. C. to Sh. Anil Masih.

That the law of hearing accused before ordering prosecution under sec. 340 of Cr. P. C. as laid down in the case of Sharad Pawar vs. Jagmohan Dalmiya (2010) SCC was actually a per incuriam law and now had been declared as bad precedent by the Full Bench in the case of **State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240.**

15.3. But Adv. Abhishek Manu Singhavi acted dishonestly and allowed the court to pass unlawful order and violate constitutional rights of the opponent. This is against the professional ethics and minimum standards expected from any advocates as has been ruled by Hon'ble Supreme Court in catena of decisions. For this act of commission and omission the

designation of senior counsel given to him is liable to be withdrawn and Bar Council of India needs to be directed to take strict action against him.

15.4. That in In **Sajid Khan Moyal v. State of Rajasthan, 2014 SCC OnLine Raj 1450** it is ruled as under;

> *"(...)citing of overruled judgment by learned counsel for the petitioner is a contempt, therefore, second contention is also rejected."*

15.5. That Delhi High Court have also withdrawn the designation of senior counsel of Adv. R.K. Anand. [**Court on its own motion vs State and Ors 2009 CRI. L. J. 677].**

15.6. That this Hon'ble Court in **State of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19,** had ruled as under;

> ***"6(…)****It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court.* ***They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern.*** *It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it - It was certainly the duty of the counsel*

for the respondent before the High Court to bring to t he notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment - We can only express our anguish at the falling standards of professional conducts."

15.7. That in In **Sajid Khan Moyal v. State of Rajasthan, 2014 SCC OnLine Raj 1450** it is ruled as under;

"(...) citing of overruled judgment by learned counsel for the petitioner is a contempt, therefore, second contention is also rejected."

15.8. That in **Lal Bahadur Gautam Vs. State (2019) 6 SCC 441** it is ruled as under;

"9.** Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier**, reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary

research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment.

10. Simply, failure in that duty is a wrong against the Justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.

11. *As a responsible officer of the Court and an important adjunct of the administration of justice,* ***the***

lawyer undoubtedly owes a duty to the Court as well as to the opposite side. *He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in* ***State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1****:*

> *"**34**....relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client....."*

12*. The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed in* ***D.P. Chadha vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221****:*

> *"**22**. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject*

matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the

intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

***24**. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As*

responsible officers of the court, as they are called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

26**. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. **A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party."

***13**. That a higher responsibility goes upon a lawyer representing an institution was noticed in State of Rajasthan and another vs. Surendra Mohnot and others, (2014) 14 SCC 77:*

"33. As far as the counsel for the State is concerned, it can be decidedly stated that he

> ***has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say "things fall apart".*** *He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones.*
>
> *We hope, that there would be response towards duty; the hallowed and honoured duty."*

15.9. In case of That in **Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak and Ors. 2016 SCC OnLine Bom 9859**, it is ruled as under;

> ***"35.*** *Wholly unrelated to any preliminary issue or the question of limitation, or to any estate, partition or administration action****, is the decision of AM Khanwilkar J (as he then was) in Chandrakant Govind Sutar v. MK Associates 2003 (1) Mh. LJ 1011 Counsel for the petitioner raised certain contentions on the maintainability of a civil revision application.***

Khanwilkar J pronounced his judgement in open Court, finding for the petitioner. Immediately thereafter, counsel for the petitioner brought to the court's notice that certain relevant decisions on maintainability had not been placed. He requested that the judgement be not signed and instead kept for re-hearing on the question of maintainability. At that fresh hearing, petitioner's counsel placed decisions that clinched the issue against the petitioner. The civil revision application was dismissed. The counsel in question was A.S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement: *'**9.**While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style* ***he did the wonderful act of balancing of his duty to his client and as an officer o f the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client****. As Lord Denning MR in* ***Randel v. W. (1996) 3 All E. R. 657****observed:*

"Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a

conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocateputs his first duty to the Court, he has nothing to fear. Butit is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. ***The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour.*** *Ifhe breaks it, he is offending against the rules of the profession and is subject to its discipline."*

This view is quoted with approval by the Apex Court in ***Re. T.V. Choudhary, [1987] 3 SCR 146*** *(E.S. Reddi v. Chief Secretary, Government of AP).*

36.The cause before Khanwilkar J may have been lost, but the law gained, and justice was served.

