

**(2012) 5 Supreme Court Cases 1 : (2012) 2 Supreme Court Cases (Civ) 820 :
(2012) 2 Supreme Court Cases (Cri) 241 : (2012) 1 Supreme Court Cases (L&S)
810 : 2012 SCC OnLine SC 186**

In the Supreme Court of India

(BEFORE DR B.S. CHAUHAN AND SWATANTER KUMAR, JJ.)


RAMLILA MAIDAN INCIDENT, IN RE

Suo Motu WP (Crl.) No. 122 of 2011⁺, decided on February 23, 2012

A. Constitution of India — Arts. 19(1)(a) & (b) and (2) & (3), 21 and 32 and Preamble — Public meetings, rallies and demonstrations — Public conducting itself in orderly fashion and agitating peacefully — Proper and permissible response of State and police in case of apprehension of breach of peace, disorder, etc., despite the public being in a peaceful state

— Police crackdown at midnight on members of public sleeping in enclosed public ground, who were a part of public agitation spread over a number of days — Propriety — Ramlila Maidan incident of 4-6-2011/5-6-2011 — Imposition of prohibitory order at night and hasty and forcible evacuation of sleeping public by police which resorting to violence to force the evacuation — Suo motu probe of incident ordered by Supreme Court on basis of media reports and CCTV camera footage — Police found to have misused its power and leader of agitation, a Yoga Guru also found partly responsible — Directions issued for initiation of disciplinary and criminal action against police officials/persons concerned, and for remedial action and payment of compensation to victims of incident

— Permission granted to Yoga Guru, Baba Ramdev for holding yoga camp from 1-6-2011 to 20-6-2011 at Ramlila Maidan in New Delhi abruptly withdrawn on the night of 4-6-2011, and prohibitory order imposed under S. 144 CrPC, 1973 — Action taken on pretext that Yoga Guru instead of using premises exclusively for yoga camp as permitted, was promoting his agitation against black money and corruption — Huge gathering of people allegedly expected on Baba Ramdev commencing indefinite hunger strike on 4-6-2011 as part of abovesaid agitation — Apprehension raised that swelling

 Page: 2

crowd may cause danger to human life and disturbance of public tranquillity — Yoga Guru and his supporters asked to leave Ramlila Maidan at midnight itself — Yoga Guru not cooperating with police in implementation of prohibitory order though he appealed to his supporters to remain peaceful — Confrontation leading to caning and tear gas shelling from police side and stone-pelting from public side — Several persons including police personnel injured and one woman succumbing to injuries later on — Hasty police action at odd hours was in fact a fallout of talks' failure on preceding day (3-6-2011) between Yoga Guru and representatives of Central Government which was trying to persuade Yoga Guru to call off his agitation against black money

— Police action, held (*per curiam*), unconstitutional inasmuch as there was no justification to compel sleeping public to leave at night when there was no immediate danger of peace

being disturbed – Necessary procedural safeguards like public announcement of promulgation, banner display of prohibitory order and prior warning before use of force, also not observed by police – Yoga Guru also found to be partly responsible for incident – It was his legal and moral duty to obey prohibitory order – His cooperation might have avoided police-public confrontation and resultant damage to life and property – Contributory negligence of organisers of yoga camp – Held, organisers by refusing to cooperate with police contributed to sufferings of people and were therefore also liable

– Remedial and compensatory measures directed (*per curiam*) – Disciplinary action directed to be taken against police officials who used undue force or failed to render assistance to injured persons – Criminal cases directed to be registered both against police officials and members of public who resorted to violence – Compensation of Rs 5 lakhs awarded to legal heirs of lady who died as a result of this incident – Compensation of Rs 50,000 awarded to each of persons who were hospitalised due to serious injuries – Compensation of Rs 25,000 also awarded to each of persons who were discharged after simple medical treatment – Liability for monetary compensation apportioned between State and Yoga Guru in ratio of 3 : 1 – Such compensation to be treated as ad hoc compensation, and victims, further held, could claim additional compensation by moving competent court – Administrative Law – Administrative Action – Administrative or Executive Function – Colourable/Arbitrary/Mala fide Exercise of Power – Criminal Procedure Code, 1973 – S. 144 – Penal Code, 1860, S. 187

B. Constitution of India – Arts. 32, 136 and 226 – Public law compensation – Police excesses – Violation of fundamental rights – Compensation awarded – Maxims – *Injuria non excusat injuriam*

C. Service Law – Departmental Enquiry – Initiation of – Court direction regarding – Misconduct – Improper exercise of official power

D. Criminal Procedure Code, 1973 – Ss. 144 and 134 – Prohibitory order under S. 144 – Enforcement of – Necessity of strict compliance with requirements of publication/affixation – Penal Code, 1860 – Ss. 151, 152, 159 and 160 – Police – Delhi Police Standing Orders – Standing Order 309

Baba Ramdev was a world-famous Yoga Guru who had large following in India. Bharat Swabhiman Trust, Delhi Pradesh (Baba Ramdev's trust), Respondent 4 sought permission from Municipal Corporation of Delhi for organising a yoga camp for 4 to 5 thousand people at a public ground popularly known as Ramlila Maidan in Delhi from 1-6-2011 to 20-6-2011. A conditional no-objection certificate was granted by the police in this regard. The camp was however virtually used as a venue for mobilising public opinion against Indian black money stashed in foreign countries and to pressurise the Government to bring back the money in India. The Government tried to convince Yoga Guru that necessary steps were being taken in this direction and therefore this should not be made a subject-matter of public agitation at this stage. The discussion between Yoga Guru and the Central Government failed and there was a police crackdown on the night between 4-6-2011 and 5-6-2011. Media reports showed the police forcibly evicting the sleeping public from Ramlila Maidan by caning and use of tear gas and a commotion ensued resulting in injuries to several persons.

Severely criticising the handling of the situation by the police authorities, the Supreme Court

Held :


Per Swatanter Kumar, J.

The police could have avoided the tragic incident by exercising greater restraint, patience and resilience. The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed. The decision to forcibly evict the innocent public sleeping at the Ramlila Ground in the midnight of 4-6-2011/5-6-2011, whether taken by the police independently or in consultation with the Ministry of Home Affairs is amiss and suffers from the element of arbitrariness and abuse of power to some extent. The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts. It was an invasion of the people's liberties and exercise of fundamental freedoms. The members of the assembly had legal protections available to them even under the provisions of CrPC. Thus, the restriction was unreasonable and unwarrantedly executed. The action demonstrated the might of the State and was an assault on the very basic democratic values enshrined in the Constitution of India. Except in cases of emergency or the situation unexceptionably demanding so, reasonable notice/time for execution of the order or compliance with the directions contained in the order itself or in furtherance thereto is the prerequisite. It was primarily an error of performance of duty both by the police and Respondent 4 and Baba Ramdev, the Yoga Guru but the ultimate sufferer was the public at large. It was not a case of emergency. The police have failed to establish that a situation had arisen where there was imminent need to intervene, having regard to the sensitivity and perniciously perilous consequences that could have resulted, if such harsh measures had not been taken forthwith.

(Paras 286.2, 286.3 and 170 to 181)

Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423, relied on

Respondent 4 (the trust run by Baba Ramdev) is guilty of contributory negligence. The Trust and its representatives ought to have discharged their legal and moral duty and should have fully cooperated in the effective implementation

 Page: 4

of a lawful order passed by the competent authority under Section 144 CrPC. Due to the stature that Baba Ramdev enjoyed with his followers, it was expected of him to request the gathering to disperse peacefully and leave the Ramlila Maidan. He ought not have insisted on continuing with his activity at the place of occurrence. Respondent 4 and all its representatives were bound by the constitutional and fundamental duty to safeguard public property and to abjure violence. There was legal and moral duty cast upon the members of the Trust to request and persuade people to leave the Ramlila Maidan which could have obviously avoided the confrontation between the police and the members of the gathering at the Ramlila Maidan.

(Para 286.6)

Per Chauhan, J.

