SUPREME COURT OF INDIA

Shri Dilip K. Basu

Vs.

State of West Bengal & Ors

Crl.A.No.16086 of 1997

(T.S. Thakur and R. Banumathi, JJ.)

24.07.2015

JUDGMENT

T.S. Thakur, J.

1. In *D.K. Basu etc. v. State of West Bengal etc*[1].[D.K. Basu (1)] this Court lamented the growing incidence of torture and deaths in police custody. This Court noted that although violation of one or the other of the human rights has been the subject matter of several Conventions and Declarations and although commitments have been made to eliminate the scourge of custodial torture yet gruesome incidents of such torture continue unabated. The court described 'custodial torture' as a naked violation of human dignity and degradation that destroys self esteem of the victim and does not even spare his personality. Custodial torture observed the Court is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. The Court relied upon the Report of the Royal Commission on Criminal Procedure and the Third Report of the National Police Commission in India to hold that despite recommendations for banishing torture from investigative system, growing incidence of torture and deaths in police custody come back to haunt. Relying upon the decisions of this Court in*Joginder Kumar v. State of U.P. and Ors.*[2]*; Smt. Nilabati Behera alias Lalita Behera v. State of Orissa and Ors*[3]*; State of M.P. v. Shyamsunder Trivedi and Ors*[4]*;* and the 113th report of the Law Commission of India recommending insertion of Section 114-B in the Indian Evidence Act, this Court held that while the freedom of an individual must yield to the security of the State, the right to interrogate the detenus, culprits or arrestees in the interest of the nation must take precedence over an individual's right to personal liberty. Having said that the action of the State, observed this Court, must be just and fair. Using any form of torture for extracting any kind of information would neither be right nor just or fair, hence, impermissible, and offensive to Article 21 of the Constitution. A crime suspect, declared the court, may be interrogated and subjected to sustained and scientific interrogation in the manner determined by the provisions of law, but, no such suspect can be tortured or subjected to third degree methods or eliminated with a view to eliciting information, extracting a confession or deriving

knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be a qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. State terrorism declared this Court is no answer to combat terrorism. It may only provide legitimacy to terrorism, which is bad for the State and the community and above all for the rule of law. Having said that, the Court issued the following directions and guidelines in all cases of arrest and/or detention:

> "35. We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:
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> (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name togs with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
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> (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
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> (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
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> (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
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> (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.
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> (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of he next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned Stare or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

2. This Court also examined whether compensation could be awarded and declared that pecuniary compensation was permissible in appropriate cases by way of redressal upon proof of infringement of fundamental rights of a citizen by the public servants and that the State was vicariously liable for their acts. The Court further held that compensation was payable on the principle of strict liability to which the defence of sovereign immunity was not available and that the citizen must receive compensation from the State as he/she has a right to be indemnified by the government.

3. D.K. Basu(1) was followed by seven subsequent orders reported in *Dilip K. Basu v. State of W.B. and Ors*[5]*; Dilip K. Basu v. State of W.B. and Ors.*[6]*; Dilip Kumar Basu v. State of W.B. and Ors.*[7]*; Dilip K. Basu and Ors. v. State of W.B. and Ors.*[8]*; Dilip K. Basu and Ors. v. State of W.B. and Ors.*[9] *Dilip K. Basu and Ors. v. State of W.B. and Ors.*[10]*; and Dilip K. Basu v. State of W.B. and Ors.*[11]. All these orders were aimed at enforcing the implementation of the directions issued in D.K. Basu(1). It is not, in our view, necessary to refer to each one of the said orders for observations made therein and directions issued by this Court simply show that this Court has pursued the matter touching enforcement of the directions with considerable perseverance.

4. What falls for consideration before us at present are the prayers made in Crl.M.P. No.15492 of 2014 filed by Dr. Abhishek Manu Singhvi, Senior Advocate, who was appointed Amicus Curiae in this case. The Amicus has, in the said application, sought further

directions from this Court in terms of Paras 10(A) to 10(O) of the said Crl. M.P. When the application initially came-up for hearing before this Court on 5th August, 2014, we gave a final opportunity to the respondents-States to respond to the prayers made in the same. We, at the same time, requested Dr. Singhvi to identify areas that need attention and make specific recommendations for consideration of this Court based on the responses filed by the States/Union Territories to the application filed by him. Dr. Singhvi has accordingly filed a summary of recommendations, which, according to him, deserve to be examined and accepted while concluding these proceedings which have remained pending in this Court for the past 30 years or so. We, therefore, propose to deal with the recommendations so summarised by the Amicus Curiae, having regard to the responses of the States filed and also the need for giving quietus to the issues that have engaged the attention of this Court for such a long time.

