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RUPA ASHOK HURRA

v.

ASHOK HURRA AND ANR.

APRIL 10, 2002

B [S.P. BHARUCHA, CJ., SYED SHAH MOHAMMED QUADRI, UMESH C. BANERJEE, S.N. VARIAVA AND SHIVARAJ V. PATIL, JJ.]

Constitution of India, 1950:

C *Articles 12 and 32—Writ Petition—Writ of certiorari—Challenging validity of judgment of Supreme Court after dismissal of Review Petition therein—Maintainability of—Held, not maintainable—Superior Courts of Justice do not fall under the ambit of State or other authorities under Article 12.*

D *Article 142—Reconsideration of Judgment of Supreme Court after dismissal of Review Petition—Permissibility under inherent powers—Held, Court may reconsider its judgments in exercise of its inherent powers in rarest of rare cases to prevent abuse of its process and to cure gross miscarriage of justice—Grounds and procedure for such re-consideration laid down—Supreme* E *Court Rules, 1966—Order XL VII Rule 6.*

Doctrines:

Doctrine of Ex debito Justitiae—Applicability of.

Doctrine of stare decisis—discussed.

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The common questions for consideration in the instant writ petitions were whether writ petition under Article 32 of the Constitution of India could be maintained to question the validity of a Judgment of Supreme Court after the petition for review of the said judgment was dismissed; and whether the order passed by this Court could be corrected under its inherent powers after G **dismissal of the review petition on the ground that it was passed either without jurisdiction or in violation of the principles of natural justice or due to unfair procedure giving scope for bias which resulted in abuse of the process of the Court or miscarriage of justice to an aggrieved person.**

Answering the questions, the Court

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HELD : Per Quadri, J. (for himself, C.J., Variava and Patil, JJ.) A

1.1. A final judgment/order passed by this Court cannot be assailed in a petition under Article 32 of the Constitution of India by an aggrieved person whether he was a party to the case or not. [1019-G]

1.2. In view of historical background and the very nature of writ B jurisdiction, which is a supervisory jurisdiction over inferior Courts/Tribunals, on principle a writ of certiorari cannot be issued to co-ordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court; nor can one Bench of a High Court issue a writ to a different Bench of the same High Court, much less can writ jurisdiction C of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a D High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in E judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. The superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution. [1015-D-G]

Naresh Shridhar Mirajkar and Ors. v. *State of Maharashtra and Anr.*, [1966] F 3 SCR 744; *A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602; *Smt. Triveniben* v. *State of Gujarat*, [1989] 1 SCC 678; *Krishna Swami* v. *Union of India and Ors.*, [1992] 4 SCC 605; *Mohd. Aslam* v. *Union of India*, [1996] 2 SCC 749; *Khodav Distilleries Ltd. and Anr.* v. *Registrar General, Supreme Court of India*, [1996] 3 SCC 114; *Gurbachan Singh and Anr.*, [1996] 3 SCC 117; *Babu Singh and Anr.* v. *Union of India and Anr.* [1996] 6 SCC 565; *P. Ashokan* v. G *Union of India and Anr.*, [1998] 3 SCC 56; *Supreme Court Bar Association* v. *Union of India and Anr.*, [1998] 4 SCC 409 and *M.S. Ahlwat* v. *State of Haryana and Anr.*, [2000] 1 SCC 278, referred to.

Halsbury's Laws of England, Fourth Edition (reissue), Vol. 1 (1), referred H to.

A **2.1. This Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may reconsider its judgments in exercise of its inherent power. [1023-B-C]**

2.2. Principles in regard to the highest Court departing from its binding precedent are different from the grounds on which a final judgment between
B **the parties, can be reconsidered. However, when reconsideration of a judgment of this Court is sought the finality attached both to the law declared as well as to the decision made in the case, is normally brought under challenge. The Court is faced with competing principles-ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice**
C **on reconsideration of a judgment on the ground that it is vitiated, being in violation of the principles of natural justice or giving scope for apprehension of bias due to a Judge who participated in decision making process not disclosing his links with a party to the case, or on account of abuse of the process of the Court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Though Judges of the highest Court**
D **do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such a case it would not only be proper but also obligatory both legally and morally to rectify the error. The duty to do justice in these**
E **rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the final court in the country should not be open to challenge yet there may be circumstances, wherein declining to reconsider the judgment would be oppressive to judicial conscience and would cause perpetuation of irremediable injustice. [1023-E; 1031-E-H; 1032-A]**

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The Keshav Mills Co. Ltd. v. *Commissioner of Income-tax Bombay North,* **[1965] 2 SCR 908;** *Maganlal Chhaganlal (P) Ltd.* v. *Municipal Corporation of Greater Bombay and Ors.,* **[1974] 2 SCC 402;** *The Indian Aluminium Co. Ltd.* v. *The Commissioner of Income Tax West Bengal, Calcutta,* **[1972] 2 SCC 150;** *In Re: Cauvery Water disputes Tribunal,* **[1993] Suppl. 1 SCC 96: 1991 Suppl. 2**
G **SCR 497;** *S. Nagaraj and Ors.* v. *State of Karnataka and Anr.,* **[1993] Suppl. 4 SCC 595;** *Ramdeo Chauhan* v. *State of Assam,* **[2001] 5 SCC 714;** *Lily Thomas and Ors.* v. *Union of India and Ors.,* **[2000] 6 SCC 224;** *Union of India and Anr. etc.* v. *Raghubir Singh (dead) by LRs. etc. etc.,* **[1989] 2 SCC 754;** *Harbans Singh* v. *State of Uttar Pradesh and Ors.,* **[1982] 2 SCC 101;** *A.R. Antulay* v. *R.S. Nayak*
H *and Anr.,* **[1988] 2 SCC 602;** *Supreme Court Bar Association* v. *Union of India*

and Anr., [1998] 4 SCC 409; *Re: Vinay Chandra Mishra*, [1995] 2 SCC 584 A
and *M.S. Ahlwat* v. *State of Haryana and Anr.*, [2000] 1 SCC 278, referred to.

The London Street Tramways Company Limited v. *The London Country Council*, LR 1898 Appeal Cases 375; *Hoystead and Ors.* v. *Commissioner of Taxation I.R.* 1926 AC 155; *Raja Prithwi Chand Lall Choudhary* v. *Rai Bahadur Sukhraj Rai and Ors. etc.*, AIR (1941) FC 1, 2 ; (1940) 2 FCR 78: 1941 1 MLJ B
Supp. 45; *Venkata Narasimha Appa Row* v. *Court of Wards 1886 (II) Appeal cases 660; Lloyds Bank Ltd.* v. *Dawson and Ors.*, [1966] 3 All E.R. 77; *Jones* v. *Secretary of State for Social Services etc.*, (1972) 1 All E.R. 145; *Fitzleet Estates Ltd.* v. *Cherry (Inspector of Taxes)*, (1977) 3 All E.R. 996; *United States of America* v. *Ohio Power Company 1 Lawyers' Ed 2nd 683 and R.* v. *Bow Street* C
Metropolitan Stipendiary Magistrate and Ors. ex parte *Pinochet Ugarte*, (No. 2) (1999) 1 All ER 577, referred to.

'Judicial Discretion' by Aharon Barak, referred to.

**2.3. A petitioner is entitled to relief *ex debito justitiae* if he establishes D
(1) violation of principles of natural justice in that he was not a party to the lis but the judgment adversely affects his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and (2) where in the proceedings a Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.** E
[1035-B]

2.4. The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a Senior Advocate with regard to the fulfilment of the above F
requirements. [1035-C]

2.5. Since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three senior-most Judges and the Judges who passed the G
judgment complained of, if available. It is only when a majority of the Judges on the said Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. It shall be open to the Bench at any stage of consideration of the curative petition to ask a senior counsel to assist it as *amicus curiae*. In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may H

A impose exemplary costs on the petitioner. [1035-D-E]

Per Banerjee, J. (Concurring)

1. There is no manner of doubt that a writ jurisdiction as envisaged under Article 32 of the Constitution, is not available to reconsider a decision of this Court. [1037-H; 1038-A]

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Naresh Shridhar Mirajkar and Ors. v. *State of Maharashtra and Anr.*, [1966] 3 SCR 744; *A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602; *Smt. Triveniben* v. *State of Gujarat*, [1989] 1 SCC 678 and *Ajit Kumar Barat* v. *Secretary Indian Tea Association and Ors.*, [2001] 5 SCC 42, relied on.