The prohibitory order was sought to be enforced on a sleeping crowd which was not a violent crowd. The prohibitory order was enforced without any announcement as prescribed for being published or by its affixation in terms of Delhi Police Standing Order 309 read with Section 134 CrPC. There may be a reason available to impose prohibitory orders calling upon an assembly to disperse

but there does not appear to be any plausible reason for the police to resort to blows on a sleeping crowd and to throw them out of their encampments abruptly. The affidavits and explanation given by the police officials do not disclose as to why the police could not wait till morning and provide a reasonable time to this crowd to disperse peacefully. The undue haste caused a huge disarray and resulted in a catastrophe that was witnessed on media and television throughout the country. There is no explanation for the gravity or the urgent situation requiring such an emergent action at this dark hour of midnight. In the absence of any such justification there is no option but to deprecate such action and it also casts a serious doubt about the existence of the sufficiency of reasons for such action. The incident in question is an example of a weird expression of the desire of a tyrannical mind to threaten peaceful life suddenly for no justification. This coupled with what is understood of sleep, makes it clear that the precipitate action was nothing but a clear violation of human rights and a definite violation of the procedure for achieving the end of dispersing a crowd.

(Paras 298 and 304)

State of Saurashtra v. Memon Haji Ismail Haji Valimohammed, AIR 1959 SC 1383, *relied on*

People at large, sleeping in tents, had not been informed about the promulgation (of the prohibitory order) and were not asked to leave the place. There had only been a dispute regarding the service of the orders on the organisers. Therefore, there was utter confusion and the gathering could not even understand what the real dispute was and had reason to believe that police was trying to evict Baba Ramdev forcibly. At no point of time was the assembly declared to be unlawful. The police administration is to be blamed for not implementing the order by strict adherence to the procedural requirements. People at large have a legitimate expectation that the executive authority would ensure strict compliance with the procedural requirements and would certainly not act in derogation of the applicable regulations. The present is a clear-cut case of human rights violation.

(Para 324)

There was no gossip or discussion of something untrue that was going on. To the contrary, it was an assembly of followers, under a peaceful banner of yogic



Page: 5

training, fast asleep. The assembly was at least, purportedly, a conglomeration of individuals gathered together, expressive of a determination to improve the material condition of the human race. The aim of the assembly was prima facie unobjectionable and was not to inflame passions. It was to ward off something harmful. What was suspicious or conspiratorial about the assembly, may require an investigation by the appropriate forum but the implementation of the prohibitory order appears to have been done in an unlawful and derogatory manner that did violate the basic human rights of the crowd to have a sound sleep which is also a constitutional freedom, acknowledged under Article 21 of the Constitution of India.

(Para 325)

Judicially and on the strength of impartial logic, such an attempt cannot be permitted or justified, as a sleeping crowd cannot be included within the bracket of an unlawful category unless there is sufficient material to brand it as such. The facts as uncovered and the procedural mandate having been blatantly violated, is malice in law and also the part played by the police and the administration shows the outrageous behaviour which cannot be justified by law in any civilised society. The respondents are forewarned to prevent any repetition of such hasty and unwarranted act affecting the safe living conditions of the citizens/persons in this country.

(Paras 328 and 329)

[Ed. : The directions for disciplinary action, criminal action and award of compensation, etc. are contained in paras 158, 286.17 to 286.19 and 287.]

E. Constitution of India — Art. 21 — Sleep as a human right — Nature and scope — Sleep, held (*per Chauhan, J.*), is a biological necessity — Its deprivation affects a person's health and mental condition — Interference with a person's sleep is therefore a form of third-degree method of torture prohibited by Constitution — Human and Civil Rights — Right to sleep

Held :


An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.

(Para 327)

In many countries there are complete night curfews (at the airport i.e. banning of landing and taking off between the night hours), for the reason that the concept of sound sleep has been associated with sound health which is an inseparable facet of Article 21 of the Constitution. Various statutory provisions prohibit the arrest of a judgment-debtor, a woman in the night and restrain the entering of, in the night into a constructed area suspected to have been raised in violation of the sanctioned plan, master plan or zonal plan for the purpose of survey or demolition.

(Para 315)

While determining such matters the crucial issue in fact is not whether such rights exist, but whether the State has a compelling interest in the regulation of a subject which is within the police power of the State. Reasonable regulation of

 Page: 6

time, place and manner of the act of sleeping would not violate any constitutional guarantee. But, State authorities cannot deprive a sleeping person of that right anywhere and at all times.

(Para 316)

Jaspal Singh v. State of Punjab, (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1, *relied on*

Right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink, etc.

(Para 318)

[Ed. : Biological and psychological aspects of sleep have been explained in paras 299 to 303 of the judgment.]

F. Constitution of India — Arts. 21, 19 and Preamble — Security of citizens — Protection of privacy and human dignity — Held (*per Chauhan, J.*), are primary tasks of Government — Restrictions on privacy — Held, ought to be just, fair and reasonable — State power has to

be exercised within constitutional limitations

Held :

The primary task of the State is to provide security to all citizens without violating human dignity. Powers conferred upon the statutory authorities have to be, perforce, admitted. Nonetheless, the very essence of constitutionalism is also that no organ of the State may arrogate to itself powers beyond what is specified in the Constitution.

(Para 306)

GVK Industries Ltd. v. ITO, (2011) 4 SCC 36; *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547 : (2011) 2 SCC (L&S) 762; *Madhav Rao Jivaji Rao Scindia v. Union of India*, (1971) 1 SCC 85; *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, (1979) 2 SCC 409 : 1979 SCC (Tax) 144; *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 : 1997 SCC (Cri) 92, *relied on*

Privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity tantamounts to deprivation pro tanto of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.

(Para 309)

Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608 : 1981 SCC (Cri) 212, *relied on*

G. Constitution of India — Arts. 38, 39, 42, 47, 48-A and 51-A and Preamble — India as a welfare State — Protection to all forms of life created by nature — Constitutional goal on this aspect highlighted (*per Chauhan, J.*) — Animals, Birds and Fish — Rights of — Environment Protection and Pollution Control — Ecocentricity — Posited

Held :

The Constitution does not merely speak of human rights protection. It also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills and environment. The Constitution of India professes for collective life and collective responsibility on the one hand and individual rights and responsibilities on the other hand.

(Para 310)

Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1963) 2 Cri LJ 329; *Gobind v. State of M.P.*, (1975) 2 SCC 148 : 1975 SCC (Cri) 468; *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301, *relied on*

H. Constitution of India — Arts. 21 and 19 — Right to life — Privacy, right to silence, freedom from noise and to have proper rest and sleep, as essential constituents of right to life — Held (*per Chauhan, J.*), are guaranteed by Constitution subject to certain just and fair exceptions — Tort Law — Nuisance — Freedom from noise — Public law underpinning of

Held :

Citizens/persons have a right to leisure, to sleep, not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen. Right to privacy has

been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under the Constitution. Such a right has been extended even to woman of easy virtues as she has been held to be entitled to her right of privacy. However, right of privacy may not be absolute and in exceptional circumstance particularly surveillance in consonance with the statutory provisions may not violate such a right. The courts have always imposed the penalty on disturbing peace of others by using the amplifiers or beating the drums even in religious ceremonies.


(Paras 311, 312 and 314)

Wolf v. Colorado, 93 L Ed 1782 : 338 US 25 (1949); *Malak Singh v. State of P&H*, (1981) 1 SCC 420 : 1981 SCC (Cri) 169; *State of Maharashtra v. Madhukar Narayan Gardikar*, (1991) 1 SCC 57 : 1991 SCC (Cri) 1; *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632; *Mr 'X' v. Hospital 'Z'*, (1998) 8 SCC 296; *Sharda v. Dharmpal*, (2003) 4 SCC 493; *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399; *District Registrar and Collector v. Canara Bank*, (2005) 1 SCC 496; *Bhavesh Jayanti Lakhani v. State of Maharashtra*, (2009) 9 SCC 551 : (2010) 1 SCC (Cri) 47; *Selvi v. State of Karnataka*, (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1; *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310; *Rabin Mukherjee v. State of W.B.*, AIR 1985 Cal 222; *Burrabazar Fire Works Dealers Assn. v. Commr. of Police*, AIR 1998 Cal 121; *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn.*, (2000) 7 SCC 282 : 2000 SCC (Cri) 1350; *Noise Pollution (7), In re*, (2005) 8 SCC 796, *relied on*

I. Constitution of India – Arts. 19(1)(b) & (a) and (2) & (3) and Preamble – Public meeting – Regulation of time and place besides looking into its content/subject-matter – Permissibility – Prohibitory order under S. 144 CrPC, 1973 – Permissibility to invoke in larger public interest – Reasonable restrictions, held (*per Swatanter Kumar, J.*), can be imposed on public meeting in larger public interest – Content/subject-matter of meeting is not the only concern of authority competent to grant permission – Criminal Procedure Code, 1973, S. 144

Held :

The right to hold meetings in public places is subject to control of the appropriate authority regarding the time and place of the meeting. Orders, temporary in nature, can be passed to prohibit the meeting or to prevent an imminent breach of peace. Such orders constitute reasonable restriction upon the freedom of speech and expression. The content is not the only concern of the controlling authority but the time and place of the meeting is also well within its jurisdiction. If the authority anticipates an imminent threat to public order or public tranquillity, it would be free to pass desirable directions within the

 Page: 8

parameters of reasonable restrictions on the freedom of an individual. However, provisions of Section 144 CrPC are attracted only in emergent situations. The emergent power is to be exercised for the purposes of maintaining public order.