5. The Amicus has, in paras 10(A) to 10(B) of the application, sought suitable directions from this Court of setting-up of State Human Rights Commissions in the States of Delhi, Arunachal Pradesh, Mizoram, Meghalaya, Tripura and Nagaland, where such Commissions have not been set-up even after two decades have passed since the enactment of the Protection of Human Rights Act, 1993. The application points out that Delhi has reported the second highest number of human rights violation cases reported to National Human Rights Commission (NHRC). It refers to the NHRC Curtain Raiser published on its 20th Foundation Day, according to which out of a total number of 94,985 fresh cases registered in the NHRC the largest number of cases (46,187) came from the State of Uttar Pradesh followed by Delhi, which reported 7,988 cases and Haryana, which reported 6,921 cases. Despite a large number of complaints alleging violation of human rights from the Delhi region, the Delhi Government has not set-up a State Human Rights Commission so far. The application further points out that Mizoram, Meghalaya, Tripura and Nagaland are all disturbed States with problems of insurgency, foreign immigration, tribal warfare and ethnic violence apart from custodial violence and deaths, which according to the Amicus, are rampant in each one of these States making it necessary to have a proper authority to look into such violations and grant redress wherever necessary.

6. Despite an opportunity granted for the purpose, the States that have failed to set-up Human Rights Commissions have not come forward to offer any justification for their omission to do so. All that was argued by some of the counsel appearing for the defaulting States is that the establishment of a Commission is not mandatory in terms of Section 21 of the Protection of Human Rights Act, 1993. It was urged that the use of words 'A State Government may constitute a body to be known as the……(Name of the State) Human Rights Commission' clearly suggests that the State Government may or may not choose to constitute such a body. In the absence of any mandatory requirement under the Act constitution of a State Human Rights Commission cannot, it was urged, be ordered by this Court in the present proceedings.

7. There is, in our opinion, no merit in the contention urged on behalf of the defaulting States. We say so for reasons more than one, but, before we advert to the same we wish to point out

thatProtection of Human Rights Act, 1993 symbolises the culmination of a long drawn struggle and crusade for protection of human rights in this country as much as elsewhere is the world. The United Nations (UN) General Assembly in December, 1948 adopted the Universal Declaration of Human Rights which was a significant step towards formulating and recognizing such rights. It was, then, followed by an International Bill of Rights which was binding on the covenanting parties. Since the Universal Declaration of Human Rights was not legally binding and since United Nations had no machinery for its enforcement, the deficiency was removed by the UN General Assembly by adopting in December, 1965 two covenants for the observance of human rights viz. (i) the Covenant on Civil and Political Rights; and (ii) the Covenant on Economic, Social and Cultural Rights. The first covenant formulated legally enforceable rights of the individual while second required the States to implement them by legislation. These covenants came into force in December, 1976 after the requisite number of member States ratified them. Many of the States ratified the Covenants subsequently at the end of 1981. These Covenants thus become legally binding on the ratifying States and since India is a party to the said Covenants, the President of India promulgated the Protection of Human Rights Ordinance, 1993 on 28th September, 1993 to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in the States and Human Rights Courts for better protection of human rights and for matters connected therewith. The ordinance was shortly thereafter replaced by the Protection of Human Rights Act, 1993.

8. In the Statement of Objects and Reasons of the Protection of Human Rights Act, 1993 it, is inter alia, mentioned that India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December, 1966. It is further stated that the human rights embodied in the said Covenants are substantially protected by the Constitution and that there is a growing concern about the changing social realities and the emerging trends in the nature of crime and violence. The Statement of Objects and Reasons also refers to the wide ranging discussions that were held at various fora such as the Chief Ministers' Conference on Human Rights, seminars organized in various parts of the country and the meetings with leaders of various political parties, which culminated in the presentation of Protection of Human Rights Bill, 1993 that came to be passed by both the Houses of Parliament and received the assent of the President on 8th January, 1994 taking retrospective effect from 28th September, 1993. The significance of the human rights and the need for their protection and enforcement is thus beyond the pale of any debate. The movement for the protection of such rights is not confined only to India alone. It is a global phenomenon. It is, in this backdrop that the provisions ofSection 21 of the Act need to be examined. It is true that a plain reading of the provisions may give the impression that the setting-up of a State Human Rights Commission rests in the discretion of the State Government. But a closer and more careful analysis of the provisions contained in the Act dispel that impression. Section 21 of the Act, which deals with the setting-up of State Human Rights Commission, is in the following terms:

"21. Constitution of State Human Rights Commission.— (1) A State Government may constitute a body to be known as the ..... (Name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to a State Commission under this Chapter. (2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

(a) a Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights. (3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him. (4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution: Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter: Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment: Provided that every appointment made under this sub-section shall be made offer obtaining the recommendations of the committee referred to in sub-section (1) of section 22 in respect of the state for which a common chairman or member, or both, the case may be, is to be appointed."