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2.1. The doctrine of *ex debito justitiae* relates to and arises from the concept of justice; in the event there appears to be infraction of the concept, question of there being a turn around and thereby maintaining a total silence by the law Courts would not arise. Though an Order of this Court cannot be ascribed as an abuse of the process of the Court, but the factum of the D availability of inherent power for the ends of justice cannot in any way be decried. The Constitution of India assigned a pivotal role on to the Supreme Court providing therein the supremacy of law with the rationale being justice is above all. The exercise of inherent power of this Court also stands recognised by Order XL VII Rule 6 of the Supreme Court Rules, 1966. [1039-B-C-D]

E *A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602; *Synthetics and Chemicals Ltd. and Ors.* v. *State of U.P. and Ors.*, [1990] 1 SCC 109; *S. Nagaraj and Ors.* v. *State of Karnataka and Anr.*, [1963] Supp. 4 SCC 595 and *Supreme Court Bar Association* v. *Union of India and Anr.*, [1998] 4 SCC 409, referred to.

F *M/s Cathrineholm* v. *Norequipment Trading Ltd.*, (1972) 2 All ER 538; *Ostime (Inspector of Taxes)* v. *Australian Mutual Provident Society*, (1959) 3 All ER 245; 1960 AC 459 and *Commonwealth of Massachusetts et al* v. *USA*, (92 L ed 968), referred to.

G 2.2. Manifest injustice is curable in nature rather than incurable and this Court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silence so as to affect the parties perpetually or the H concept of justice ought to activate the Court to find a way out to resolve the

erroneous approach to the problem. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technically ought not to out-weigh the course of justice the same being the true effect of the doctrine of *ex debito justitiae*. [1044-F-G; 1045-D-E] A

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***J. Ranga Swamy* v. *Govt. of A.P. and Ors.*, AIR (1990) SC 535, distinguished.**

***R.* v. *Sussex Justices, ex P. McCarthy*, (1924) 1 KB 256 and *R.* v. *Bow Street Metropolitan Stipendiary Magistrate and Ors., ex parte Pinochet Ugarte (No. 2)*, (1999) 1 All E.R. 577, referred to.** C

2.3. Curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. It is time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. [1045-H; 1046-A] D

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No, 509 of 1997. E

(Under Article 32 of the Constitution of India)

WITH

W.P. (C) No. 245/99, 338, 325-326, 663, 680/2000, 374/2001 and 108 of 1999. F

Soli J Sorabjee, Attorney General, Shanti Bhushan, P.A. Mohammed, Anil B. Divan, Rajiv Dutta, K.K. Venugopal, D.A. Dave, Parag P. Tripathi, Ranjit Kumar, Dr. Rajiv Dhavan, P.S. Mishra, Ms. Kamini Jaiswal, Ms. Aishwarya Rao, Ms. Bipaakkhu Borthakur, P. Vittal Rao, Ms. Gunwant Dara, Ms. Sudha Gupta, Vikas Singh, Yunus Malik, Ms. Pallavi Parmar, Prashant Chaudhary, Prashant Bhushan, Sanjeev K. Kapoor, Narender Verma, Vishal Gupta, Sanjay Pathak, Anil Mittal, K.K. Mohan, A.T. Patra, S. Sukumaran, Nipun Malhotra, Dr. Sonia Hurra, Divyang K. Chhaya, Varun Goswami, A.P. Medh, Dhruv Mehta, K.C. Kaushik, Prateek Jalan, Manish G H

A Singhvi, R.N. Poddar, C. Radhakrishna, Ms. Sushma Suri, S.N. Terdol, Sanjay R. Hegde, Satya Mitra, G. Prakash, K.B. Rohtagi, Ms. Aparna Rohtagi Jain, Manoj Aggarwal, Ranji Thomas, Javed M. Rao, Vineet Sinha, Ashok Aggarwal, Rajender Pd. Saxena, B.S. Banthia, V.B. Saharya, Rakesh K. Khanna, Reetesh Singh, Surya Kant, Ms. Sunita Sharma, Ms. Rekha Pandey, D.S. Mahra, Bimal Roy Jad, Bineet Kumar, V.K. Sidharthan, B.K. B Khurana, S. Muralidhar, S. Vallinayagam, Ms. Neeru Vaid, for the appearing parties. In-person (NP), for petitioner in W.P. No. 374/2001.

The Judgments of the Court were delivered by

SYED SHAH MOHAMMED QUADRI, J. These writ petitions have C come up before us as a Bench of three learned Judges of this Court referred the first mentioned writ petition to a Constitution Bench observing thus :

> "Whether the judgment of this Court dated March 10, 1997 in Civil Appeal No.1843 of 1997 can be regarded as a nullity and whether a writ petition under Article 32 of the Constitution can be maintained to D question the validity of a judgment of this Court after the petition for review of the said judgment has been dismissed are, in our opinion, questions which need to be considered by a Constitution Bench of this Court."

The other writ petitions were tagged to that case.

E In these cases the following question of constitutional law of considerable significance arises for consideration : whether an aggrieved person is entitled to any relief against a final judgment/order of this Court, after dismissal of review petition, either under Article 32 of the Constitution or otherwise.

In our endeavour to answer the question, we may begin with noticing F that the Supreme Court of India is established by Article 124 of the Constitution which specifies its jurisdiction and powers and enables Parliament to confer further jurisdiction and powers on it. The Constitution conferred on the Supreme Court original jurisdiction (Articles 32 and 131); appellate jurisdiction both civil and criminal (Articles 132, 133 and 134); discretionary jurisdiction to G grant special leave to appeal (Article 136) and very wide discretionary powers, in the exercise of its jurisdiction, to pass decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, which shall be enforceable throughout the territory of India in the manner prescribed (Article 142); powers like the power to withdraw any case pending in any High Court or High Courts to itself or to transfer any case from one H High Court to another High Court (Article 139) and to review judgment

pronounced or order made by it (Article 137). Conferment of further jurisdiction and powers is left to be provided by Parliament by law (Article 138). Parliament is also enabled to confer further powers on the Supreme Court (Articles 134(2), 139 and 140). Article 141 says that the law declared by the Supreme Court shall be binding on all courts within the territory of India and Article 144 directs that all authorities civil and judicial, in the territory of India, shall act in aid of the Supreme Court. It is a Court of record and has all the powers of such a Court including power to punish for contempt of itself (Article 129).

Since the jurisdiction of this Court under Article 32 of the Constitution is invoked in these writ petitions, we shall advert to the provisions of Article 32 of the Constitution. It is included in Part III of the Constitution and is quoted hereunder :

"*32. Remedies for enforcement of rights conferred by this Part.* -

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

A perusal of the Article, quoted above, shows it contains four clauses. Clause (1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III - fundamental rights. By clause (2) the Supreme Court is vested with the power to issue directions or orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the rights conferred by Part III. Without prejudice to the powers of the Supreme Court in the aforementioned clauses (1) and (2), the Parliament is enabled, by clause (3), to empower by

A law any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) . The constitutional mandate embodied in clause (4) is that Article 32 shall not be suspended except as otherwise provided for by the Constitution.