(Para 54)

Romesh Thappar v. State of Madras, AIR 1950 SC 124 : (1950) 51 Cri LJ 1514; *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294, *relied on*

J. Constitution of India – Arts. 19(1)(a) & (b) and Preamble – Hunger strike – Threat of – Held (per Swatanter Kumar, J.), is a form of protest permissible under law – Penal Code, 1860, S. 309

Held :

The threat of going on a hunger strike extended by Baba Ramdev to personify his stand on the issues raised, cannot be termed as unconstitutional or barred under any law. It is a form of protest which has been accepted, both historically and legally in the constitutional jurisprudence of India.

(Para 209)

K. Constitution of India – Art. 19 – Scope and extent of six freedoms conferred under Art. 19(1) – Principles reiterated – “Reasonable” – Meaning and scope – Said freedoms, held, are neither absolute nor completely obliterated – Constitution adopts a middle course – Imposition of reasonable restrictions is permissible within parameters prescribed in Arts. 19(2) to (6) so as to avoid anarchy and chaos – Purpose is to strike proper balance for meaningful enjoyment of rights by society as a whole – State ought to follow least invasive approach and must act openly and fairly, yet restrictions can be suitably tailored depending upon gravity of situation to be tackled – Law and order problem for example calls for least restriction, public order problem may justify greater restriction while threat to security of State may warrant maximum restriction – Restrictions however are subject to judicial review so as to check State arbitrariness or highhandedness – Prohibitory order imposed under S. 144 CrPC, 1973 – Held, being a restriction on freedoms under Arts. 19(1)(a) & (b), is subject to judicial review – Criminal Procedure Code, 1973, S. 144


L. Constitution of India – Arts. 19(2) to (6) and 21 – Reasonability of restrictions – Touchstone for – Restrictions, held, must be just, fair and reasonable as in the case of due process requirement under Art. 21 – Restrictions backed by law, like prohibitory order S. 144 CrPC, 1973 – Held, such restrictions must withstand test of reasonableness – Criminal Procedure Code, 1973 – S. 144 – Rule of Law

M. Constitution of India – Arts. 19(2) to (6) – Restrictions on six freedoms available under Art. 19(1) – Burden of proof to justify reasonability – Reversal of burden on State when violation of right prima facie proved

Held :

Per Swatanter Kumar, J.

No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge : (a) The restriction can be imposed only by or under the authority of law. It

 Page: 9

cannot be imposed by exercise of executive power without any law to back it up. (b) Each restriction must be reasonable. (c) A restriction must be related to the purpose mentioned in Article 19(2).

(Para 30)

The legislative determination of what restriction to impose on a freedom is final and conclusive, as it is not open to judicial review. It is difficult to define or explain the word “reasonable” with any precision. It will always be dependent on the facts of a given case with reference to the law which has

been enacted to create a restriction on the right. It is neither possible nor advisable to state any abstract standard or general pattern of reasonableness as applicable uniformly to all cases.

(Para 31)

State of Madras v. V.G. Row, (1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 Cri LJ 966, *relied on*

For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorised, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, amongst others, enter into the judicial verdict.

(Para 32)

Chintamanrao v. State of M.P., 1950 SCC 695 : AIR 1951 SC 118, *relied on*

The courts must bear a clear distinction in mind with regard to "restriction" and "prohibition". They are expressions which cannot be used interchangeably as they have different connotations and consequences in law. Wherever a "prohibition" is imposed, besides satisfying all the tests of a reasonable "restriction", it must also satisfy the requirement that any lesser alternative would be inadequate. Furthermore, whether a restriction, in effect, amounts to a total prohibition or not, is a question of fact which has to be determined with regard to facts and circumstances of each case.

(Para 33)

State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534, *relied on*

A restriction imposed in any form has to be reasonable and to that extent, it must stand the scrutiny of judicial review. It cannot be arbitrary or excessive. It must possess a direct and proximate nexus with the object sought to be achieved. Whenever and wherever any restriction is imposed upon the right to freedom of speech and expression, it must be within the framework of the prescribed law, as subscribed by Article 19(2) of the Constitution.

(Para 35)

The restriction must be provided by law in a manner somewhat distinct to the term "due process of law" as contained in Article 21 of the Constitution. If the orders passed by the executive are backed by a valid and effective law, the restriction imposed thereby is likely to withstand the test of reasonableness, which requires it to be free of arbitrariness, to have a direct nexus to the object and to be proportionate to the right restricted as well as the requirement of the society, for example, an order passed under Section 144 CrPC. This order is passed on the strength of a valid law enacted by Parliament. The order is passed by an executive authority declaring that at a given place or area, more than five persons cannot assemble and hold a public meeting. There is a complete channel provided for examining the correctness or otherwise of such an order passed under Section 144 CrPC and, therefore, it has been held that such order falls within the framework of reasonable restriction.

(Para 43)



In spite of there being a general presumption in favour of the constitutionality of a legislation under challenge alleging violation of the right to freedom guaranteed by Article 19(1) of the Constitution, on a prima facie case of such violation being made out, the onus shifts upon the State to show that the

legislation comes within the permissible restrictions set out in Articles 19(2) to (6) and that the particular restriction is reasonable. It is for the State to place on record appropriate material justifying the restriction and its reasonability. Reasonability of restriction is a matter which squarely falls within the power of judicial review of the courts. Such limitations, therefore, indicate two purposes; one that the freedom is not absolute and is subject to regulatory measures and the second that there is also a limitation on the power of the legislature to restrict these freedoms. The legislature has to exercise these powers within the ambit of Article 19(2) of the Constitution.

(Para 25)

The State has a duty to protect itself against certain unlawful actions and, therefore, may enact laws which would ensure such protection. The right that springs from Article 19(1)(a) is not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder.

(Paras 13 and 14)

State of W.B. v. Subodh Gopal Bose, (1953) 2 SCC 688 : AIR 1954 SC 92, *relied on*

Where the court applies the test of "proximate and direct nexus with the expression", the court also has to keep in mind that the restriction should be founded on the principle of least invasiveness i.e. the restriction should be imposed in a manner and to the extent which is unavoidable in a given situation. The court would also take into consideration whether the anticipated event would or would not be intrinsically dangerous to public interest.

(Para 28)

The distinction between "public order" and "law and order" is a fine one, but nevertheless clear. A restriction imposed with "law and order" in mind would be least intruding into the guaranteed freedom while "public order" may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, "security of the State" is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of "public order" and "law and order". However stringent may these restrictions be, they must stand the test of "reasonability". The State would have to satisfy the court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution.

(Para 44)

Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423; *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*, (1970) 3 SCC 746; *Himat Lal K. Shah v. Commr. of Police*, (1973) 1 SCC 227 : 1973 SCC (Cri) 280, *relied on*

There is a direct as well as implied responsibility upon the Government to function openly and in public interest. Each citizen of India is entitled to enforce his fundamental rights against the Government subject to any reasonable restrictions as may be imposed under law. The Government can, in larger public interest, take a decision to restrict the enforcement of freedom, however, only for a valid, proper and justifiable reason. Such a decision cannot be arbitrary or capricious. Another important facet of exercise of such power is that such restriction has to be enforced with least invasion.

(Paras 26, 178 and 179)



The constitutional protection available to the citizens of India for exercising their fundamental rights has a great significance in the Constitution of India. Article 13 is indicative of the significance that the Framers of the Constitution intended to attach to the fundamental rights of the citizens. Wherever the State proposes to impose a restriction on the exercise of the fundamental rights, such restriction has to be reasonable and free from arbitrariness. It is for the Court to examine whether the circumstances which existed at the relevant time were of such imminent and urgent nature that it required passing of a preventive order within the scope of Section 144 CrPC, on the one hand, and on the other, of imposing a restriction on exercise of a fundamental right by Respondent 4 and persons present therein by withdrawing the permissions granted and enforcing dispersal of the gathering at the Ramlila Maidan at such an odd hour.