9. A plain reading of the above would show that the Parliament has used the word 'may' in sub-Section (1) while providing for the setting-up of a State Human Rights Commission. In contrast the Parliament has used the word 'shall' in sub-Section (3) while providing for constitution of a National Commission. The argument on behalf of the defaulting States, therefore, was that the use of two different expressions which dealing with the subject of

analogous nature is a clear indication that while a National Human Rights Commission is mandatory a State Commission is not. That argument is no doubt attractive, but does not stand close scrutiny. The use of word 'may' is not by itself determinative of the true nature of the power or the obligation conferred or created under a provision. The legal position on the subject is fairly well settled by a long line of decisions of this Court. The stated position is that the use of word 'may' does not always mean that the authority upon which the power is vested may or may not exercise that power. Whether or not the word 'may' should be construed as mandatory and equivalent to the word 'shall' would depend upon the object and the purpose of the enactment under which the said power is conferred as also related provisions made in the enactment. The word 'may' has been often read as 'shall' or 'must' when there is something in the nature of the thing to be done which must compel such a reading. In other words, the conferment of the power upon the authority may having regard to the context in which such power has been conferred and the purpose of its conferment as also the circumstances in which it is meant to be exercised carry with such power an obligation which compels its exercise. The locus classicus on the subject is found *in Julius v. Bishop of Oxford*[12] where Justice Cairns, L.C. observed:

> "…The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. …" Lord Blackburn in the same case observed:
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> "I do not think the words "it shall be lawful" are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf.…"

10. A long line of decisions of this Court starting with Sardar *Govind Rao and Ors. v. State of Madhya Pradesh*[13] have followed the above line of reasoning and authoritatively held that the use of the word 'may' or 'shall' by themselves do not necessarily suggest that one is directory and the other mandatory, but, the context in which the said expressions have been used as also the scheme and the purpose underlying the legislation will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied

by the duty to exercise the same. *In The Official Liquidator v. Dharti Dhan Pvt. Ltd.*[14] this Court summed up the legal position thus :

> "In fact it is quite accurate to say that the word "may" by itself, acquires the meaning' of "must" or "shall" sometimes. This word however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compel- ling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness. Thus, the question to be determined in such cases always is, whether the power conferred by the use of the word "may" has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled: A power is exercised even when the Court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word "may" indicates that annexes any obligation to its exercise but the legal and factual context of it."

11. So also, this Court in *ND Jayal and Anr. v. Union of India and Ors*[15] interpreted the provisions of the Environmental Protection Act, 1986 to mean that the power conferred under the Act was not a power simpliciter, but, was power coupled with duty. Unless the Act was so interpreted sustainable development and protection of life under Article 21 was not possible observed the Court. *In Manushkhlal Vithaldas Chauhan v. State of Gujarat*[16] this Court held that the scheme of the statute is determinative of the nature of duty or power conferred upon the authority while determining whether such power is obligatory, mandatory or directory and that even if that duty is not set out clearly and specifically in the stature, it may be implied as correlative to a right. Numerous other pronouncements of this Court have similarly addressed and answered the issue. It is unnecessary to refer to all those decisions for we remain content with reference to the decision of this Court in *Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr.*[17] in which the position was succinctly summarized as under:

> "18. It is well settled that the use of word `may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word `may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word `may', the court has to consider various factors, namely, the object and the scheme of the

Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word `may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word `may' should be interpreted to convey a mandatory force. As a general rule, the word `may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words `may' `shall', and `must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word `shall' or `may' depends on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty."

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretional and `shall' is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word `may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'.

21. The ultimate rule in construing auxiliary verbs like `may' and `shall' is to discover the legislative intent; and the use of words `may' and 'shall' is not decisive of its discretion or mandates. The use of the words `may' and `shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed." (emphasis supplied)

12. The above decision also dispels the impression that if the Parliament has used the words "may" and "shall" at the places in the same provision, it means that the intention was to make a distinction in as much as one was intended to be discretionary while the other mandatory. This is obvious from the following passage where this Court declared that even when the two words are used in the same provision the Court's power to discover the true intention of the legislature remains unaffected:

> "22. …..Obviously where the legislature uses two words may and shall in two different parts of the same provision prima facie it would appear that the legislature manifested its intent on to make one part directory and another mandatory. But that by itself is not decisive. The power of court to find out whether the provision is directory or mandatory remains unimpaired."

13. When we examine the scheme of the legislation and the provisions of Section 21 (supra) in the light of the above principles, the following broad features emerge prominently:

> that the Act is aimed at providing an efficacious and transparent mechanism for prevention of violation of human rights both at national level as also at the state level;
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> that the National Human Rights Commission is vested with the powers and functions set out in Chapter-III of comprising Sections 12 to 16 of the Protection of Human Rights Act, 1963. While in relation to State Human Rights Commissions similar provisions of Sections 9, 10, 10, 12, 13, 14, 15to 18 apply mutatis mutandis subject to certain modifications referred to in clauses (a) to (d) of the said provision. This implies that he powers exercisable by the State Commissions under the said provisions are pari materia with the powers exercisable by the National Human Rights Commission.
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> (iii) that while Section 3 does use the word 'shall' in relation to the constitution of a National Human Rights Commission, the absence of a similar expression in Section and the use of the word 'may' as observed by this Court in Bachahan Devi (supra) case makes little difference as the scheme of the Act and the true intention underlying the legislation is to be determined by the Court depending upon whether the power was coupled with a duty to exercise the same or was conferment of power simpliciter.