B Inasmuch as the Supreme Court enforces the fundamental rights by issuing appropriate directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, it may be useful to refer to, in brief, the characteristics of the writs in general and writ of certiorari in particular with which we are concerned here. In English law there are two types of writs — (i) judicial procedural writs like writ of summons, C writ of motion etc. which are issued as a matter of course; these writs are not in vogue in India and (ii) substantive writs often spoken of as high prerogative writs like writ of quo warranto, habeas corpus, mandamus, certiorari and prohibition etc.; they are frequently resorted to in Indian High Courts and the Supreme Court. *"Historically, prohibition was a writ whereby the royal courts* D *of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs."*[1] In England while E issuing these writs, at least in theory, the assumption was that the King was present in the King's Court. The position regarding the House of Lords is described thus, "of the Court of Parliament, or of the King in Parliament as it is sometimes expressed, the only other supreme tribunal in this country." in *Rajunder Narain Rai* v. *Bijai Govind Singh,* (1836) 1 Moo. P.C. 117 . They are discretionary writs but the principles for issuing such writs are well defined. F In the pre-constitutional era the jurisdiction to issue the prerogative writs was enjoyed only by three chartered High Courts[2] in India but with the coming into force of the Constitution, all the High Courts and the Supreme Court are conferred powers to issue those writs under Article 226 and Article 32, respectively, of the Constitution. In regard to the writ jurisdiction, the High G Courts in India are placed virtually in the same position as the Courts of King's Bench in England. It is a well-settled principle that the technicalities associated with the prerogative writs in English Law have no role to play under our constitutional scheme. It is, however, important to note that a writ

1. Halsbury's Laws of England, Fourth Edition (reissue), Vol. 1 (1) para 103.

H 2. High Courts of Bombay, Calcutta and Madras.

of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination. "*Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities.*"[3]

Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior Courts/ Tribunals, in our view, on principle a writ of certiorari cannot be issued to co-ordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court; nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

In *Naresh Shridhar Mirajkar and Ors.* v. *State of Maharashtra and Anr.*, [1966] 3 SCR 744, some journalists filed a Writ Petition in the Supreme Court under Article 32 of the Constitution challenging an oral order passed by the High Court of Bombay, on the Original Side, prohibiting publication of the statement of a witness given in open court, as being violative of Article

3. Halsbury's Laws of England, Fourth Edition (reissue) Vol. 1 (1) para 189.

A 19(1) (a) of the Constitution of India. A Bench of nine learned Judges of this Court considered the question whether the impugned order violated fundamental rights of the petitioners under Article 19(1) (a) and if so whether a writ under Article 32 of the Constitution would issue to the High Court. The Bench was unanimous on the point that an order passed by this Court was not amenable to the writ jurisdiction of this Court under Article 32 of the Constitution. Eight B of the learned Judges took the view that a judicial order cannot be said to contravene fundamental rights of the petitioners. Sarkar, J. was of the view that the Constitution does not contemplate the High Courts to be inferior courts so their decisions would not be liable to be quashed by a writ of certiorari issued by the Supreme Court and held that this Court had no power C to issue a writ of certiorari to the High Court. To the same effect are the views expressed by Shah and Bachawat, JJ. Though, in his dissenting judgment Hidayatullah, J. (as he then was) held that a judicial order of the High Court, if erroneous, could be corrected in an appeal under Article 136 of the Constitution, he, nonetheless, opined that the impugned order of the High Court committed breach of the fundamental right of freedom of speech and D expression of the petitioners and could be quashed under Article 32 of the Constitution by issuing a writ of certiorari to the High Court as subordination of the High Court under the scheme of the Constitution was not only evident but also logical. In regard to the apprehended consequences of his proposition, the learned Judge observed :

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> "It was suggested that the High Courts might issue writs to this Court and to other High Courts and one Judge or Bench in the High Court and the Supreme Court might issue a writ to another Judge or Bench in the same Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court *because the writ* F *goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction.* Where the county court exercised the powers of the High Court, the writ was held to be wrongly issued to it (See : In re The New Par Consols, Limited [1898 (1) Q.B. 669]." (Emphasis supplied)

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In *A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602, the question debated before a seven-Judge Bench of this Court was whether the order dated February 16, 1984, passed by a Constitution Bench of this Court, withdrawing the cases pending against the appellant in the Court of Special Judge and transferring them to the High Court of Bombay with a request to the Chief H Justice to assign them to a sitting Judge of the High Court for holding trial

from day to day *R.S. Nayak* v. *A.R. Antulay*, [1984] 2 SCC 183 at 243, was a valid order. It is relevant to notice that in that case the said order was not brought under challenge in a petition under Article 32 of the Constitution. Indeed, the appellant's attempt to challenge the aforementioned order of the Constitution Bench before this Court under Article 32 of the Constitution, turned out to be abortive on the view that the writ petition under Article 32, challenging the validity of the order and judgment passed by the Supreme Court as nullity or otherwise incorrect, could not be entertained and that he might approach the court with appropriate review petition or any other application which he might be entitled to file in law. While so, in the course of the trial of those cases the appellant raised an objection in regard to the jurisdiction of the learned Judge of the High Court to try the cases against him. The learned Judge rejected the objection and framed charges against the appellant, which were challenged by him by filing a Special Leave Petition to appeal before this Court wherein the question of jurisdiction of the High Court to try the cases was also raised. It was numbered as Criminal Appeal No. 468 of 1986 and was ultimately referred to a seven-Judge Bench. By majority of 5 : 2 the appeal was allowed and all proceedings in the cases against the appellant before the High Court pursuant to the said order of the Constitution Bench dated February 16, 1984, were set aside and quashed. Mukharji, Oza and Natarajan, JJ. took the view that the earlier order of this Court dated February 16, 1984 which deprived the appellant of his constitutional rights, was contrary to the provisions of the Act of 1952 and was in violation of the principles of natural justice and in the background of the said Act was without any precedent and that the legal wrong should be corrected *ex debito justitiae*[4] Ranganath Misra, J., with whom Ray, J., agreed, while concurring with the majority, observed that it was a duty of the Court to rectify the mistake by exercising inherent powers. Ranganathan, J. expressed his agreement with the view of the majority that the order was bad being in violation of Articles 14 and 21 of the Constitution. However, he held that the said order was not one such order as to be recalled because it could not be said to be based on a view which was manifestly incorrect, palpably absurd or patently without jurisdiction. In that he agreed with Venkatachaliah, J. (as he then was) who gave a dissenting opinion. The learned Judge held that it would be wholly erroneous to characterise the directions issued by a five-Judge Bench as a nullity liable to be ignored and so declared in a collateral attack. However, five learned Judges were unanimous that the Court should act *ex debito justitiae*. On the question of power of the Supreme Court to review its earlier order under its inherent

A B C D E F G

4. In accordance with the requirement of justice, as a matter of right. H

A powers Mukharji, Oza and Natarajan, JJ. expressed the view that the Court could do so even in a petition under Article 136 or Article 32 of the Constitution. Ranganath Misra, J. gave a dissenting opinion holding that the appeal could not be treated as a review petition. Venkatachaliah, J. (as he then was) also gave a dissenting opinion that inherent powers of the Court do not confer or constitute a source of jurisdiction and they are to be exercised in aid of a B jurisdiction that is already invested for correcting the decision under Article 137 read with Order XL Rule 1 of the Supreme Court Rules and for that purpose the case must go before the same Judges as far as practicable.

On the question whether a writ of certiorari under Article 32 of the C Constitution could be issued to correct an earlier order of this Court Mukharji and Natarajan, JJ. concluded that the powers of review could be exercised under either Article 136 or Article 32 if there had been deprivation of fundamental rights. Ranganath Misra, J. (as he then was) opined that no writ of certiorari was permissible as the Benches of the Supreme Court are not subordinate to the larger Benches of this Court. To the same effect is the view D expressed by Oza, Ray, Venkatachaliah and Ranganathan, JJ. Thus, in that case by majority of 5 : 2 it was held that an order of the Supreme Court was not amenable to correction by issuance of a writ of certiorari under Article 32 of the Constitution.