37. *Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With theproliferation of online databases and access to past ordersonthe High Court website, there is no excuse at al l for not cross-checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easilyavailable to counsel at my Bar.* ***Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal****. Frequently, appellate orders reversingreported*

decisions of the lower court are not themselves reported. ***The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.***

38.Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperiled."

15.10. In **Hindustan Organic Chemicals Ltd. Vs. ICI India Ltd. 2017 SCC Online Bom 74** it is read as under;

"DUTY OF ADVOCATES TO NOT TO MISLED THE COURT EVEN ACCIDENTALLY – THEY SHOULD COME BEFORE COURT BY PROPER ONLINE RESEARCH OF CASE LAW BEFORE ADDRESSING THE COURT.

I have found counsel at the Bar citing decisions that are not good law.

The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good law. *The performance of that duty may be more onerous with the proliferation of online research tools, but that is a burden that lawyers*

are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable."

15.11. In **Sunita Pandey v. State of Uttarakhand, 2018 SCC OnLine Utt 933** it is ruled as under;

"19. A lawyer is supposed to have the knowledge of a judgment delivered by the Hon'ble Apex Court, which is the law of land, but the reply of counsel appearing for the petitioners Mr. Shashank Pandey is not acceptable that he is not aware of the judgment of the Hon'ble Apex Court. A lawyer cannot make excuse for unawareness of a particular judgment of the Hon'ble Apex Court and also cannot be permitted to cite a judgment, which has already been overruled. A lawyer is known for its legal acumen. He should not have argued the Writ Petition (PIL) and should have suggested his clients to withdraw the Writ Petition (PIL) but the attitude of the learned counsel for the petitioners that he has been engaged to argue the matter appears to be against the ethics of a lawyer and further it appears to the Court that he has not given proper advice to his clients. The counsel could have adviced properly to his clients and could have also considered it appropriate to withdraw the Writ Petition (PIL), but the counsel and petitioners are not ready to accept the request of this Court to withdraw the petition and the learned counsel for the petitioners

has again wasted valuable time of this Court for his own satisfaction. Numbers of litigants are waiting for their turn. *We were expecting from the learned counsel for the petitioners that he should make a statement on behalf of the petitioners that the petitioners were not aware of filing the Writ Petition (PIL) on the judgment passed by the Hon'ble Apex Court and, therefore, they have filed the aforesaid Writ Petition (PIL) on an advice or on bonafide mistake of fact, but, the petitioners and their counsel are not ready to make such submissions before this Court. Thus, this Court has no option but to decide the Writ Petition (PIL) on merits, as the counsel has insisted this Court to decide the matter on merits after giving him full opportunity.*

20. *This Court has already granted full opportunity of hearing to* ***the learned counsel for the petitioners and he has argued every paragraph of the present Writ Petition (PIL) and has wasted the court's valuable time for more than two hours. We find that the present petition is a gross abuse of process of law and time was granted to the petitioners to refute the contents of the counter affidavit, but despite time being granted to the petitioners, rejoinder affidavit has not been filed to refute the contents of the averments made in the counter affidavit.***

23. *The Hon'ble Apex Court in the case of Suraz India Trust Vs. Union of India reported in (2017) 14 SCC 416 has held that* ***a frivolous litigation should be declined***

and be tackled with iron hands. In the said case, the Hon'ble Apex Court has imposed a cost of ` 25 lakhs on the petitioner and issued direction to the Registry of the High Court and other High Courts that no P.I.L should be entertained in the name of Suraz India Trust.