14. Time now to refer to certain other provisions of the Act. In terms of Section 13(6) of the Act, the National Commission is empowered whenever considered necessary or expedient so to do, to transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises for disposal in accordance with the provisions of the Act, subject to the condition that the complaint is one respecting which the State Commission has jurisdiction to entertain the same. Upon such transfer the State Commission is competent to dispose of the matter as if complaint was initially filed before it. The power of the State Commission, it is noteworthy, is confined to matters enumerated in List-II and List-III of the Constitution in terms of Section 21 sub-Section (5) extracted earlier. Significantly, Section 12 applicable to State Commissions also provides for not only inquiries into complaints of violation of human rights or abetment thereof and negligence in the prevention of such

violation, by a public servant but also matters enumerated in clauses (a) to (g). the provision enjoins upon the State Commissions the task of spreading human rights literacy among various sections of the society and promoting awareness about the safeguards available for the protection of those rights through publications in the media, seminars and other available means; and to encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and to perform all such other functions as may be considered necessary for the promotion of human rights. All these functions are critical for the promotion and protection of human rights at the State level. The essence of a statutory Commission will, therefore, have the effect of negating the legislative intent that human rights need to be promoted and protected against violations. The State Governments cannot frustrate the objects underlying the legislation but pleading that the legislative measure notwithstanding they can in their discretion keep the setting-up of the Commissions at bay. Any such contention will be destructive of the scheme of the Act and the promise the law contains for the protection of the rights of the people.

15. The upshot of the above discussion that the power of the State Governments under Section 21to set-up State Human Rights Commission in their respective areas/territories is not a power simpliciter but a power coupled with the duty to exercise such power especially when it is not the case of anyone of the defaulting States that there is no violation of human rights in their territorial limits. The fact that Delhi has itself reported the second largest number of cases involving human rights cases would belie any such claim even if it were made. So also, it is not the case of the North-Eastern States where such Commissions have not been set- up that there are no violations of Human Rights in those States. The fact that most if not all the States are affected by ethnic and other violence and extremist activities calling for curbs affecting the people living in those areas resulting, at times, in the violation of their rights cannot be disputed. Such occurrence of violence and the state of affairs prevailing in most of the States cannot support the contention that no such commissions are required in those States as there are no human rights violations of any kind whatsoever.

16. There is another angle from which the matter may be viewed. It touches the right of the affected citizens to "access justice" and the denial of such access by reason of non-setting up of the *Commissions. In Imtiyaz Ahmad v. State of Uttar Pradesh and Ors.*[18] this Court has declared that access to justice is a fundamental right guaranteed under Article 21 of the Constitution. This Court observed:

> "25….A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short-cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.

> 26. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable (See United Nations Development Programme, Access to Justice
> - Practice Note (2004)]."

17. Human rights violations in the States that are far removed from the NHRC headquarters in Delhi itself makes access to justice for victims from those states an illusion. While theoretically it is possible that those affected by violation of human rights can approach the NHRC by addressing a complaint to the NHRC for redressal, it does not necessarily mean that such access to justice for redressal of human rights violation is convenient for the victims from the states unless the States have set-up their own Commissions that would look into such complaints and grant relief. We need to remember that access to justice so much depends upon the ability of the victim to pursue his or her grievance before the forum competent to grant relief. North-Eastern parts of the country are mostly inhabited by the tribals. Such regions cannot be deprived of the beneficial provisions of the Act simply because the States are small and the setting-up of commissions in those states would mean financial burden for the exchequer. Even otherwise there is no real basis for the contention that financial constrains prevent these States from setting-up their own Commissions. At any rate, the provisions of Section 21(6) clearly provide for two or more State Governments setting–up Commissions with a common Chairperson or Member. Such appointments may be possible with the consent of Chairperson or Member concerned but it is nobody's case that any attempt had in that direction been made but the same had failed on account of the persons concerned not agreeing to take up the responsibility vis-a-vis the other State. Even the NHRC had in its Annual Report (1996-1997) suggested that if financial constraint was really one of the reasons for not setting-up of Commission in the North-Eastern Regions, the State Governments could consider setting-up such commissions by resorting to Section 21(6), which permits two States having the same Chairperson or Members thereby considerably reducing the expenses on the establishment of such Commissions.

18. Reference in this connection may be made to the recommendations of the NHRC published in its Annual Report for the year 2004-2005 where the commission observed:
"16.1 State Human Rights Commissions have been set up in 151 States viz., the States of Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. The Commission would like to reiterate its view that the 'better protection of human rights' can be ensured if all the States set up Human Rights Commission. The Commission also emphasizes that the State Human Rights Commission which have already been set up or are proposed to be set up should be in compliance with the 'Paris Principles'.

"16.2 The Commission, on its part, has endeavoured to assist and guide the State Commissions in whatever manner possible, whenever requests for such assistance or guidance has been sought. The strengthening of the State Commissions, is an important agenda in the Commission's activities. With this in view, the Commission has taken the initiative to have annual interactions with all the State Human Rights Commissions, where mutual discussions take place.