(Para 206)

N. Constitution of India — Arts. 19(1)(a) & (b) and (2) & (3), 21 and Preamble — Prohibitory order under S. 144 CrPC, 1973 — Held (*per Swatanter Kumar, J.*), per se is not an unreasonable restriction provided order is passed within parameters set in S. 144 itself — Order however is open to judicial review — Criminal Procedure Code, 1973 — S. 144 — Rule of Law

Held :

An order passed in anticipation by the Magistrate empowered under Section 144 CrPC is not an encroachment of the freedom granted under Articles 19(1)(a) and (b) of the Constitution and it is not regarded as an unreasonable restriction. It is an executive order, open to judicial review. In exercise of its executive power the executive authority, by a written order and upon giving material facts, may pass an order issuing a direction requiring a person to abstain from doing certain acts or take certain actions/orders with respect to certain properties in his possession, if the officer considers that such an order is likely to prevent or tends to prevent obstruction, annoyance or injury to any other person.

(Para 188)

O. Constitution of India — Arts. 19(2) to (6) — Restrictions on fundamental rights — Significance of expression “in the interest of” — Held (*per Swatanter Kumar, J.*), confers wide scope for imposing reasonable restrictions

Held :

The expression “in the interest of” has given a wide amplitude to the permissible law which can be enacted to impose reasonable restrictions on the rights guaranteed by Article 19(1) of the Constitution.

(Para 38)

P. Constitution of India — Arts. 19(1)(a) & (b) and (2) & (3) and Preamble — Freedom of speech and expression and freedom to assemble — Scope of right — Indian and US positions compared — Said freedom in India, held (*per Swatanter Kumar, J.*), is not as wide as in USA — Constitution of USA — First Amendment

Held :

The effect of use of wide expressions in the First Amendment to the US Constitution was that the freedom of speech of press was considered absolute and free from any restrictions whatsoever. Shortly thereafter, as a result of widening of the power of judicial review, the US Supreme Court preferred to test each case on the touchstone of the rule of “clear and present danger”. However,

application of this rule was unable to withstand the pace of development of law and, therefore, through its judicial pronouncements, the US Supreme Court applied the doctrine of “balancing of interests”. The cases relating to speech did not simply involve the rights of the offending speaker but typically they presented a clash of several rights or a conflict between individual rights and necessary functions of the Government. Frankfurter, J. often applied the abovementioned balancing formula and concluded that “while the court has emphasised the importance of ‘free speech’, it has recognised that free speech is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if free expression of ideas is not found to be the overbalancing considerations.”

(Paras 2 and 3)

Niemotko v. Maryland, 95 L Ed 267, at 276 : 340 US 268, at 282 (1951), *relied on*

The “balancing of interests” approach is basically derived from Roscoe Pound’s theories of social engineering. Pound had insisted that his structure of public, social and individual interests are all, in fact, individual interests looked at from different points of view for the purpose of clarity. Therefore, in order to make the system work properly, it is essential that when interests are balanced, all claims must be translated into the same level and carefully labelled. Thus, a social interest may not be balanced against individual interest, but only against another social interest. The author points out that throughout the heyday of the “clear and present danger” and “preferred position” doctrines, the language of balancing, weighing or accommodating interests was employed as an integral part of the libertarian position.

(Para 4)

Martin Shapiro, *Freedom of Speech : The Supreme Court and Judicial Review* (1966), *quoted*

Even in the United States there is a recurring debate in modern First Amendment jurisprudence as to whether First Amendment rights are “absolute” in the sense that the Government may not abridge them at all or whether the First Amendment requires the “balancing of competing interests” in the sense that free speech values and the Government’s competing justification must be isolated and weighed in each case. Although the First Amendment to the American Constitution provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of the constitutional Government to survive. If it is to survive, it must have the power to protect itself against unlawful conduct and under some circumstances against incitements to commit unlawful acts. Freedom of speech, thus, does not comprehend the right to speak on any subject at any time.

(Para 5)

Schenck v. United States, 63 L Ed 470 : 249 US 47 (1919), *relied on*

Dr L.M. Singhvi : *Constitution of India* (2nd Edn.), Vol. I, *quoted*

In the face of the constitutional mandate contained in Articles 19(1)(a), (1)(b), (2) and (3) of the Indian Constitution, the American doctrine adumbrated in *Schenck case*, 63 L Ed 470 cannot be imported and applied. Under the Indian Constitution, this right is not an absolute right but is subject to the above-noticed restrictions. Thus, the position under the Indian Constitution is different. The fundamental right enshrined in the Constitution itself being made subject to reasonable restrictions, the laws so enacted to specify certain restrictions on the right to freedom of speech and expression

have to be construed meaningfully and with the constitutional object in mind. The right to freedom of speech and

 Page: 13

expression is not violated by a law which requires that the name of the printer and publisher and the place of printing and publication should be printed legibly on every book or paper. There is a marked distinction in the language of law, its possible interpretation and application under the Indian and the US laws.

(Paras 7, 8, 10 and 11)

Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423, followed

Schenck v. United States, 63 L Ed 470 : 249 US 47 (1919), limited

H.M. Seervai : *Constitutional Law of India* (4th Edn.), Vol. I, quoted

Q. Constitution of India — Arts. 19(1)(a), 25 and Preamble — Right to speech and expression an undeniable human right — Held (*per Swatanter Kumar, J.*), it is basic human nature to give vent to one's inner feelings through speech and expression — Belief too is inherent in human nature — Figuratively, belief, thought and expression are three angles of a triangle which cannot be separated from one another — All other freedoms spring from this freedom

Held :

The freedom of speech is the bulwark of democratic Government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press. The Framers of the Constitution of India, in unambiguous terms, granted the right to freedom of speech and expression and the right to assemble peaceably and without arms. This gave to the citizens of this country a very valuable right, which is the essence of any democratic system. There could be no expression without these rights. Liberty of thought enables liberty of expression. Belief occupies a place higher than thought and expression. Belief of people rests on liberty of thought and expression. Placed as the three angles of a triangle, thought and expression would occupy the two corner angles on the baseline while belief would have to be placed at the upper angle. Attainment of the Preambular liberties is eternally connected to the liberty of expression.

(Paras 10 to 12)

R.C. Lahoti, *Preamble : The Spirit and Backbone of the Constitution of India*, relied on

[Ed. : In this regard it may be useful to consider that Article 25 provides for the right to freedom of conscience as a right distinct from the right freely to profess, practise and propagate religion. In fact, if in the triangle postulated above, the freedom of belief is at the apex, then the freedom of conscience would come at the apex of all rights! Article 25(1) provides:

25. *Freedom of conscience and free profession, practice and propagation of religion.*—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.]

 Page: 14

R. Constitution of India – Arts. 19(1)(a) & (b), 25, 21, 14 and Preamble and Arts. 73 & 162 – Freedom of speech and to assemble peaceably – State's duty to make available safe environment for fruitful enjoyment of rights – Held (*per Swatanter Kumar, J.*), State has multi-dimensional role including protection of its citizens – State is therefore obliged to ensure safety of people participating in a public meeting – Rule of Law – Administrative Law – Administrative Action – Administrative or Executive Function – Fairness in Action – Executive Wing of State – Exercise of executive power – Fairness in action

Held :

There is a direct and not merely implied responsibility upon the Government to function openly and in public interest. The right to information itself emerges from the right to freedom of speech and expression. Unlike an individual, the State owns a multi-dimensional responsibility. It has to maintain and ensure security of the State as well as the social and public order. It has to give utmost regard to the right to freedom of speech and expression which a citizen or a group of citizens may assert. The State also has a duty to provide security and protection to the persons who wish to attend such assembly at the invitation of the person who is exercising his right to freedom of speech or otherwise.