E In *Smt. Triveniben* v. *State of Gujarat*, [1989] 1 SCC 678, speaking for himself and other three learned Judges of the Constitution Bench, Oza, J., reiterating the same principle, observed :

> "It is well settled now that a judgment of court can never be challenged under Article 14 or 21 and therefore the judgment of the court awarding F the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in *Naresh Shridhar Mirajkar* v. *State of Maharashtra* and also in *A.R. Antulay* v. *R.S. Nayak*, the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the G subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and H sentencing the condemned prisoner and even while considering the

circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper."

Jagannatha Shetty, J. expressed no opinion on this aspect.

We consider it inappropriate to burden this judgment with discussion of the decisions in other cases taking the same view. Suffice it to mention that various Benches of this Court reiterated the same principle in the following cases : [*A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602; *Krishna Swami* v. *Union of India and Ors.*, [1992] 4 SCC 605, *Mohd. Aslam* v. *Union of India*, [1996] 2 SCC 749; *Khoday Distilleries Ltd. and Anr.* v. *Registrar General, Supreme Court of India*, [1996] 3 SCC 114; *Gurbachan Singh and Anr.* v. *Union of India and Anr.*, [1996] 3 SCC 117; *Babu Singh Bains and Ors.* v. *Union of India and Ors.*, [1996] 6 SCC 565 and *P. Ashokan* v. *Union of India and Anr.*, [1998] 3 SCC 56.

It is, however, true that in *Supreme Court Bar Association* v. *Union of India and Anr.*, [1998] 4 SCC 409 a *Constitution Bench and in M.S. Ahlawat* v. *State of Haryana and Anr.*, [2000] 1 SCC 278 a three-Judge Bench, and in other cases different Benches quashed the earlier judgments/orders of this Court in an application filed under Article 32 of the Constitution. But in those cases no one joined issue with regard to the maintainability of the writ petition under Article 32 of the Constitution. Therefore, those cases cannot be read as authority for the proposition that a writ of certiorari under Article 32 would lie to challenge an earlier final judgment of this Court.

On the analysis of the ratio laid down in the aforementioned cases, we reaffirm our considered view that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person whether he was a party to the case or not.

In fairness to the learned counsel for the parties, we record that all of them at the close of the hearing of these cases conceded that the jurisdiction of this Court under Article 32 of the Constitution cannot be invoked to challenge the validity of a final judgment/order passed by this Court after exhausting the remedy of review under Article 137 of the Constitution read with Order XL Rule 1 of the Supreme Court Rules 1966.

However, all the learned counsel for the parties as also the learned

A Attorney-General who appeared as *amicus curiae*, on the notice of this Court, adopted an unusual unanimous approach to plead that even after exhausting the remedy of review under Article 137 of the Constitution, an aggrieved person might be provided with an opportunity under inherent powers of this Court to seek relief in cases of gross abuse of the process of the Court or gross miscarriage of justice because against the order of this Court the affected party B cannot have recourse to any other forum.

Mr. Shanti Bhushan, the learned senior counsel appearing for the petitioner, submitted that the principle of finality of the order of this Court had to be given a go-by and the case re-examined where the orders were passed C without jurisdiction or in violation of the principles of natural justice, *violation of any fundamental rights* or where there has been gross injustice. He invited our attention to Order XLVII, Rule 6 of the Supreme Court Rules, 1966 and submitted that this Court had inherent jurisdiction and that cases falling in the aforementioned categories should be examined under the inherent jurisdiction of this Court. According to the learned counsel Article 129 would not be D available to correct a judgment of this Court but he pleaded that as from the order of the Apex Court no appeal would lie, therefore, an application, by whatever name called, which should be certified by a senior counsel in regard to existence of permissible ground, has to be entertained on any of the aforementioned grounds to correct a judgment of this Court. He cited *Antulay's* E case, *Supreme Court Bar Association's* case and *Ahlawat's* case as instances in which this Court had corrected its earlier judgments. He advocated : (i) for oral hearing on such an application and (ii) for hearing by a Bench of Judges other than those who passed the order on the ground that it would inspire confidence in the litigant public.

F Mr. K.K. Venugopal, the learned senior counsel, while adopting the arguments of Mr. Shanti Bhushan submitted that the provisions of Order XLVII, Rule 6 of the Supreme Court Rules, is a mere restatement of the provisions of Article 137 of the Constitution and that the inherent jurisdiction of this Court might be exercised to remedy the injustice suffered by a person. G He suggested that a Constitution Bench consisting of senior judges and the judges who passed the order under challenge, could be formed to consider the application seeking correction of final orders of this Court. He added that to ensure that floodgates are not opened by such a remedy, an application for invoking the inherent power of this Court might require that it should be certified by a senior advocate and in case of frivolous application the petitioner H could be subjected to costs. He relied on the judgment of *United States in*

United States of America v. *Ohio Power Company*, [1 Lawyers' Ed. 2d 683] to show that in every jurisdiction the courts have corrected their own mistakes. He cited the judgment of this Court in *Harbans Singh* v. *State of Uttar Pradesh and Ors.*, [1982] 2 SCC 101 to show that even after the dismissal of the Review Petition the Supreme Court reconsidered its own judgment; he pleaded for laying down guidelines in regard to entertaining such an application.

Mr. Anil B.Divan, the learned senior counsel, submitted that Article 129 of the Constitution declared this Court to be a court of record so it would have inherent powers to pass appropriate orders to undo injustice to any party resulting from judgments of this Court. He relied on the judgment of this Court in *Supreme Court Bar Association's* case (supra) to show that such a power was exercised by this Court and pleaded to fashion appropriate procedure for entertaining application to reconsider earlier judgment of this Court at the instance of an aggrieved person to do justice to the parties.

The learned Attorney-General argued that the remedy provided under Article 32 of the Constitution would not be available to a person aggrieved by the final order of this Court; he nonetheless supported the contentions urged by other learned counsel that in case of gross miscarriage of justice, this Court ought to exercise its inherent powers by entertaining an application to examine the final order of this Court, even when a review was rejected, in the rarest of the rare cases. According to him where the order was passed without jurisdiction or in violation of the principles of natural justice, the case would fall in the rarest of the rare cases. He, however, contended that an order of this Court could not be said to violate fundamental rights conferred under Part III of the Constitution and, therefore, on that ground no relief could be claimed. He submitted that under Article 137 read with Order XL Rule 1 of the Supreme Court Rules, 1966 review of an order of this Court is provided which will be considered by the same Bench unless the same Judges are not available by reason of demitting the office. In regard to reconsideration of the judgment under the inherent power of the Court he referred to the judgment of the Federal Court in *Raja Prithwi Chand Lall Choudhry etc.* v. *Rai Bahadur Sukhraj Rai and Ors. etc.*, (1940) 2 FCR 78]. He submitted that for correction of a final judgment of this Court on the ground of lack of jurisdiction or violation of principle of natural justice, a curative petition could be entertained which might be heard by an appropriate Bench composed of the senior Judges as well as Judges who passed the order.

Dr. Rajiv Dhavan, the learned senior counsel, argued that since the

A Supreme Court is the creature of the Constitution so the corrective power has to be derived from the provisions conferring jurisdiction on the Supreme Court like Articles 32 and 129-140; such a power does not arise from an abstract inherent jurisdiction. The corrective power must be exercised so as to correct an injustice in a case of patent lack of jurisdiction in a narrow sense, not in the Anisminic's broader sense, and gross violation of natural justice. B Relying on the judgment of *House of Lords in R* v. *Bow Street Metropolitan Stipendiary Magistrate and Ors.*, **ex parte** *Pinochet Ugarte (No. 2) 's* case [1999] 1 All ER 577 he has submitted that this Court has inherent power to correct its own judgment where a party through no fault of his own has been subjected to an unfair procedure giving scope for bias. His further contention C is that the corrective power is a species of the review power and Articles 129, 137, Order XL Rule 5 and Order XLVII Rules 1 and 6 indicate that this Court has inherent power to set right its own judgment. He referred to the decisions of this Court in *Antulay's* case, *Supreme Court Bar Association's* case, *Ahlawat's* case and Triveniben's case (supra) to impress upon us that this Court has earlier exercised this power. He submitted that the Supreme Court D can also issue practice direction in that behalf.