16.3 The first such annual meeting was held on the 30-01-2004, where the agenda included coordination and sharing of information between the SHRCs and the Commission; training, awareness building and substantive human rights issues. Taking forward the initiative, the second meeting was convened on the 13-05-2005. Apart from the various issues of concern discussed in the meeting, the meeting concluded with the adoption of the following Resolution:-

"The National Human Rights Commission and the State Human Rights Commissions present hereby unanimously resolve to urge the State Governments to:-
Setup, on priority, State Human Rights Commissions where the same do not exist.
b) Where, there are State Human Rights Commissions or, are in the process of being setup, it be ensured that they are structurally and financially independent as envisaged in and, fully confirming to, the principles relating to the status of national institutions (the "Paris Principles') which were endorsed by the UN General Assembly Resolution 48/134 of 20-12- 1993. The National and State Commissions also reiterate and remind the Governments, both, at the Centre and in the States, that the primary obligation towards the protection of human rights is that of the State and that the national human rights institutions are for 'better protection of human rights'.

16.4 The Commission places great importance to these interactions especially keeping in view the social, cultural and linguistic diversity that comprises our society. Institutionalizing the mechanism of these annual interactions is one way the Commission hopes to keep up the process of dialogue. It is thus, all the more important that all the states expeditiously set up human rights Commissions." (emphasis supplied)

19. A similar recommendation was made in the Annual Report for the year 2009-2010 of NHRC. It said:

"10.1 Section 21 of the PHRA, 1993 as amended in 2006, provides for constitution of State Human Rights Commissions (SHRCs) in all the States. The existence and functioning of a Human Rights Commission in the State goes a long way in the 'better' protection and promotion of human rights. It is now an accepted fact that good governance and human rights go hand in hand. The SHRCs have been set-up in 18 States. The names of these States are: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh,

Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal….

10.2 The NHRC is keen that SHRCs are set-up in all the States so that each and every citizen of the country has easy recourse to better protection of 'human rights' as well as for matters connected therewith or incidental thereto. The Commission earnestly recommends to all those States which have not yet constituted SHRCs to follow suit at the earliest in the interest of better protection and promotion of human rights. …" (emphasis supplied)

20. Yet again, the same has been reiterated in the Annual Report for the year 2010-2011 of NHRC in the following words:

"15.1 Section 21 of the Protection of Human Rights Act, 1993 as amended in 2006, stipulates constitution of State Human Rights Commissions (SHRCs) in all the States. The creation of a Human Rights Commission in all the States would definitely facilitate in `better' protection and promotion of human rights. It is now an accepted proposition that good governance and human rights go hand in hand. During the period under report, SHRCs were set up in two States, namely, Jharkhand and Sikkim, thus taking the overall total of SHRCs in the country to 20. Eighteen States which already have an SHRC are Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. At present, there is no Chairperson and Members in the Himachal Pradesh State Human Rights Commission except for a Secretary.

15.2 NHRC is keen that SHRCs are set up in every State of the country so that its inhabitants have easy access to better protection of human rights and justice. The Commission once again makes an earnest appeal to all those States which have not yet constituted SHRCs to take action at the earliest in the interest of better protection and promotion of human rights. In addition, the Commission is in constant touch with all the SHRCs and renders technical support to them as and when required by them." (emphasis supplied)

21. It is a matter of regret that despite the National Human Rights Commission itself strongly and repeatedly recommending setting-up of State Commission in the States the same have not been set-up. Keeping in view the totality of the circumstances, therefore, we see no reason why the recommendation made by the Amicus for a direction to the States of Delhi, Arunachal Pradesh, Mizoram, Meghalaya, Tripura and Nagaland should not be issued to set-up State Human Rights Commission in their respective territories.

22. The other recommendation which the Amicus has noted for issue of suitable directions relates to the filling-up of vacancy of Chairperson and Members in several State Human Rights Commissions. The Amicus points out that in the States of Manipur and Himachal

Pradesh SHRC is not functional since post of Chairperson and several Members remains unfilled. In the State of Jammu and Kashmir, the post of Chairperson and one Member is vacant. In the State of Jharkhand, the Chairperson is in position but the post of sole Member is vacant. So also, in the State of Karnataka two Members in the Commission are working while the post of Chairperson and one member remains vacant. Even in the State of Tamil Nadu the post of Chairperson remains vacant. The Amicus states that similar is the position in several other States also which means that although States have set up SHRC, the same are dysfunctional on account of non filling-up of the vacancies on account of administrative apathy and lethargy. It was argued by the Amicus that dysfunctional SHRCs are as good as there being no such Commissions at all thereby defeating the very purpose underlying the Act and calling for a direction from this Court to the States concerned to fill up the existing vacancies immediately and also to ensure that no vacancy in the SHRC whether against the post of Chairperson or Members remains unfilled for more than three months.