24. *In our view, though this is a case, which is liable to be dismissed with exemplary cost in view of the dictum of Hon'ble Apex Court in the case of Suraz India Trust Vs. Union of India (supra), but considering the fact that the petitioners are the residents of hilly State of Uttarakhand, they might not be in a position to pay such huge exemplary cost of ` 25 lacs, thus, we are of the considered view that nominal cost of ` 50,000/- be imposed upon the petitioners for raising their private interest in this Public Interest Litigation to suffice the purpose."*

15.12. As per law laid down in **E. S. Reddi Vs. Chief Secretary, Government of A.P. (1987) 3 SCC 258** higher responsibility cast upon Senior Advocates like Abhishek Manu Singhvi and their duty and role is already explained.

It is ruled as under;

"10.By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only car ry greater responsibilities but they also act as a model to the junior members of the profession*. A senior counsel more or less occupies a position akin*

to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred on advocates of standing and experience by the Chief Justice and the Judges of this Court. They thus become leading counsel and take precedence on all counsel not having that rank. A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors.

11. *Lord Reid in Rondel v. Worsley has succinctly set*

out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows :

Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and as k every question, however distasteful, which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public,which may and often does lead to a conflict with his client'swishes or with what the client thinks are his personal interests. ***Counsel must not***

mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. *By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.*

12. *Again as Lord Denning, M. R. in Rondel v. W would say:*

He (the counsel) has time and again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. When a barrister (or an advocate) puts his first duty to the court, he has nothing to fear. (words in brackets added).

In the words of Lord Dinning:

It is a mistake to suppose that he is the mouthpiece of his client to say what he wants He must disregard the most specific instructions of his client, if they conflict with his duty to the court. ***The code which requires a barrister to do all this is not a code of***

> ***law. It is a code of honor. If he breaks it, he is offending against the rules of t he profession and is subject to its discipline."***

15.13. As per law & ratio laid down in **Re: Vinay Chandra Mishra (1995) 2 SCC 584** where Senior Counsel are guilty of contempt then exemplary sentence of imprisonment is must.

15.14. That in another case of contempt by a Sr. Counsel Sh. R. K. Anand it was observed by Delhi High Court in the case of **Court on its own motion v. State and Ors 2009 CRI. L. J. 677** as under;

> **"*41*.** *In these circumstances, we feel the adequate punishment would be to prohibit them from appearing before this Court and the Courts subordinate to it for a specified period and also to recommend to the Full Court that they should be stripped of their designation as Senior Advocates. In this context, we may refer to a decision of a Division Bench of this Court authored by one of us (Manmohan Sarin, J.), titled Court on its own Motion v. Rajiv Dawar, 2007 I AD (Delhi) 567 : (2007 Cri LJ 3114). In that case, the defence lawyer had assured the accused of his release on bail for a sum of Rs. 30,00,000/- having spoken to? the people, who would be responsible for his release on bail?. After being given a full opportunity of representing his case, he was found guilty of criminal contempt and substantially interfering with the administration of justice. In that case, the contemner had refunded Rs. 4,00,000/- as directed by the Bar Council and a plea*

was made to bring a quietus to the matter. This submission was rejected by the Bench holding;

To our mind, it is essential that aberration committed by those who are integral part of the administration of justice are sternly and firmly dealt with. Magnanimity and latitude should be available to those who are not knowledgeable or conversant with the system or commit the offence unwittingly or innocently. We may also observe that throughout these prolonged proceedings, despite several opportunities being available, there has not even been expression of any slightest remorse or regret on the part of respondent-contemner and he continues to maintain his high ground?

A fine of Rs. 2,000/- was imposed on the contemner. Further, in exercise of powers conferred by Art. 315 of the Constitution of India, he was debarred from appearing in this Court and the Courts subordinate to it for a period of two months while permitting him to discharge his professional duties in terms of consultation etc.

***242**. . We are of the view the ratio of the above case would apply to the present situation, particularly as regards the punishment to be given to Mr. and Mr. Khan. We accordingly direct :*

(i) In exercise of powers conferred by Art. 215 of the Constitution of India, Mr. R. K. and Mr. I. U. Khan are prohibited from appearing in this Court or the Courts subordinate to it for a period of four months from today. However, they are free to discharge their professional duties in terms of consultation, advises, conferences, opinions etc.