Mr. Ranjit Kumar, the learned senior counsel, invited our attention to various provisions of the Constitution dealing with different types of jurisdictions of this Court and advocated that in case of manifest illegality and E palpable injustice this Court under its inherent powers could reconsider final judgment/order passed by this Court. He submitted that the composition of the Bench might include senior-most Judges along with the Judges who passed the order, if available. It is also his submission that while considering such curative petitions on the ground of manifest illegality and palpable injustice, in the rarest of rare cases, factors like the doctrine of stare decisis and the F finality and the certainty of the law declared by this Court are required to be kept in mind. He referred to the judgment of this Court rendered by seven learned Judges in *The Keshav Mills Co. Ltd.* v. *Commissioner of Income-Tax Bombay North*, [1965] 2 SCR 908, which was followed by another Bench of seven learned Judges reported in *Maganlal Chhaganlal (P) Ltd.* v. *Municipal* G *Corporation of Greater Bombay and Ors.*, [1974] 2 SCC 402 and by a Bench of five learned Judges in the case of *The Indian Aluminium Co. Ltd.* v. *The Commissioner of Income-tax, West Bengal, Calcutta*, [1972] 2 SCC 150. He stressed that the power of re-consideration of an earlier decision had to be very restricted; when the power of review is very limited and circumscribed as is evident from the decision of the Constitution Bench in *Cauvery Water* H *Disputes Tribunal*, [1993] Suppl. 1 SCC 96 and the Bench of three learned

Judges in *S. Nagaraj and Ors.* v. *State of Karnataka and Anr.*, [1993] Suppl. 4 SCC 595 and in *Ramdeo Chauhan* v. *State of Assam*, [2001] 5 SCC 714 by three learned Judges and in the case of *Lily Thomas and Ors.* v. *Union of India and Ors.*, [2000] 6 SCC 224 the exercise of inherent power for correcting the manifest illegality and palpable injustice after dismissal of the review petition has to be much narrower than the power of review.

These contentions pose the question, whether an order passed by this Court can be corrected under its inherent powers after dismissal of the review petition on the ground that it was passed either without jurisdiction or in violation of the principles of natural justice or due to unfair procedure giving scope for bias which resulted in abuse of the process of the Court or miscarriage of justice to an aggrieved person.

There is no gainsaying that the Supreme Court is the Court of last resort – the final Court on questions both of fact and of law including constitutional law. The law declared by this Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India. In a judgment there will be declaration of law and its application to the facts of the case to render a decision on the dispute between the parties to the lis. It is necessary to bear in mind that the principles in regard to the highest Court departing from its binding precedent are different from the grounds on which a final judgment between the parties, can be reconsidered. Here, we are mainly concerned with the latter. However, when reconsideration of a judgment of this Court is sought the finality attached both to the law declared as well as to the decision made in the case, is normally brought under challenge. It is, therefore, relevant to note that so much was the value attached to the precedent of the highest court that in *The London Street Tramways Company, Limited* v. *The London County Council* [LR 1898 Appeal Cases 375], the House of Lords laid down that its decision upon a question of law was conclusive and would bind the House in subsequent cases and that an erroneous decision could be set right only by an Act of Parliament.

> In *Haystead and Ors.* v. *Commissioner of Taxation*, LR 1926 AC 155 at 165, Lord Shaw observed : "Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result..... If this were permitted litigation would have no end, except when legal ingenuity is exhausted."

A To the same effect is the view expressed by the Federal Court of India in *Raja Prithwi Chand Lall Choudhary's* case (supra) placing reliance on dicta of the Privy Council in *Venkata Narasimha Appa Row* v. *Court of Wards*, [1886] (II) Appeal Cases 660 at 664]. Gwyer, CJ. speaking for the Federal Court observed.

B "This Court will not sit as a court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public interest if cases once decided by the Court could be re-
C opened and re-heard : "There is a salutary maxim which ought to be observed by all Courts of last resort —*Interest reipublicae ut sit finis litium*[5]. Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of
D such a tribunal as this."

In *S. Nagaraj's* case (supra) , an application was filed by the State for clarification of the order passed earlier. It was urged by the petitioner that any modification or recalling of the order passed by this Court would result in destroying the principle of finality enshrined in Article 141 of the Constitution.
E Sahai, J. speaking for himself and for Pandian, J. observed :

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative
F Law as in Public Law. Even the law bends before justice."

The learned Judge referring to the judgment of *Raja Prithwi Chand Lall Choudhury's* case (supra) further observed : "Even when there was no statutory provision and no rules were framed by the highest court indicating the
G circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice."

The position with regard to conclusive nature of the precedent obtained in England till the following practice statement was made by *Lord Gardiner,*

H 5. It concerns the state that there be an end of lawsuits. It is in the interest of the State that there should be an end of law-suit.

L.C. in Lloyds Bank, Ltd. v. *Dawson and Ors.*, [Note (1966) 3 All E.R. 77 on behalf of himself and the Lords of Appeal in Ordinary,

> "They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so."

The principle in regard to departing from an earlier view by the House, after the said practice statement, is reflected in the speech of *Lord Reid in Jones* v. *Secretary of State for Social Services, Hudson* v. *Secretary of State for Social Services,* (conjoined appeals) (1972) 1 All E.R. 145, who observed:

> "The old view was that any departure from rigid adherence to precedent would weaken that certainty. I did not and do not accept that view. It is notorious that where an existing decision is disapproved but cannot be overruled courts tend to distinguish it on inadequate grounds. I do not think that they act wrongly in so doing; they are adopting the less bad of the only alternatives open to them. But this is bound to lead to uncertainty for no one can say in advance whether in a particular case the court will or will not feel bound to follow the old unsatisfactory decision. On balance it seems to me that overruling such a decision will promote and not impair the certainty of the law.
>
> But that certainty will be impaired unless this practice is used sparingly. I would not seek to categorise cases in which it should or cases in which it should not be used. As time passes experience will supply some guide. But I would venture the opinion that the typical case for reconsidering an old decision is where some broad issue is involved, and that it should only be in rare cases that we should reconsider questions of construction of statutes or other documents."

In *Fitzleet Estates Ltd.* v. *Cherry (Inspector of Taxes),* [1977] 3 All E.R. 996] Lord Wilberforce observed :

> "My Lords, in my firm opinion, the 1966 Practice Statement was never intended to allow and should not be considered to allow such a course. Nothing could be more undesirable, in fact, than to permit litigants, after a decision has been given by this House with all appearance of finality, to return to this House in the hope that a differently constituted committee might be persuaded to take the view which its predecessors rejected. True that the earlier decision was by majority : I say nothing as to its correctness or as to the validity of the

A reasoning by which it was supported. That there were two eminently possible views is shown by the support for each by at any rate two members of the House. But doubtful issues have to be resolved and the law knows no better way of resolving them than by the considered majority opinion of the ultimate tribunal. It requires much more than doubts as to the correctness of such opinion to justify departing from it."

Lord Edmund-Davies observed :

"My Lords, I respectfully share your views that the *Chancery Lane* decision [1966] 1 All. E.R. 1 was correct. But even had I come to the opposite conclusion, the circumstances adverted to are such that I should not have thought it 'right' to depart from it now. To do so would have been to open the floodgates to similar appeals and thereby to impair that reasonable certainty in the law which the Practice Statement [Note 1966 (3) All E.R. 77] itself declared to be 'an indispensable foundation upon which to decide what is the law and its application to individual cases'."