23. There is, in our opinion, considerable merit in the submission made by the Amicus that the very purpose of setting up of the State Human Rights Commission gets defeated if vacancies that occur from time to time are not promptly filled up and the Commission kept functional at all times. There is hardly any explanation much less a cogent one for the failure of the State to take immediate steps for filling-up of the vacancies wherever they have occurred. The inaction or bureaucratic indifference or even the lack of political will cannot frustrate the laudable object underlying the Parliamentary legislation. With the number of complaints regarding breach of human rights increasing everyday even in cities like Delhi which is the power centre and throbbing capital of the county, there is no question of statutory Commissions being made irrelevant or dysfunctional for any reason whatsoever. The power available to the Government to fill up the vacancies wherever they exist is, as noticed earlier, coupled with the duty to fill up such vacancies. The States ought to realise that the Human Rights Commission set up by them are not some kind of idle formality or dispensable ritual. The Commissions are meant to be watch dogs for the protection of the human rights of the citizens and effective instruments for redressal of grievances and grant of relief wherever necessary. Denial of access to the mechanism conceptualised under the Act by reason of non filling up of the vacancies directly affects the rights of the citizens and becomes non functional. It is in that spirit that we deem it fit and proper to direct that all vacancies against the post of Chairperson and Members of the State Human Rights Commission shall be filled up by the concerned State Governments as expeditiously as possible but, in any case, within a period of three months from the date of this order. We only hope and trust that we shall be spared the unpleasant task of initiating action against the defaulting State in case the needful is not done within the time allotted. We also recommend to the State Governments that since the dates on which vacancies are scheduled to occur are known well in advance, (save and except where an incumbent dies in office) the process for appointment of the incumbents against such vacancies should be initiated well in time in future so that no post remains vacant in any State Human Rights Commission for a period or unfilled for any period for more than three months from the date the vacancy arises.

24. That brings us to the third recommendation that Amicus has formulated concerning the constitution of Human Rights Court in different districts in terms of Section 30 of The Protection of Human Rights Act, 1993. Section 30 of the Act provides that the State Government shall specify with the concurrence of the Chief Justice of the High Court, for each district a Court of Session to be a Human Rights Court so that the offences arising out of violation of human rights are tried and disposed of speedily. It was submitted that while the State of Sikkim has complied with the said provision, other States are silent in that regard. It was urged that if a small State like Sikkim could comply with the requirement of specifying Sessions Courts to be Human Rights Court, there was no reason why other States cannot follow suit. There is considerable merit in that submission. Section 30 of the Act stipulates that for providing speedy trial of offences arising out of violation of human rights, the State Government, may with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court provided that if a Court of Session is already specified as a special Court or a special Court is already constituted for such offences under any other law for the time being in force, no such specification of a Court would be necessary.

25. There is, in our opinion, no reason why the State Governments should not seriously consider the question of specifying human rights Court to try offences arising out of violation of human rights. There is nothing on record to suggest that the Governments have at all made any attempt in this direction or taken steps to consult the Chief Justices of the respective High Courts. The least which the State Governments can and ought to do is to take up the matter with the Chief Justices of High Courts of their respective States and examine the feasibility of specifying Human Rights Court in each district within the contemplation of Section 30 of the Act. Beyond that we do not propose to say anything at this stage.

26. There are, apart from the above, few other recommendations made by the Amicus like installation of CCTV Cameras in all Police Stations and prisons in a phased manner, and appointment of non-official visitors to prisons and police stations for making random and surprise inspections. Initiation of human proceedings Under Section 302/304 IPC in each case where the enquiry establishes culpability in custodial death and framing of uniform definition of custodial death and mandatory deployment of atleast two women constables in each district are also recommended by the Amicus.

27. As regards installation of CCTV cameras in police stations and prisons, with a view to checking human rights abuse, it is heartening to note that all the States have in their affidavits supported the recommendation for installation of CCTV cameras in Police Stations and prisons. In some of the States, steps appear to have already been initiated in that direction. In the State of Bihar, CCTV cameras in all prisons and in 44 police stations in the State have already been installed. So also the State of Tamil Nadu plans to equip all police stations with CCTV cameras. State of Haryana has stated that CCTV cameras should be installed in all police stations, especially, at the entrance and in the lockups. Union Territories of Andaman & Nicobar and Puducherry has also installed CCTV cameras in most of the police stations. Some other States also appear to be taking steps to do so. Some of the States have, however,

remained silent and non-committal on the issue. We do not for the present consider it necessary to issue a direction for installation of CCTV cameras in all police stations. We are of the opinion that the matter cannot be left to be considered by the State Governments concerned, having regard to the fact that several other State Governments have already taken action in that direction which we consider is commendable. All that we need say is that the State Governments may consider taking an appropriate decision in this regard, and appropriate action wherever it is considered feasible to install CCTV cameras in police stations. Some of these police stations may be located in sensitive areas prone to human rights violation. The States would, therefore, do well in identifying such police stations in the first instance and providing the necessary safeguard against such violation by installing CCTV camera in the same. The process can be completed in a phased manner depending upon the nature and the extent of violation and the experience of the past.