(ii) Mr. R. K. and Mr. I. U. Khan, on account of their conduct, have forfeited the right to enjoy the honour conferred on them by this Court of being designated senior advocates. We recommend to the Full Court to strip them of their designation as such.

(iii) The Registrar General will put up our recommendation to Hon'ble the Chief Justice within a month for placing the matter before the Full Court for consideration and a decision be taken thereon.

(iv) Both Mr. R. K. and Mr. I. U. Khan will each pay a fine of Rs. 2,000/- for committing criminal contempt of Court.

***243**. . Finally, we may place on record the fact that we have been ably assisted throughout by Mr. Arvind Nigam, Advocate, who had the unpleasant task of rendering assistance in a matter where senior advocates of the Bar were involved. He spared no effort in rendering able assistance and we found the same to*

*be of a high caliber and quality. Mr. Nigam truly performed the task of an Amicus Curiae in ably assisting the Court in formulating the legal propositions and giving an objective and impartial assessment. We recommend the Hon'ble the Chief Justice to suo motu consider designating Mr. Arvind Nigam as a Senior Advocate of this Court.***"**

15.15. Said conviction is also uphold by the Three Judge Bench of this Hon'ble Court in **R.K. Anand v. Delhi High Court, (2009) 8 SCC 106**. This Hon'ble Court however of the view that the sentence is less and issued notice to Adv. R. K. Anand for enhancement of sentence. It is ruled as under;

*"**Supreme Court issued notice requiring him to show-cause why punishment awarded to him should not be enhanced as provided u/S.12 - He would additionally show-cause why he should not be debarred from appearing in Courts for longer period.***

THE QUESTION OF SENTENCE :

***148**. Having regard to the misdeeds of which R. K. Anand has been found guilty, the punishment given to him by the High Court can only be regarded as nominal. We feel that the leniency shown by the High Court in meting out the punishment was quite misplaced. And the view is greatly reinforced if one looks at the contemnor's conduct before the High Court. As we shall see presently, before the High Court the contemnor took a defiant stand and constantly tried to obstruct the proceedings.*

165. *The action of the appellant in trying to suborn the Court witness" in a criminal trial was reprehensible enough but his conduct before the High Court aggravates the matter manifold. He does not show any remorse for his gross misdemeanour and instead tries to take on the High Court by defying its authority. We are in agreement with Mr. Salve and Mr. Subramanium that punishment given to him by the High Court was wholly inadequate and incommensurate to the seriousness of his actions and conduct. We, accordingly, propose to issue a notice to him for enhancement of punishment. We also hold that by his actions and conduct the appellant has established himself as a person who needs to be kept away from the portals of the Court for a longer time. The notice would therefore require him to show-cause why the punishment awarded to him should not be enhanced as provided under Section 12 of the Contempt of Courts Act. He would additionally show-cause why he should not be debarred from appearing in Courts for a longer period. The second part of the notice would also cure the defect in the High Court order in debarring the appellant from appearing in Courts without giving any specific notice in that regard as held in the earlier part of the judgment.*

206. *In light of the discussions made above we pass the following orders and directions.*

..

2. The appeal of R. K. Anand is dismissed subject to the notice of enhancement of punishment issued to him as indicated in paragraph 165 of the judgment. He is allowed eight weeks

time from the date of service of notice for filing his show-cause. ”

15.16. Later this Hon’ble Court imposed a cost of Rs. 21 Lacs upon advocate Adv. R. K. Anand.

In **R.K. Anand v. Delhi High Court, (2013) 1 SCC 218** it is ruled as under;

“7. The offence committed by the contemnor was indeed odious. In the judgment, the gravity of the offence committed by him is discussed in detail and it is pointed out that the contemnor’s action tended to strike at the roots of the administration of criminal justice. We reaffirm the observations and findings made in the earlier judgment. Further, we have not the slightest doubt that normally the punishment for the criminal contempt of the nature committed by the contemnor should be a term of imprisonment.

8. In a judicial proceeding, however, it is important not to lose complete objectivity and that compels us to take note of certain features of this case. The contemnor is 69 years old. His wife has suffered a stroke of multiple sclerosis in the year 1992 and she is confined to the bed and a wheel chair for over 20 years. The contempt proceeding was initiated against the contemnor in the year 2007 and he has, thus, been facing the rigours of the proceeding for five years.