(Paras 26, 178 and 179)

S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574, relied on


S. Constitution of India – Arts. 21, 14 and 19 and Preamble – “Liberty” – True import of – Reasonableness as hallmark of valid administrative and legislative actions (*per Swatanter Kumar, J.*) – Administrative Law – Administrative Action – Administrative or Executive Function – Non-arbitrariness and reasonableness in action – Rule of Law

Held :

The term “liberty”, which is subject to reasonable restrictions, needs to be examined with reference to the other constitutional rights. Article 21 is the foundation of the constitutional scheme. The procedure established by law for deprivation of rights conferred by this article must be fair, just and reasonable. The rules of justice and fair play require that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness, thereby vitiating the law which prescribed that procedure and, consequently, the action taken thereunder. Any action taken by a public authority which is entrusted with the statutory power has, therefore, to be tested by the application of two standards—first, the action must be within the scope of the authority conferred by law and, second, it must be reasonable. If any action, within the scope of the authority conferred by law is found to be unreasonable, it means that the procedure established under which that action is taken is itself unreasonable. The law itself has to be reasonable and furthermore, the action under that law has to be in accordance with the law so established. Non-observance of either of this can vitiate the action, but if the former is invalid, the latter cannot withstand.

(Paras 15 to 17)

Maneka Gandhi v. Union of India, (1978) 1 SCC 248; *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : 1978 SCC (Cri) 468, *relied on*

 Page: 15

T. Constitution of India — Pt. III and Art. 13 — Fundamental rights vis-à-vis laws framed by legislature — Overriding effect of fundamental rights subject to exceptions created within Pt. III — Art. 13, held, is repository of various protections given to individuals (citizens or otherwise) against violation of their fundamental rights

(Para 18)

U. Constitution of India — Pts. IV and III, Art. 37 and Arts. 21 and 21-A — Directive principles — Lifting up of their status equivalent to fundamental rights on certain aspects — Instances of directive principles being given same recognition as fundamental rights — Right to free and compulsory education, recognised now as fundamental right (*per Swatanter Kumar, J.*) — Education and Universities — Right of Children to Free and Compulsory Education Act, 2009, Ss. 3 and 4

Held :

With the development of law, even certain matters covered under Part IV of the Constitution relating to directive principles have been uplifted to the status of fundamental rights, for instance, the right to education. Though this right forms part of the directive principles of State policy, compulsory and primary education has been treated as a part of Article 21 of the Constitution of India by the courts, which consequently led to the enactment of the Right of Children to Free and Compulsory Education Act, 2009.

(Para 20)

V. Constitution of India — Pts. III, IV and IV-A and Preamble — Fundamental rights, directive principles and fundamental duties — Composite scheme to achieve social order which affords liberty to all — Unbridled individual rights, held, will create imbalance in society — Appropriate proportion therefore has to be maintained between individual rights and collective rights of society as a whole which imply observance of fundamental duties by individuals — Directive principles as community rights — Words and Phrases — “Social order” — Contents of — “Public order”, “law and order” and “security of State” — Jurisprudence — Social order

W. Constitution of India — Arts. 19(2) to (6) and 51-A — Fundamental duties as facets of reasonable restrictions under Arts. 19(2) to (6)


Held :

Per Swatanter Kumar, J.

A common thread runs through Parts III, IV and IV-A of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these Parts.

(Para 22)

As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine the existence of a right not coupled with a duty. The duty may be a direct or indirect consequence of a fair assertion of the right. Part III of the Constitution of India although confers rights, still duties and restrictions are inherent thereunder. These rights are basic in nature and are recognised and guaranteed as natural rights, inherent in the status of a citizen of a free country, but are not absolute in nature and uncontrolled in operation. Each one of these rights is to be controlled, curtailed

 Page: 16

and regulated, to a certain extent, by laws made by Parliament or the State Legislature.

(Para 24)

Rights, restrictions and duties coexist. As, on the one hand, it is necessary to maintain and preserve the freedom of speech and expression in a democracy, there, on the other, it is also necessary to place reins on this freedom for the maintenance of social order. The term "social order" has a very wide ambit. It includes "law and order", "public order" as well as "the security of the State". The security of the State is the core subject and public order as well as law and order follow the same.

(Para 36)

There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51-A are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant. Part IV of the Constitution relates to the directive principles of the State policy. Article 38 was introduced in the Constitution as an obligation upon the State to maintain social order for promotion of welfare of the people. By the Constitution (Forty-second Amendment) Act, 1976, Article 51-A was added to comprehensively state the fundamental duties of the citizens to complement the obligations of the State. Thus, all these duties are of constitutional significance.

(Para 39)

It is obvious that Parliament realised the need for inserting the fundamental duties as a part of the Indian Constitution and required every citizen of India to adhere to those duties. Thus, it will be difficult for any court to exclude from its consideration any of the abovementioned articles of the Constitution while examining the validity or otherwise of any restriction relating to the right to freedom of speech and expression available to a citizen under Article 19(1)(a) of the Constitution. The restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties and non-interference with liberty of others. Therefore, a restriction on the right to assemble and raise protest has also to be examined on similar parameters and values. In other words, when you assert your right, you must respect the freedom of others. Besides imposition of a restriction by the State, non-interference with liberties of others is an essential condition for assertion of the right to freedom of speech and expression.


(Para 40)

D.C. Saxena v. Chief Justice of India, (1996) 5 SCC 216, relied on

Every right has a corresponding duty. Part III of the Constitution of India although confers rights, duties and restrictions are inherent thereunder. Reasonable regulations have been found to be contained in the provisions of Part III of the Constitution of India, apart from Articles 19(2) to (4) and (6) of the Constitution.

(Para 42)

Union of India v. Naveen Jindal, (2004) 2 SCC 510, relied on

 Page: 17

When there exists freedom of rights which are subject to reasonable restrictions, there are contemporaneous duties cast upon the citizens too. The duty to maintain law and order lies on the authority concerned and, thus, there is nothing unreasonable in making it the initial judge of the emergency. All this is coupled with a fundamental duty upon the citizens to obey such lawful orders as well as to extend their full cooperation in maintaining public order and tranquillity.

(Para 52)

Feiner v. New York, 95 L Ed 295 : 340 US 315 (1951), relied on

Ramlila Maidan Incident, In re, (2012) 5 SCC 125; Ramlila Maidan Incident, In re, (2012) 5 SCC 126, referred to

Pratap Singh v. State of Punjab, AIR 1964 SC 72 : (1964) 4 SCR 733; Destruction of Public and Private Properties, In re, (2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : (2009) 2 SCC (Civ) 451, cited

X. Constitution of India — Pts. III, IV and Art. 37 — Fundamental rights and directive principles — “Fundamental” — Meaning of — Different connotations in Pts. III and IV — Held (*per Swatanter Kumar, J.*), rights in Pt. III have been made fundamental in the sense that State’s power to abridge those rights have been curtailed — Directive principles have been treated fundamental in the sense that they are basic goals which State must strive to achieve — Words and Phrases — “Fundamental” — Interpretation of

Held :

The word “fundamental” as used in the expression “fundamental in the governance of the State” to describe the directive principles which have not legally been made enforceable. The word “fundamental” has been used in two different senses under the Constitution. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law *pretendo* void. The word “fundamental” in Article 37 also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve. The significance of the fundamental principles stated in the directive principles has attained greater significance through judicial pronouncements.

(Para 23)

Y. Constitution of India — Arts. 73, 162, 21 and 14 — Protection of life and property of citizens — State’s duty — Emphasised — Rule of Law

(Paras 184 to 187)

Z. Constitution of India — Arts. 239-AA(3)(a) & (4) and Arts. 73 and 162 — Law and order management in Delhi — Delhi Police acting in coordination with Central Home Ministry — Held (*per Swatanter Kumar, J.*), nothing objectionable in it so long as police action is within framework of law — Government of National Capital Territory of Delhi Act, 1991 (1 of 1992) — S. 44 — Rule of Law

(Paras 184 to 187)

Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423; *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*, (1970) 3 SCC 746; *Amitabh Bachchan Corpn. Ltd. v. Mahila Jagran Manch*, (1997) 7 SCC 91; *R.K. Garg v. Supt., District Jail*, (1970) 3 SCC 227 : 1971 SCC (Cri) 45; *State of Karnataka v. Praveen Bhai Thogadia*, (2004) 4 SCC 684 : 2004 SCC (Cri) 1387, *cited*

[Ed. : Delhi Police comes under the administrative control of the Central Government and not the Government of NCT of Delhi.]