28. In regard to CCTV cameras in prison, we see no reason why all the States should not do so. CCTV cameras will help go a long way in preventing violation of human rights of those incarcerating in jails. It will also help the authorities in maintaining proper discipline among the inmates and taking corrective measures wherever abuses are noticed. This can be done in our opinion expeditiously and as far as possible within a period of one year from the date of this order.

29. That leaves us with the appointment of non-official visitors to prisons and police stations for making random and surprise inspection to check violation of human rights. The Amicus points out that there are provisions in the Prison Manual providing for appointment of non-official visitors to prisons in the State. These appointments are made on the recommendations of the Magistrate of the District in which the prison is situated. He urged that the provisions being salutary ought to be invoked by the Governments concerned and non-official visitors to prisons in police stations nominated including independent persons like journalist. There is, in our opinion, no real harm or danger in appointment of non-official visitors to prisons and police stations provided the visitors who are so appointed do not interfere with the ongoing investigations if any. All that we need say is that the State Governments may take appropriate action in this regard keeping in view the provisions of the Prison Manuals and the Police Acts and the Rules applicable to each State.

30. That leaves us with the question of initiation of criminal proceedings in cases where enquiry establishes culpability in custodial deaths and for deployment of atleast two women constables in each district. We see no reason why appropriate proceedings cannot be initiated in cases where enquiry establishes culpability of those in whose custody a victim dies or suffers any injuries or torture. The law should take its course and those responsible duly and appropriately proceeded against.

31. As regards deployment of women constables all that we need say is that the States concerned would consider the desirability of posting women constables in the police stations wherever it is found that over a period of past two years women were detained in connection with any criminal case or investigation. Needless to say that in case women constables are

needed in such police stations for interrogation or detention, the State shall provide such infrastructural facilities for such constables as are required. To sum up:

> "1. The States of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura and Nagaland shall within a period of six months from today set up State Human Rights Commissions for their respective territories with or without resort to provisions of Section 21(6) of the Protection of Human Rights Act, 1993.
>
> 2. All vacancies, for the post of Chairperson or the Member of SHRC wherever they exist at present shall be filled up by the State Governments concerned within a period of three months from today.
>
> 3. Vacancies occurring against the post of Chairperson or the Members of the SHRC in future shall be filled up as expeditiously as possible but not later than three months from the date such vacancy occurs.
>
> 4. The State Governments shall take appropriate action in terms of Section 30 of the Protection of Human Rights Act, 1993, in regard to setting up/specifying Human Rights Courts.
>
> 5. The State Governments shall take steps to install CCTV cameras in all the prisons in their respective States, within a period of one year from today but not later than two years.
>
> 6. The State Governments shall also consider installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violation reported in such stations.
>
> 7. The State Governments shall consider appointment of non-official visitors to prisons and police stations in terms of the relevant provisions of the Act wherever they exist in the Jail Manuals or the relevant Rules and Regulations.
>
> 8. The State Governments shall launch in all cases where an enquiry establishes culpability of the persons in whose custody the victim has suffered death or injury, an appropriate prosecution for the commission of offences disclosed by such enquiry report and/or investigation in accordance with law.
>
> 9. The State Governments shall consider deployment of at least two women constables in each police station wherever such deployment is considered necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years."

32. These petitions are, with the above directions, disposed of. Liberty is, however, reserved to the petitioner to seek revival of these proceedings should there be any cogent reason for such revival at any time in future. No costs.

ITEM NO.1F-For Judgment COURT NO.2 SECTION PIL(W) S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Crl.M.P. Nos. 16086/1997 in Crl.M.P. No. 4201/1997 with Crl.M.P. No. 4201/1997, 4105/1999, 2600/2000, 2601/2000, 480/2001, 3965, 10385/2002, 12704/2001, 19694/2010 in Crl.M.P. No. 4201/1997, Crl.M.P. No. 13566/2011 in Crl.M.P. No. 16086/1997 in Crl.M.P. No. 4201/1997, Crl.M.P. No. 15490/2014 in Writ Petition(s)(Criminal) No(s). 539/1986 SHRI DILIP K. BASU Petitioner(s) VERSUS STATE OF WEST BENGAL & ORS. Respondent(s) Date : 24/07/2015 These petitions were called on for pronouncement of JUDGMENT today.
For Petitioner(s) Ms. Suruchii Aggarwal,Adv.
For Respondent(s) Mr. Ravi Prakash Mehrotra,Adv.
Mr. Anip Sachthey,Adv.
Mr. Anil K. Jha,Adv.
Mr. B. Krishna Prasad,Adv.
Mr. G. Prakash,Adv.
Mr. Gopal Singh,Adv.
Mr. Rituraj Biswas, Adv.
Mr. Manish Kumar, Adv.
Mr. Guntur Prabhakar,Adv.
Ms. Indra Sawhney,Adv.
Mr. Naresh K. Sharma,Adv.
Dr. A.M. Singhvi, Sr. Adv.
Mr. Pranab Kumar Mullick, Adv.
Mr. Amit Bhandari, Adv.
Mrs. S. Mullick, Adv.
Mr. Sebat Kumar D., Adv.
Ms. Sushma Suri,Adv.
Mr. T. C. Sharma,Adv.
Mr. T. V. Ratnam,Adv.
Mr. Pravir Choudhary,Adv.
Mr. K. R. Sasiprabhu,Adv.
Mr. Shreekant N. Terdal,Adv.
Mr. D. S. Mahra,Adv.
Mr. Ranjan Mukherjee,Adv.
Mrs. D. Bharathi Reddy,Adv.
Mr. Khwairakpam Nobin Singh,Adv.
Ms. Asha Gopalan Nair,Adv.
Mr. Sanjay R. Hegde,Sr. Adv.
Mr. Gopal Prasad,Adv.
Mr. Javed Mahmud Rao,Adv.