10. The aforesaid facts and circumstances persuade us to take a slightly lenient view of the matter. We feel that no useful purpose will be served by sending the contemnor to jail. On the contrary, by keeping him out and making him do the things

that he has undertaken to do would serve a useful social purpose. We, accordingly, accept the offer made by the contemnor.

11. In terms of his undertaking, the contemnor shall not do any kind of professional work charging any fees or for any personal considerations for one year from today. He shall exclusively devote his professional services to help pro bono the accused who, on account of lack of resources, are not in a position to engage any lawyer to defend themselves and have no means to have their cases effectively presented before the court. The contemnor shall place his professional services at the disposal of the Delhi Legal Services Authority which, in coordination with the Delhi High Court Legal Services Authority, will frame a scheme to avail of the contemnor's services for doing case of undefended accused either at the trial or at the appellate stage. The contemnor shall appear in court only in cases assigned to him by the Legal Services Authority.

12. The Delhi Legal Services Authority shall keep a record of all the cases assigned to the contemnor and the result/progress made in those cases. At the end of the year, the Delhi Legal Services Authority shall submit a report to this Court in regard to all the cases done by the contemnor at its instance which shall be placed before the Judges for perusal.

13. At the end of one year it will be open to the contemnor to resume his private law practice. But he shall not leave any case assigned to him by the Legal Services Authority

incomplete. He shall continue to do those cases, free of cost, till they come to a close.

14. The contemnor shall pay a sum of Rs.21,00,000/- (Rupees Twenty One Lakhs) through a demand draft to the Bar Council of India within one week from today. The Bar Council shall give the money to a law college preferably situated at a muffassil place and attended mostly by children from the under-privileged and deprived sections of the society. The money may be used for developing the infrastructure of the college, such as class rooms, library, computer facilities or moot court facilities, etc. The Bar Council of India will ensure a proper utilisation of the money.

15. With the aforesaid observations and directions, the proceedings of this case are closed."

16. Point No. 15: As per law settled in catena of decisions the designation of Sr. Counsel given to Adv. Abhishek Manu Singhvi is liable to be withdrawn and he is liable to be prohibited lifetime from appearing in any courts of India.

16.1. That recently in Gujarat High Court had withdrawn the designation of senior counsel of Adv. Yatin Oza .

16.2. That the challenge to said decision was not found to be meritorious by this Hon'ble Court and only showing magnanimity, this Hon'ble court gave some sort of interim relief with rider of putting conduct of Adv. Yatin Oza in to surveillance.

In the case of **Yatin Narendra Oza Vs High Court of Gujarat, 2021 SCC OnLine SC 1004**, it is ruled as under;

> ***"1.*** *One more chance after the last chance. That appears to be what is sought to be urged on behalf of the petitioner, Mr. Yatin Narendra Oza-counsel with many years standing, President of the Bar Association of the High Court of Gujarat on many occasions, and an erstwhile designated Senior Advocate. The privilege of the Senior's gown has been withdrawn unanimously by a Full Bench of the Gujarat High Court and that is what is sought to be assailed in the present petition under Article 32 of the Constitution of India.*
>
> ***11.*** *In the conspectus of the aforesaid we really find little ground to interfere with the impugned order before us. We respect the views of the High Court but still endeavour to give one more and last chance to the petitioner. In a way this can really be done by recourse to Article 142 of the Constitution of India as there is merit in the contention of the learned counsel for the High Court that there is no real infringement of the fundamental rights of the petitioner. The question is in what manner this last chance should be given?*
>
> ***12.*** *We are of the view that the ends of justice would be served by seeking to temporarily restore the designation of the petitioner for a period of two years from 1.1.2022. It is the High Court which will watch and can best decide how the petitioner behaves and conducts himself as a senior counsel without any*

further opportunity. It will be for the High Court to take a final call whether his behaviour is acceptable in which case the High Court can decide to continue with his designation temporarily or restore it permanently. Needless to say that if there is any infraction in the conduct of the petitioner within this period of two years, the High Court would be well within its rights to withdraw the indulgence which we have given for two years which in turn is predicated on the assurances given by the petitioner and his counsel for the immaculate behaviour without giving any cause to the High Court to find fault with his conduct. In effect, the fate of the petitioner is dependent on his appropriate conduct as a senior counsel before his own High Court, which will have the final say. All we are seeking to do is to give him a chance by providing a window of two years to show that he truly means what he has assured us. We can only hope that the petitioner abides by his assurances and does not give any cause for the High Court or for us to think otherwise."