Page: 18

ZA. Constitution of India — Arts. 32, 226 and Pt. III — Appropriate proceedings for enforcement of fundamental rights — Suo motu action by Supreme Court — Material relied upon — Media reports, photographs, CCTV camera footage of incident and police records — Practice and Procedure

(Paras 125, 136 and 142 to 146)

ZB. Penal Code, 1860 — Ss. 96, 97, 188 and 189 — Retaliatory action by public as a result of police crackdown — Criminal liability of attacking public — Use of tear gas by police, held, did not justify brickbatting by a section of public — Erring persons would be criminally liable — Criminal Procedure Code, 1973 — S. 144 — Constitution of India — Arts. 19(1)(a) & (b) and (2) & (3) and 21 — Rule of Law

(Para 171)

ZC. Criminal Procedure Code, 1973 — S. 144(1) — Prohibitory order — Scope and parameters for exercise of power — Emergent situation warranting quick remedial action — Power to be invoked to serve public purpose

ZD. Words and Phrases — “Emergency” — Meaning explained — Exigent situation arising suddenly — Constitution of India — Art. 368 — Criminal Procedure Code, 1973, S. 144

Held :

Per Swatanter Kumar, J.

Section 144 CrPC is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquillity or a riot or an affray. These features must coexist at a given point of time in order to enable the authority concerned to pass appropriate orders. Section 144 CrPC enumerates the principles and declares the situations where exercise of rights recognised by law, by one or few, may conflict with other rights of the public or tend to endanger public peace, tranquillity and/or harmony. The orders passed under Section 144 CrPC are attempted to serve larger public

interest and purpose. Under the provisions of CrPC complete procedural mechanism is provided for examining the need and merits of an order passed under Section 144 CrPC. Section 144 CrPC is a power to be exercised by the specified authority to prevent disturbance of public order, tranquillity and harmony by taking immediate steps and when desirable, to take such preventive measures.

(Paras 49, 50 and 52)

The expression "emergency" even if understood in its common parlance would mean an exigent situation; a serious, unexpected, and potentially dangerous situation requiring immediate action. Such an emergent case must exist for the purpose of passing a protective or preventive order. This may be termed as an "emergency protective order" or an "emergency preventive order". In either of these cases, the emergency must exist and that emergent situation must be reflected from the records which were before the authority concerned which passed the order under Section 144 CrPC.

(Para 133)

Black's Law Dictionary, 12th Edn.; *Concise Oxford English Dictionary*, 11th Edn., quoted



Page: 19

The entire basis of an action under this section is the "urgency of the situation" and the power therein is intended to be availed for preventing "disorder, obstruction and annoyance", with a view to secure the public weal by maintaining public peace and tranquillity.

(Para 189)

Gulam Abbas v. State of U.P., (1982) 1 SCC 71 : 1982 SCC (Cri) 82, relied on

Per Chauhan, J.

Section 144 CrPC deals with immediate prevention and speedy remedy. Before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action. The sine qua non for an order under Section 144 CrPC is urgency requiring an immediate and speedy intervention by passing of an order. The order must set out the material facts of the situation. Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. The emergency must be sudden and the consequences sufficiently grave.

(Para 319)

ZE. Criminal Procedure Code, 1973 – Ss. 144(1) and 134 – Contents of prohibitory order – Precise statement of material facts and emergent circumstances warranting invocation of power under S. 144(1) – Order being a restriction on freedom of speech and to assemble peaceably, must be in writing and should set out grounds for imposing such order – Order to remain in force for a limited period of time only (*per Swatanter Kumar, J.*) – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

Held :

The provisions of Section 144 CrPC provide for a complete mechanism to be followed by the Magistrate concerned and also specify the limitation of time till when such an order may remain in force. An order passed under Section 144 CrPC has the following characteristics : (1) It is an executive power vested in the officer so empowered; (2) There must exist sufficient ground for proceeding; (3) Immediate prevention or speedy remedy is desirable; and (4) An order, in writing,

should be passed stating the material facts and be served the same upon the person concerned. An order under Section 144 CrPC being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of CrPC, such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction.

(Paras 45, 56 and 57)

Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423; *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*, (1970) 3 SCC 746; *State of Bihar v. Kamla Kant Misra*, (1969) 3 SCC 337; *Jagrupa Kumari v. Chobey Narain Singh*, (1936) 37 Cri LJ 95 (Pat); *Himat Lal K. Shah v. Commr. of Police*, (1973) 1 SCC 227 : 1973 SCC (Cri) 280; *Railway Board v. Niranjan Singh*, (1969) 1 SCC 502; *State of Karnataka v. Praveen Bhai Thogadia*, (2004) 4 SCC 684 : 2004 SCC (Cri) 1387, *relied on*



ZF. Criminal Procedure Code, 1973 – S. 144 – Social need to maintain peace and tranquillity – Temporary overriding of private rights – Permissibility (*per Swatanter Kumar, J.*) – Rule of Law – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

Held :

The Constitution mandates and every Government is constitutionally committed to the idea of socialism, secularism and public tranquillity. The regulatory mechanism contemplated under different laws is intended to further the cause of this constitutional obligation. An order under Section 144 CrPC, though primarily empowers the executive authorities to pass prohibitory orders vis-à-vis a particular facet, but is intended to serve larger public interest. Restricted dimensions of the provisions are to serve the larger interest, which at the relevant time, has an imminent threat of being disturbed. The order can be passed when immediate prevention or speedy remedy is desirable. The legislative intention to preserve public peace and tranquillity without lapse of time, acting urgently, if warranted, giving thereby paramount importance to the social needs by even overriding temporarily, private rights, keeping in view the public interest, is patently inbuilt in the provisions under Section 144 CrPC.

(Para 190)

ZG. Criminal Procedure Code, 1973 – S. 144 – Prohibitory order – Grounds for issuance of – Imminent threat and need for immediate preventive steps – Simultaneous existence of both parameters – Held, is necessary for invocation of S. 144 – Objective application of mind – Material on record, held, must disclose objective decision – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

ZH. Criminal Procedure Code, 1973 – S. 144 – Prohibitory order – Grounds for issuance of – Use of public place for purpose other than for which permission was obtained – Apprehended overcrowding of public place – Held, not relevant grounds for invoking S. 144 – On facts held, actual occupancy in Ramlila Maidan by peacefully agitating members of

public was less than its capacity and therefore there was no justification to issue prohibitory order on this count – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

Held :

Per Swatanter Kumar, J.

Material facts, imminent threat and requirement for immediate preventive steps should exist simultaneously for passing any order under Section 144 CrPC. The mere change in the purpose or in the number of persons to be gathered at the Ramlila Maidan simpliciter could hardly be the cause of such a grave concern for the authorities to pass the orders late in the night. In the standing order issued by the police itself, it has been clarified that wherever the gathering is more than 50,000, the same may not be permitted at the Ramlila Maidan but they should be offered Burari Ground as an alternative. This itself shows that the attempt on the part of the authorities concerned should be to permit such public gathering by allotting them alternative site and not to cancel such meetings. This, however, does not seem to further the case of the State at all inasmuch as when the order was passed and the police came to the Ramlila Maidan to serve the said order, not even 15,000 to 20,000 people were stated to be present in the shamiana/tent. In these circumstances, it appears it was not necessary for the executive



Page: 21

authorities and the police to pass orders under Section 144 CrPC and withdraw the permissions. The matter could be resolved by mutual deliberation and intervention by the appropriate authorities.

(Para 218)

ZI. Criminal Procedure Code, 1973 – S. 144 – Threat perception – Relevance of, for issuance of prohibitory order – Held (*per Swatanter Kumar, J.*), threat perception must be real and based on objective assessment of situation – Mere possibility of a danger is not enough to invoke S. 144 – Proportionality in prohibitory order – Held, order must be least intrusive and period of its operation should not be longer than necessary – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

Held :

The requirement of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance. The perception of the officer recording the desired/contemplated satisfaction has to be reasonable, least invasive and bona fide. The restraint has to be reasonable and must be minimal. Such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration. The most onerous duty that is cast upon the empowered officer by the legislature is that the perception of threat to public peace and tranquillity should be real and not quondary, imaginary or a mere likely possibility. Apprehension of danger is what can inevitably be gathered only from the circumstances of a given case.

(Paras 58 and 59)

The activities which, though unintended have a tendency to create disorder or disturbance of public peace by resorting to violence, should invite the appropriate authority to pass orders taking preventive measures. The intent or the expected threat should be imminent. Some element of certainty, therefore, should be traceable in the material facts recorded and the necessity for taking such preventive measures. There has to be an objective application of mind to ensure that the constitutional rights are not defeated by subjective and arbitrary exercise of power. Threat perception is one of the most relevant considerations and may differ as per the perspective of different parties.