Mr. Abhijit Sengupta,Adv.
Mr. Jayesh Gaurav, Adv.
Mr. Ratan Kumar Choudhuri,Adv.
Ms. Bina Madhavan,Adv.
For M/s Corporate Law Group Mr. C. D. Singh,Adv.
Ms. Sakshi Kakkar, Adv.
Mr. Jatinder Kumar Bhatia,Adv.
Mr. P. V. Yogeswaran,Adv.
Mr. P. V. Dinesh,Adv.
Mr. Shibashish Misra,Adv.
Mr. Ansar Ahmad Chaudhary,Adv.
Mr. T. Harish Kumar,Adv.
Mr. Manish Kumar Saran,Adv.
Mr. Anuvrat Sharma,Adv.
Mr. Balaji Srinivasan,Adv.
Mr. Ajay Pal,Adv.
Mr. Suryanarayana Singh, Sr. AAG Ms. Pragati Neekhra,Adv.
Mr. Gunnam Venkateswara Rao,Adv.
Ms. Ruchi Kohli,Adv.
Mr. Sunil Fernandes,Adv.
Mr. K.V. Jagdishvaran, Adv.
Ms. G. Indira,Adv.
Mr. M. Yogesh Kanna,Adv.
Mr. Jayant Patel, Adv.
Mr. Chandra Prakash,Adv.
Mr. Sapam Biswajit Meitei, Adv.
Mr. Z.H. Isaac Haiding, Adv.
Mr. Ashok Kumar Singh, Adv.
Mrs. K. Enatoli Sema, Adv.
Mr. Edward Belho, Adv.
Mr. Amit Kumar Singh, Adv.
Ms. A. Subhashini, Adv.

Hon'ble Mr. Justice T.S. Thakur pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mrs. Justice R. Banumathi.

The petitions are disposed of in terms of the Signed Reportable Judgment with following directions:

1. The States of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura and Nagaland shall within a period of six months from today set up State Human Rights Commissions for their respective territories with or without resort to provisions of Section 21(6) of the Protection of Human Rights Act, 1993.

2. All vacancies, for the post of Chairperson or the Member of SHRC wherever they exist at present shall be filled up by the State Governments concerned within a period of three months from today.

3. Vacancies occurring against the post of Chairperson or the Members of the SHRC in future shall be filled up as expeditiously as possible but not later than three months from the date such vacancy occurs.

4. The State Governments shall take appropriate action in terms of Section 30 of the Protection of Human Rights Act, 1993, in regard to setting up/specifying Human Rights Courts.

5. The State Governments shall take steps to install CCTV cameras in all the prisons in their respective States, within a period of one year from today but not later than two years.

6. The State Governments shall also consider installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violation reported in such stations.

7. The State Governments shall consider appointment of non-official visitors to prisons and police stations in terms of the relevant provisions of the Act wherever they exist in the Jail Manuals or the relevant Rules and Regulations.

8. The State Governments shall launch in all cases where an enquiry establishes culpability of the persons in whose custody the victim has suffered death or injury, an appropriate prosecution for the commission of offences disclosed by such enquiry report and/or investigation in accordance with law.

9. The State Governments shall consider deployment of at least two women constables in each police station wherever such deployment is considered necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years."

Judgment Referred.

[1] (1997) 1 SCC 416
[2] (1994) 4 SCC 260
[3] (1993) 2 SCC 746
[4] (1995) 4 SCC 262
[5](1997) 6 SCC 642
[6](1998) 9 SCC 437
[7](1998) 6 SCC 380

[8] *(2002) 10 SCC 741*
[9] *(2003) 11 SCC 723*
[10] *(2003) 11 SCC 725*
[11] *(2003) 12 SCC 174*
[12] *(1880) 5 AC 214*
[13] *AIR 1965 SC 1222*
[14] *(1977) 2 SCC 166*
[15] *(2004) 9 SCC 362*
[16] *(1997) 7 SCC 622*
[17] *(2008) 12 SCC 372*
[18] *(2012) 2 SCC 688*