The law existing in other countries is aptly summarised by Aharon Barak in his treatise[6] thus :

"The authority to overrule exists in most countries, whether of civil law or common law tradition. Even the House of Lords in the United Kingdom is not bound any more by its precedents. The Supreme Court of the United States was never bound by its own decisions, and neither are those of Canada, Australia, and Israel."

To what extent the principle of stare decisis binds this Court, was considered in the case of *Keshav Mills Co. Ltd.* (supra). The question before a Constitution Bench of seven learned Judges of this Court was : to what extent the principle of stare decisis could be pressed into service where the power of this Court to overrule its earlier decisions was invoked. The Court expressed its view thus :

"When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the

6. "Judicial Discretion" at page 234.

country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions."

In *Maganlal Chhaganlal's* case (supra), a Bench of seven learned Judges of this Court considered, *inter alia*, the question : whether a judgment of the Supreme Court in *Northern India Caterers'* case was required to be overruled. Khanna, J. observed :

> "At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of rule of law. Certainty in law would be considerably eroded and suffer a serious set back if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify the overruling of the view. The law laid down by this Court is binding upon all courts in the country under Article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this Court on the basis of which numerous cases have been decided and many transactions have taken place is held to be not the correct law."

In the case of *The Indian Aluminium Co. Ltd.* (supra) , the question before a Constitution Bench of five learned Judges was : when can this Court properly dissent from a previous view?

A In regard to the effect of an earlier order of this Court Sawant, J. speaking for the Constitution Bench observed in *Cauvery Water Disputes Tribunal's* case (supra) as follows :

> "The decision of this Court on a question of law is binding on all courts and authorities. Hence under the said clause the President can
B refer a question of law only when this court has not decided it. Secondly, a decision given by this Court can be reviewed only under Article 137 read with Rule 1 of Order XL of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, this Court overrules the view of law expressed by it in an earlier case,
C it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is *per incuriam* or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief. See : *Bengal Immunity Company Ltd.* v. *State of*
D *Bihar*, [1955] 2 SCR 603.

In the cases of *Ramdeo Chauhan* (supra) and *Lily Thomas* (supra) , the question before the Court was, the scope of the power of review of a judgment of this Court under Article 137 of the Constitution read with Section 114, Order XLVII of the C.P.C. and Order XL Rule 1 of the Supreme Court Rules,
E 1966.

In the case of *Ex parte Pinochet Ugarte* (No 2) (supra) , on November 25, 1998 the House of Lords by majority 3 : 2 restored warrant of arrest of Senator Pinochet who was the Head of the State of Chile and was to stand trial in Spain for some alleged offences. It came to be known later that one
F of the Law Lords (Lord Hoffmann), who heard the case, had links with Amnesty International (A.I.) which had become a party to the case. This was not disclosed by him at the time of the hearing of the case by the House. Pinochet Ugarte, on coming to know of that fact, sought reconsideration of the said judgment of the House of Lords on the ground of an appearance of
G bias not actual bias. On the principle of disqualification of a judge to hear a matter on the ground of appearance of bias it was pointed out,

> "The principle that a judge was automatically disqualified from hearing a matter in his own cause was not restricted to cases in which he had a pecuniary interest in the outcome, but also applied to cases where
H the judge's decision would lead to the promotion of a cause in which

the judge was involved together with one of the parties. That did not mean that judges could not sit on cases concerning charities in whose work they were involved, and judges would normally be concerned to recuse themselves or disclose the position to the parties only where they had an active role as trustee or director of a charity which was closely allied to and acting with a party to the litigation. In the instant case, the facts were exceptional in that AI was a party to the appeal, it had been joined in order to argue for a particular result and the Law Lord was a director of a charity closely allied to AI and sharing its objects. Accordingly, he was automatically disqualified from hearing the appeal. The petition would therefore be granted and the matter referred to another committee of the House for rehearing per curiam." A B C

On the point of jurisdiction of the House to correct any injustice in an earlier order, it was observed :

"In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered. In *Cassell & Co. Ltd.* v *Broome,* (No. 2) [1972] 2 All ER 849 = 1972 AC 1136 your Lordships varied an order for costs already made by the House in circumstances where the parties had not had a fair opportunity to address argument on the point." D E

And it was held,

"An appeal to the House of Lords will only be reopened where a party through no fault of its own, has been subjected to an unfair procedure. A decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong." F

We may notice here that in these cases except in *Raja Prithwi Chand Lall Choudhary* (supra) and *Ex parte Pinochet Ugarte* (No.2) (supra) , the question was in what circumstances the ratio in the earlier judgment of the highest court having precedent value could be departed. In the aforementioned two cases the decision was rendered on an application seeking reconsideration of the final judgment of the Federal Court and House of Lords respectively. In view of the specific provision of Article 137 of the Constitution read with Order XL Rule 1 of the Supreme Court Rules, conferring power of review G H

A on this Court, the problem in entertaining a review petition against its final judgment which its precursor - the Federal Court - had to face, did not arise before this Court.

The petitioners in these writ petitions seek re-consideration of the final judgments of this Court after they have been unsuccessful in review petitions B and in that these cases are different from the cases referred to above. The provision of Order XL Rule 5 of the Supreme Court Rules bars further application for review in the same matter. The concern of the Court now is whether any relief can be given to the petitioners who challenge the final judgment of this Court, though after disposal of review petitions, complaining C of the gross abuse of the process of Court and irremedial injustice. In a State like India, governed by rule of law, certainty of law declared and the final decision rendered on merits in a lis between the parties by the highest court in the country is of paramount importance. The principle of finality is insisted upon not on the ground that a judgment given by the apex Court is impeccable but on the maxium *"Interest reipublicae ut sit finis litium."*[7]

D

At one time adherence to the principle of *stare decisis* was so rigidly followed in the courts governed by the English Jurisprudence that departing from an earlier precedent was considered heresy. With the declaration of the practice statement by the House of Lords, the highest court in England was enabled to depart from a previous decision when it appeared right to do so. E The next step forward by the highest court to do justice was to review its judgment *inter partie* to correct injustice. So far as this Court is concerned, we have already pointed out above that it has been conferred the power to review its own judgments under Article 137 of the Constitution. The role of judiciary merely to interpret and declare the law was the concept of bygone F age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years there is a discerniable shift in the approach of the final courts in favour of rendering justice on the facts presented before them, without abrogating but by-passing the principle G of finality of the judgment. In *Union of India and Anr. etc.* v. *Raghubir Singh (Dead) by Lrs. etc. etc.,* [1989] 2 SCC 754 Pathak, CJ. speaking for the Constitution Bench aptly observed :

"But like all principles evolved by man for the regulation of the

7. It concerns the state that there be an end of lawsuits. It is in the interest of the State that H there should be an end of law-suit.

social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for re-adjustment in a changing society, a re-adjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience" (Oliver Wendell Holmes : The Common Law, p.5), and again when he declared in another study (Oliver Wendell Holmes: Common Carriers and the Common Law, (1943) 9 Curr LT 387, 388) that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined (Julius Stone : Legal Systems & Lawyers Reasoning, pp.58-59)."