(Paras 221 and 222)

Existence of sufficient ground is the sine qua non for invoking the power vested in the executive under Section 144 CrPC. It is a very onerous duty that is cast upon the empowered officer by the legislature. The perception of threat should be real and not imaginary or a mere likely possibility. The test laid down in this section is not that of "mere likelihood or tendency". The legislature, in its wisdom, has empowered an officer of the executive to discharge this duty with great caution, as the power extends to placing a restriction and in certain situations, even a prohibition, on the exercise of the fundamental right to freedom of speech and expression. In case of a mere apprehension, without any material facts to indicate that the apprehension is imminent and genuine, it may not be proper for the authorities to place such a restriction upon the rights of the citizen.

(Para 225)

The authorities are expected to seriously cogitate over the matter in its entirety keeping the common welfare in mind. The police have not placed on record any document or even affidavits to show such sudden change of circumstances, compelling the authorities to take the action that they took. Denial of a right to hold such meeting has to be under exceptional circumstances and strictly with the object of preventing public tranquillity and public order from being disturbed.

(Para 228)



Page: 22

ZJ. Criminal Procedure Code, 1973 – S. 144 – Procedural safeguards to be observed by police – Public announcement and banner display of promulgation of prohibitory order – Declaration of the assembly as unlawful and prior warning on public address system before use of any kind of force – Videography of event – Safeguards not followed in Ramlila Maidan incident of 4-6-2011 – Tear gas also used improperly in an enclosed space – Police action apparently suggested highhandedness and therefore declared unconstitutional – Delhi Police Standing Orders – Standing Orders 309 and 152 – Punjab Police Rules, 1934 (applicable to Delhi) – R. 14.56(1)(a) – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

(Paras 162 to 173)

ZK. Criminal Procedure Code, 1973 – S. 144 – Time to be allowed for obeying prohibitory order – Held (*per Swatanter Kumar, J.*), such time period is to be decided by competent authority depending on situation emerging in a given case – Normally reasonable time to be allowed but in emergent situation, order may be enforced immediately – However, undue haste to be avoided as it may make situation worse than sought to be prevented – Ramlila Maidan incident of 4-6-2011 – Sleeping public, held, ought to have been allowed to leave by morning instead of asking them to leave immediately at night – Prohibitory order, further held, also ought to have been announced by means of public address system – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

(Paras 229 to 233)

ZL. Criminal Procedure Code, 1973 – Ss. 144(1), 129, 130 and 195(1)(a) – Prohibitory order – Effect on assembly against which such order is passed – Disagreeing opinions expressed – *Per Swatanter Kumar, J.*, assembly becomes unlawful and assembled persons

must immediately comply with order failing which force may be used against them – Per Chauhan, J. (disagreeing on this point), disobedience becomes punishable only when it causes or tends to cause obstruction, annoyance or injury in terms of S. 188 IPC – Follow-up action if prohibitory order defied – Complaint to be filed under S. 195(1)(a) before competent Magistrate – Penal Code, 1860 – Ss. 188 and 187 – Constitution of India, Arts. 19(1)(a) & (b) and (2) & (3) and 21

ZM. Criminal Procedure Code, 1973 – S. 144 – Duty to obey prohibitory order – Consequences of failure to obey – Held (per Swatanter Kumar, J.), every defaulting person, by virtue of S. 149 IPC, becomes vicariously liable for illegal acts committed by other members of assembly – Penal Code, 1860, Ss. 187, 188 and 149

ZN. Tort Law – Contributory Negligence – Application of concept to organisers of public meetings – Injuries and death taking place as a result of organisers' failure to obey order passed under law – Liability for – Held (per curiam), organisers become negligent and therefore become tortiously liable when statutory order is defied and consequently participants of meeting suffer due to chaos resulting therefrom – Responsibility arises both under duty of care and fundamental duties prescribed in Art. 51-A – Ramlila Maidan incident of 4-6-2011 – Baba Ramdev, chief organiser, held, was under legal and moral duty to prevent mishap by complying with prohibitory order under S. 144 CrPC, 1973 even



if order was strictly not in conformity with requirements of S. 144 – Liability therefore fastened on organisers of yoga camp as well as police authorities – Constitution of India – Arts. 19(1)(a) & (b) and (2) & (3), 21 and Art. 51-A – Legal Maxims – *Actio quaelibet it sua via* (every action is to follow its prescribed course) – *Injuria non excusat injuriam* – Applied – Penal Code, 1860, Ss. 187 and 188

ZO. Tort Law – Negligence – Concept – Absence of care warranted in a given situation resulting in injury to other person – Kinds of negligence – Composite or contributory (per Swatanter Kumar, J.)

ZP. Tort Law – Negligence – Contributory negligence – Factors giving rise to liability – Whether one party could avoid consequences of other's negligence by taking reasonable care – Application of principle to public gatherings – Liability for injuries suffered in a public meeting – Rule of identification for determining who was responsible – Agony-of-moment theory – Held (per Swatanter Kumar, J.), court can determine kind of behaviour expected of a party in particular circumstances and how far such party contributed to injuries suffered by public – Words and Phrases – “Contributory negligence”

Held :

Per Swatanter Kumar, J.


Once an order under Section 144 CrPC is passed, it is expected of all concerned to implement the said order unless it has been rescinded or modified by a forum of competent jurisdiction. Its enforcement has legal consequences. One of such consequences would be the dispersal of an unlawful assembly and, if necessitated, by using permissible force. An assembly which might have lawfully assembled would be termed as an “unlawful assembly” upon the passing and implementation of such a preventive order. The empowered officer is also vested with adequate powers to direct the dispersal of such assembly. He may even take the assistance of officers concerned and armed forces

for the purposes of dispersing such an assembly. The said officer has even been vested with the powers of arresting and confining the persons and, if necessary, punishing them in accordance with law in terms of Section 129 CrPC. An order under Section 144 CrPC would have an application to an "actual" unlawful assembly as well as a "potential" unlawful assembly. This is precisely the scope of application and enforcement of an order passed under Section 144 CrPC.

(Para 60)

Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423, relied on

Once an order under Section 144 CrPC is passed by the competent authority and such order directs certain acts to be done or directs the abstention from doing certain acts and such order is in force, any assembly, which initially might have been a lawful assembly, would become an unlawful assembly and the people so assembled would be required to disperse in furtherance to such order. A person can not only be held responsible for his own act, but, in light of Section 149 IPC, if the offence is committed by any member of the unlawful assembly in prosecution of a common object of that assembly, every member of such assembly would become member of the unlawful assembly. Obedience of lawful orders is the duty of every citizen. Every action is to follow its prescribed course

 Page: 24

in law *actio quaelibet it sua via*. The course prescribed in law has to culminate to its final stage in accordance with law. In that process there might be either a clear disobedience or a contributory disobedience. In either way, it may tantamount to being negligent. Thus, the principle of contributory negligence can be applied against parties to an action or even a non-party. The rule of identification would be applied in cases where a situation of the present kind arises. The Court will have to see the fault of the party and the effective cause of the ensuing injury. Also it has to be seen that in the "agony of the moment", would the situation have been different and safe, had the people concerned acted differently and as to who was majorly responsible for creation of such a dilemma. Under the English law, it has been accepted that once a statute has enjoined a pattern of behaviour as a duty, no individual can absolve another from having to obey it. Thus, as a matter of public policy, *volenti* cannot erase the duty or breach of it.

(Paras 270 to 272)

Clerk and Lindsell on Torts, 20th Edn., p. 246, quoted

There is no statutory definition of contributory negligence. The concerns of contributory negligence are now too firmly established to be disregarded, but it has to be understood and applied properly. "Negligence" materially contributes to injury or is regarded as expressing something which is a direct cause of the accident.

(Para 273)

Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC), relied on

The individual guilty of contributory negligence may be the employee or agent of the claimant, so as to render the claimant vicariously responsible for what he did. There could be cases of negligence between spectators and participants in sporting activities. However, in such matters, negligence itself has to be established. In cases of "contributory negligence", it may not always be necessary to show

that the claimant is in breach of some duty, but the duty to act carefully, usually arises and the liability in an action could arise. These are some of the principles relating to the award of compensation in cases of contributory negligence and in determining the liability and identifying the defaulter. Even if these principles are not applicable *stricto sensu* to the cases of the present kind, the applied principles of contributory negligence akin to these principles can be applied more effectively on the strength of the provisions of Section 149 IPC.