17. REQUEST: - It is therefore humbly requested that the Hon'ble National Human Rights Commission may please to:-

(i) Record a finding in view of law laid down in the case of **Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 SCC 209** and as per Section 18(3) of Human Rights Protection Act, 1993 that the order dated **20.02.2024** passed by the Bench of Hon'ble Supreme Court headed by Ld. CJI D.Y. Chandrachud, Justice J.B. Pardiwala and Justice Manoj

Mishra thereby calling Sh. Anil Masih to show cause about initiation of action under section 340 of Cr.P.C. is against the provisions of law and binding precedents and it had violated the fundamental rights under Article **14, 20 & 21** of the Constitution of India and therefore Central Government is bound to pay interim compensation to Sh. Anil Masih in view of law & ratio laid down in the case of **Ramesh Lawrence Maharaj Vs. Attorney-General of Trinidad and Tobago, [1978] 2 WLR 902, S. Nambi Narayanan v. Siby Mathews, (2018) 10 SCC 804, Walmik Bobde vs State of Maharashtra 2001 ALL MR (Cri.)1731 etc.**

(ii) Direct Attorney General for India or Solicitor General to file Contempt Petition under section 2 (b), 12, 16 of Contempt of Courts Act 1971 r/w Article 129, 142 of the Constitution of India before Supreme Court against Ld. CJI D.Y. Chandrachud & Justices Sh. J.B. Pardiwala and & Sh. Manoj Mishra for their act of Contempt of binding precedents.

(iii) Issue directions as per law & ratio laid down in the case of **Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 SCC 209** thereby directing Attorney General or Registrar of NHRC or Solicitor General to file petition before Hon'ble Supreme Court for recall of unlawful order dated **20.02.2024** passed by the Bench of Ld. CJI because Supreme Court had clearly laid down in the case of **State of Orissa Vs. Mamta Mohanty (2011) 3 SCC 436** & **Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd., (2019) 3 SCC 203** that to perpetuate error is no heroism and Judges are bound to correct their mistakes by recalling unlawful orders and as being

Judges of Court of record they are bound to keep their record correct and according to law.

(iv) Direct Attorney General for India or any other authority to make representation to Hon'ble Supreme Court of India for taking immediate action of withdrawal of work from Ld. CJI D. Y. Chandrachud and forwarding reference for his impeachment by conducting enquiry under supervision of hon'ble Justice Sanjeev Khanna as per procedure under 'In-House-Procedure' detailed in the case of **Additional District and Sessions Judge 'X' Vs. Registrar General (2015) 4 SCC 91;**

(v) Direct Home Ministry & Law Ministry of Union of India to give directions to central investigating agencies like CBI, CVC, IB, RAW to investigate and take legal action according to law regarding allegations made in the present petition;

(vi) Direct Bar Council of India to take appropriate and strict action against Sr. Adv. Abhishek Manu Singhavi and others who are party to such conspiracy in obtaining illegal order which has violated the fundamental constitutional rights of the Presiding Officer Sh. Anil Masih;

(vii) Direct Attorney General for India or any other authority to make representation to Hon'ble Supreme Court of India for taking decision of withdrawal of Senior counsel designation of Adv. Abhishek Manu Singhavi.

(viii) Pass any other order which this Hon'ble Court deems fit & proper in the facts and circumstances of the case.

FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER WILL ALWAYS REMAIN GRATEFUL.

Shri. Rashid Khan Pathan
President
Supreme Court and High Court
Litigants Association (SCHCLA)