The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles - ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principle of natural justice or giving scope for apprehension of bias due to a Judge who participated in decision making process not disclosing his links with a party to the case, or on account of abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice - a concept which is not disputed but by a few. We are of the view that though Judges of the highest Court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error. After giving our anxious consideration to the question we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the final court in the country should not be open to challenge yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be

A oppressive to judicial conscience and would cause perpetuation of irremediable injustice. It may be useful to refer to the judgment of the Supreme Court of United States in *Ohio Power Company's* case (supra) . In that case the Court of Claims entered judgment for refund of tax, alleged to have been overpaid, in favour of the tax payer. On the application of the Government a writ of certiorari against that judgment was declined by the Supreme Court of United B States in October 1955. The Government sought re-hearing of the case by filing another application which was dismissed in December 1955. A second petition for hearing was also rejected in May 1956. However, in June 1956 the order passed in December 1955 was set aside *sua sponte* (of its own motion) and that case was ordered to be heard along with two other pending C cases in which the same question was presented. In those two cases the Supreme Court held against the tax payer and, on the authority of that judgment, reversed the judgment of the Court of Claims. Four learned members of the Court, in *per curiam* opinion, rested the decision "on the ground of interest in finality of the decision must yield where the interest of justice so required". Three learned members dissented and held that denial of certiorari D had become final and ought not to be disturbed. Two learned members, however, did not participate.

This Court in *Harbans Singh's* case (supra) , on an application under Article 32 of the Constitution filed after the dismissal of special leave petition and the review, reconsidered its judgment. In that case, among others, the E petitioner and another person were convicted under Section 302 of I.P.C. and sentenced to death. In the case of one of the remaining two convicts, the Supreme Court commuted the death sentence to life imprisonment. While staying the death sentence of the petitioner, A.N. Sen, J. in his concurring opinion, noticed the dismissal of the petitioner's special leave, review petitions F and the petition for clemency by the President and observed:

> "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent G power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

H In *Antulay's* case (supra) , the majority in the seven-Judge Bench of

this Court set aside an earlier judgment of the Constitution Bench in a collateral proceeding on the view that the order was contrary to the provisions of the Act of 1952; in the background of that Act without precedent and in violation of the principles of natural justice, which needed to be corrected *ex debito justitiae*.

In *Supreme Court Bar Association's* case (supra), on an application filed under Article 32 of the Constitution of India, the petitioner sought declaration that the Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone had exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct and that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction had no such jurisdiction, power or authority in that regard. A Constitution Bench of this Court considered the correctness of the judgment of this Court in *Re: Vinay Chandra Mishra*, [1995] 2 SCC 584. The question which fell for consideration of this Court was : whether the punishment of debarring an advocate from practice and suspending his licence for a specified period could be passed in exercise of power of this Court under Article 129 read with Article 142 of the Constitution of India. There an errant advocate was found guilty of criminal contempt and was awarded the punishment of simple imprisonment for a period of six weeks and was also suspended from practice as an advocate for a period of three years from the date of the judgment of this Court for contempt of the High Court of Allahabad. As a result of that punishment all elective and nominated offices/ posts then held by him in his capacity as an advocate had to be vacated by him. Elucidating the scope of the curative nature of power conferred on the Supreme Court under Article 142, it was observed :

> "The plenary powers of the Supreme Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which

A the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. It is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Supreme Court B to prevent "clogging or obstruction of the stream of justice"."

Inspite of the width of power conferred by Article 142, the Constitution Bench took the view that suspending the advocate from practice and suspending his licence was not within the sweep of the power under the said C Article and overruled the judgment in *Re V.C. Mishra's* case (supra).

In *M.S. Ahlawat's* case (supra) , the petitioner, who was found guilty of forging signatures and making false statements at different stages before this Court, was inflicted punishment under Section 193 IPC in *Afzal* v. *State of Haryana,* [1996] 7 SCC 397. He filed an application under Article 32 of D the Constitution assailing the validity of that order. Taking note of the complaint of miscarriage of justice by the Supreme Court in ordering his incarceration which ruined his career, acting without jurisdiction or without following the due procedure, it was observed that to perpetuate an error was no virtue but to correct it was a compulsion of judicial conscience. The correctness of the judgment was examined and the error was rectified. E

In the cases discussed above this Court reconsidered its earlier judgments, inter alia, under Articles 129 and 142 which confer very wide powers on this Court to do complete justice between the parties. We have already indicated above that the scope of the power of this Court under Article 129 as a court of record and also adverted to the extent of power under Article 142 of the F Constitution.

The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may re-consider its judgments in exercise of its inherent power.

G The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application H seeking reconsideration of an order of this Court which has become final on

dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained. A

Nevertheless, we think that a petitioner is entitled to relief *ex debito justitiae* if he establishes (1) violation of principles of natural justice in that he was not a party to the lis but the judgement adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner. B

The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a Senior Advocate with regard to the fulfillment of the above requirements. C

We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three senior-most Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. It shall be open to the Bench at any stage of consideration of the curative petition to ask a senior counsel to assist it as *amicus curiae*. In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner. D E

Insofar as the present writ petitions are concerned, the Registry shall process them, notwithstanding that they do not contain the averment that the grounds urged were specifically taken in the review petitions and the petitions were dismissed in circulation. F

The point is accordingly answered. G

BANERJEE, J. I have had the privilege of going through a very lucid expression of opinion by brother Quadri and while recording my concurrence therewith I wish to add a few paragraphs of my own.

The issue involved presently though not a concept within the ambit of H

A doctrine of stare decisis but akin thereto to the effect as to the scope or finality of the decision of this Court in the normal course of events. There cannot possibly be any manner of doubt that the matter once dealt with by this Court attains a state of finality and no further grievance can be had in regard thereto. The founding fathers of the Constitution decidedly provided that the decision of this Court as final, conclusive and binding---final and B conclusive inter-parties and binding on all. But the makers have also conferred a power of review of the Judgment of this Court and the perusal of the provisions of Articles 137 and 145 makes it abundantly clear. In the event, however, a party stands aggrieved by reason of a rejection of review, the question posed as to whether a litigant thereof to suffer the onslaught for all C times to come and in perpetuity when on the face of the Order it appears to be wholly without jurisdiction or in violation of natural justice - a further factum of there being a bias or gross or manifest injustice, which shocks the conscience of a reasonable man: needless to record that the facts, as noticed above, are not only unwarranted but possibly in the region of impossibility or more appropriately improbable.

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Mr. K.K. Venugopal, the learned senior council appearing in support of one of the matters before this Bench, has been rather emphatic in his submissions as regards the apprehension of bias and it is his contention that a mere likelihood of bias should prompt this Court to allow a further E consideration of the matter. Incidentally, be it noted that in all these matters, petitions under Article 32 of the Constitution have been filed with a prayer for issuance of the Writ of Certiorari. We called for the records in some of the matters, which stand concluded by decisions of this Court and the principal issue thus arises as to the maintainability of a petition under Article 32 of the Constitution. There is no denial of the fact that the right exists to move this F Court for enforcement of the rights conferred by Part III of the Constitution and stands conferred in terms of Article 32 and the language used therein is of widest possible amplitude but as regards the issuance of writs, the view seems to be rather well settled in the negative.

G About four decades ago, in *Naresh Shridhar Mirajkar and Ors.* v. *State of Maharashtra and Anr.*, [1966] 3 SCR 744, a nine Judge Bench of this Court in no uncertain terms negatived the availability of writ jurisdiction under Article 32 and with utmost clarity and felicity of expression stated:

> "We are, therefore, satisfied that so far as the jurisdiction of this H Court to issue writ of certiorari is concerned, it is impossible to

accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Article 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Article 32. The words used in Article 32 are no doubt wide; but having regard to the considerations which we have set out in the course of his judgment, we are satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32; to hold otherwise would be repugnant to the well-recognised limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decisions in relation to the said point."

Two decades later, this Court in *A.R. Antulay* v. *R.S. Nayak and Anr.*, [1988] 2 SCC 602, relying upon the nine Judge Bench Judgment, came to a conclusion that in view of the decision in Mirajkar case, it must be taken as concluded that the judicial proceedings in this Court are not subject to the writ jurisdiction under Article 32 of the Constitution and that is so on account of the fact that Benches of this Court are not subordinate to larger Benches thereof and certiorari is not admissible thus for quashing of the Orders made on the judicial side of the court. In *Smt. Triveniben* v. *State of Gujarat*, [1989] 1 SCC 678, a Constitution Bench of this Court also in no uncertain terms laid down that it will not be open to this Court in exercise of its jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent Court. To complete the list, however, a very recent decision of this Court in *Ajit Kumar Barat* v. *Secretary, Indian Tea Association and Ors.*, [2001] 5 SCC 42 one of us (Shivaraj V. Patil, J.) upon consideration of Mirajkar (supra) and Antulay (supra) came to a conclusion that authority of an Order passed by this Court itself cannot be subjected to writ jurisdiction of this Court.

On the wake of the aforesaid, there is thus no manner of doubt that the plea of the availability of writ jurisdiction, as envisaged under Article 32 of the Constitution, cannot be sustained and the law seems to be well settled on

A this score and as such we need not delve into neither dilate any further thereon.

Having regard to the conclusion, as above, does it, however, mean and imply a closed door even if the Order of this Court depicts that the same stands in violation of natural justice adversely and seriously affecting the B rights of the parties or the same depicts manifest injustice rendering the order a mockery of justice - can it be said that the binding nature of an Order of this Court, cannot thus ever be corrected even if it causes insurmountable difficulty and immense public injury - the debate has a very large and wide ramification and thus will have to be dealt with in a manner with care and C caution and with proper circumspection as regards its impact - the principal basis being the concept of justice and this is where the principle of *ex debito justitiae* comes to play. Can it be said that the justice delivery system of the country is such that in spite of noticing a breach of public interest with a corresponding social ramification, this Court would maintain a delightful silence with a blind eye and deaf ear to the cry of a society in general or even D that of a litigant on the ground of finality of an Order as passed by this Court? True the finality shall have to be maintained but is it the principal requirement, which the law envisages? Rescue Pound stated that flexibility is the greatest virtue of law and thus its applicability should also be flexible rather than a rigid insistence on a strict format. Justice of the situation shall E have to be considered with a fair perception of such a concept rather than with a blinking light - attention ought to be focused on a larger social perspective since law is meant for the society and if flexibility is its virtue, which law enjoys, its corresponding primary duty thus would be to change the legal horizon and perspective with the appropriate socio-economic change. The law must follow the society rather than abandon the society and carry on F it strict track without any deviation or without being hindered of the social changes and thus resultantly face a social catastrophe.

Lord Denning's exposition of the doctrine 'ex debito justitiae' in *A/s Cathrineholm* v. *Norequipment Trading Ltd.*, (1972) 2 All ER 538 has been G stated to be rather restrictive, but since basically the same stands out to be on the concept of justice, speaking for myself do not subscribe to such a criticism. The Master of the Rolls stated that if the Judgment is irregular - that is, which ought not to have been signed at all - then the defendant is entitled *ex debito justitiae* to have it set aside but in the event it is otherwise regular, question of setting aside of the Judgment would not arise. It is, H thereafter, however, arises, the question as to the true effect of Regular and

Irregular Judgments : Since the issue involves a much wider debate, we refrain ourselves to attribute meanings thereto or to dilate on the ramifications of the terminology having regard to further enunciation of the doctrine by both the English Courts and the Indian Supreme Court. A

Adverting to the true purport of the maxim, therefore, it is no gainsaid that "the same relates to and arises from the *concept of justice* : In the event there appears to be infraction of the concept, question of there being a turn around and thereby maintaining a total silence by the law Courts would not arise. It is on this score, the learned Attorney General for India, appearing as Amicus Curiae, contended that Supreme Court has the jurisdiction to exercise this inherent power for the ends of justice or to prevent abuse of the process of the court. Though we are not inclined to ascribe an Order of this Court as an abuse of the process of the Court, but the factum of the availability of inherent power for the ends of justice cannot in any way be decried. The Constitution of India assigned a pivotal role on to the Supreme Court providing therein the supremacy of law with the rationale being justice is above all. The exercise of inherent power of this Court also stands recognised by Order XL VII Rule 6 of the Supreme Court Rules, 1966, which reads as below : B C D

> "6. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court." E

The observations of this Court in A.R. Antulay (supra) lends concurrence to such an exercise of power by this Court *ex debito justitiae*. The Court can exercise its inherent power in the event of there being an error brought to the notice of this Court. Mukharji, J (as he then was) in paragraph 40 of the Judgment in A.R. Antulay (supra) very lucidly and with utmost precision stated: F

> "The question of validity, however, is important in that the want of jurisdiction can be established solely by a superior court and that, in practice, no decision can be impeached collaterally by any inferior court. But the superior court can always correct its own error brought to its notice either by way of petition or *ex debito justitiae*. See Rubinstein's Jurisidiction and Illegality)." G

Incidentally a Seven Judge Bench of this Court in *Synthetics and* H

A *Chemicals Ltd. and Ors.* v. *State of U.P. and Ors.*, [1990] 1 SCC 109 relied upon another Judgment of *Lord Denning in Ostime (Inspector of Taxes)* v. *Australian Mutual Provident Society*, (1959) 3 All ER 245 : 1960 AC 459 and the dissent noting by Justice Jackson in the case of *Commonwealth of Massachusetts et al* v. *USA*, (92 L ed 968), wherein in similar tone it has been stated that as soon as one finds a journey in the wrong direction, there B should always be an attempt to turn to the right direction since law courts ought to proceed for all times in the right path rather than in the wrong. Adverting to the issue of inherent power, the observations of this Court in *S Nagaraj and Ors.* v. *State of Karnataka and Anr.*, [1993] Supp. 4 SCC 595 seems to be rather apposite. This Court in paragraph 19 of the report, upon C relying on the fundamental principles of jurisprudence that justice is above all, stated as below :

> "Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts D and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage or justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to E avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai*, AIR (1941) FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp. 45 the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground F developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae* v. *Bijai Govind Singh*, (1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175 that an order made by the Court was final and could not be altered :
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> G "....nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must H possess the same authority. The Lords have however gone a

step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. A

Basis for exercise of the power was stated in the same decision as under : B

> "It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard." C

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XL VII Rule I of the Civil Procedure Code. The expression 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice." D E F G

In one of its recent pronouncements [*Supreme Court Bar Association v. Union of India and Anr.*, [1998] 4 SCC 409] this Court has had the H

A occasion to deal with the issue at some length relying upon Article 129 read with Article 142 of the Constitution. The plenary powers of the Supreme Court, as envisaged under Article 142, stand out to be complimentary to those powers to do complete justice between the parties and it is on this score in paragraphs 47 and 48 of the report, this Court observed:

B "47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice C between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. D This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable E adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice." It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant F while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or case under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot G be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article H 142. The construction of Article 142 must be functionally informed

by the salutary purposes of the article, *viz.*, to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemnor and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-setting. It is a "problem-solver in the nebulous areas" see *K. Veeraswami* v. *Union of India*, [1991] 3 SCC 655 : [1991] SCC (Cri) 734 but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr. Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required - be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to

A correct its errors - any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference may be made in this context to a decision of this Court in the case of *J. Ranga Swamy* v. *Govt. of A.P. and Ors.*, AIR (1990) SC 535, wherein this Court in paragraph 3 stated as below:

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> "We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case [1988] 2 SCC 602 : AIR 1988 SC 1531. We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

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E True, due regard shall have to have as regards opinion of the Court in *Ranga Swamy* (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of *ex debito justitiae* be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest injustice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silence so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr. Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's

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box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook no further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal - The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affection of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice - the same being the true effect of the doctrine of *ex debito justitiae*. The oft quoted statement of law of Lord Hewart, CJ in *R* v. *Sussex Justices, ex p McCarthy*, (1924) 1 KB 256 that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in *R.* v. *Bow Street Metropolitan Stipendiary Magistrate and Ors., ex parte* Pinochet Ugarte (No. 2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system - any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look.

Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of

A our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. B Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century. No costs.

C K.K.T. Petitions answered.