(Para 274)

Charlesworth and Percy on Negligence, 11th Edn., pp. 195 and 206, *relied on*

Negligence could be composite or contributory. "Negligence" does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. "Negligence" is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Normally, the crucial question on which such a liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. The principle stated therein would be applicable to a large extent to the cases involving the principles of contributory negligence as well.

(Para 275)

Municipal Corpn. of Greater Bombay v. Laxman Iyer, (2003) 8 SCC 731 : 2004 SCC (Cri) 252; *MCD v. Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481, *relied on*



Page: 25

Whenever an order is passed which remains unchallenged before the court of competent jurisdiction, then its execution is the obvious consequence in law. For its execution, all concerned are expected to permit implementation of such orders and, in fact, are under a legal obligation to fully cooperate in the enforcement of lawful orders. Article 51-A requires the citizens of India to abide by the Constitution and to uphold the sovereignty and integrity of India. Article 51-A(i) requires a citizen to safeguard public property and to abjure violence. An order passed under Section 144 CrPC is a restriction on enjoyment of fundamental rights. It has been held to be a reasonable restriction. Once an order is passed under Section 144 CrPC within the framework and in accordance with the requirements of the said section, then it is a valid order which has to be respected by all concerned. Its enforcement is the natural consequence.

(Paras 276 and 278)

When an order was passed by the authorities competent to pass such an order, it was expected of all concerned to respect the order lawfully passed and to ensure that the situation at the site was not converted into a tragedy. All were expected to cooperate in the larger interest of the public. The police was concerned with the problem of law and order while Respondent 4 and Baba Ramdev certainly should have been concerned about the welfare of their followers and the large gathering present at the Ramlila Maidan. Thus, to that extent, the police and Respondent 4 ought to have acted in tandem and ensured that no damage to the person or property should take place, which unfortunately did not happen.

(Para 282)

Keeping in view the stature and respect that Baba Ramdev enjoyed with his followers, he ought to

have exercised the moral authority of his office in the welfare of the people present. There exists a clear constitutional duty, legal liability and moral responsibility to ensure due implementation of lawful orders and to maintain the basic rule of law. It would have served the greater public purpose and even the purpose of the protests for which the rally was being held, if Baba Ramdev had requested his followers to instantaneously leave the Ramlila Maidan peacefully or had assured the authorities that the morning yoga programme or protest programme would be cancelled and the people would be requested to leave for their respective places. Absence of performance of this duty and the gesture of Baba Ramdev led to an avoidable lacerating episode.


(Para 283)

Even if the Court takes the view that there was undue haste, adamance and negligence on the part of the police authorities, then also it cannot escape to mention that to this negligence, there is a contribution by Respondent 4 as well. The role of Baba Ramdev at that crucial juncture could have turned the tide and probably brought a peaceful end rather than the heart rending end of injuries and unfortunate death. Even if it is assumed that the action of the police was wrong in law, it gave no right to others to commit any offence *injuria non excusat injuriam*.

(Para 284)

Every law-abiding citizen should respect the law and must stand in conformity with the rule, be as high an individual may be. Violation of orders has been made punitive under the provisions of Section 188 IPC, but still in other allied proceedings, it would result in fastening the liability on all contributory partners, may be vicariously, but the liability certainly would extend to all the defaulting parties. For these reasons, a view has to be taken that in the circumstances of the case, Baba Ramdev and the office-bearers of Respondent 4 have contributed to the negligence leading to the occurrence in question and are vicariously liable for such action.

(Para 285)

 Page: 26

Per Chauhan, J.

The disobedience of the prohibitory order becomes punishable under Section 188 IPC only "if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed" or "if such disobedience causes or tends to cause damage to human life, health or safety, or causes or tends to cause riot or affray". Disobedience of an order by public servant lawfully empowered will not be an offence unless such disobedience leads to enumerated consequences stated under the provision of Section 188 IPC. More so, a violation of the prohibitory order cannot be taken cognizance of by the Magistrate who passed it. He has to prefer a complaint about it as provided under Section 195(1)(a) CrPC. A complaint is not maintainable in the absence of allegation of danger to life, health or safety or of riot or affray.

(Para 320)

It cannot be presumed that such an assembly is necessarily illegal and even if it was, the individuals were all asleep who were taken by surprise altogether for a simultaneous implementation and action under Section 144 CrPC without being preceded by an announcement or even otherwise, giving no time in a reasonable way to the assembly to disperse from the Ramlila Ground. To the contrary, the sleep of this huge crowd was immodestly and brutally outraged and it was dispersed by force making

them flee hither and thither, which by such precipitate action, caused a mayhem that was reflected in the media.

(Para 326)

ZQ. Criminal Procedure Code, 1973 – S. 144 – Prohibitory order – Contents of – Order not disclosing exceptional circumstances warranting invocation of S. 144 at midnight and also not giving any specific direction to organisers of public meeting – Held (*per Swatanter Kumar, J.*), bad in law

(Paras 210 and 212)

ZR. Criminal Procedure Code, 1973 – S. 144 – Constitutional validity – Power to issue prohibitory order under S. 144, held (*per Swatanter Kumar, J.*), is conferred in the interest of public tranquillity and is therefore constitutional

(Paras 38 and 49)

ZS. Words and Phrases – “Law and order” – Meaning and content – Held (*per Swatanter Kumar, J.*), expression is comprehensive enough to take in its fold “public order”, “public peace”, “public tranquillity” and “orderliness”

(Paras 37 and 49)

ZT. Words and Phrases – “Public order” – Held (*per Swatanter Kumar, J.*), is different from orderliness in a local area – Breach of peace confined to a particular area, may not necessarily lead to public disorder – However, where a disturbance affects community or public at large, it may give rise to public disorder – Disturbance of public peace, when aggravated, may become a public order problem

(Paras 37 and 49)

Romesh Thappar v. State of Madras, AIR 1950 SC 124 : (1950) 51 Cri LJ 1514; *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740 : 1966 Cri LJ 608; *State of Karnataka v. Praveen Bhai Thogadia*, (2004) 4 SCC 684 : 2004 SCC (Cri) 1387, *relied on*

ZU. Legal Maxims – *Qui non prohibet quod prohibere potest, asentire videtur* (he who does not prohibit when he is able to prohibit assents to it) – Applied

(Para 227)

K-D/49499/CRV

Advocates who appeared in this case:

R.F. Nariman, Solicitor General, P.P. Malhotra, Additional Solicitor General, Dr Rajeev Dhavan (Amicus Curiae), Ram Jethmalani, Harish Salve and P.H. Parekh, Senior Advocates [Udita Singh, L.R. Singh, Shubhranshu Pedhi, Ms Anil Katiyar, Ms Lata Krishnamurti, Balajji Subramanian, Ms Manu Sharma, Karan Kalia, Pranav Diesh, Sanjay Jain, Vikas Garg, B.K. Prasad, Siddhartha Dave, Shailender Sharma, S.N. Terdal, D.P. Mohanty, Ms Subhasree Chatterjee, Anand Shankar Jha, Ekansh Misra (for M/s Parekh & Co.), Ms Kamini Jaiswal, Ms Shomila Bakshi, Abhimanyu Shrestha and Ms Kumud L. Das, Advocates] for the appearing parties.


Chronological list of cases cited

on page(s)

| | |
|--|----------------|
| 1. (2012) 5 SCC 126, <i>Ramlila Maidan Incident, In re</i> | 66d-e |
| 2. (2012) 5 SCC 125, <i>Ramlila Maidan Incident, In re</i> | 66d-e |
| 3. (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1, <i>Jaspal Singh v. State of Punjab</i> | 121e-f |
| 4. (2011) 14 SCC 481, <i>MCD v. Uphaar Tragedy Victims Assn.</i> | 107f |
| 5. (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310, <i>Ram Jethmalani v. Union of India</i> | 120b |
| 6. (2011) 7 SCC 547 : (2011) 2 SCC (L&S) 762, <i>Nandini Sundar v. State of Chhattisgarh</i> | 118d |
| 7. (2011) 4 SCC 36, <i>GVK Industries Ltd. v. ITO</i> | 118d |
| 8. (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1, <i>Selvi v. State of Karnataka</i> | 120b |
| 9. (2009) 9 SCC 551 : (2010) 1 SCC (Cri) 47, <i>Bhavesh Jayanti Lakhani v. State of Maharashtra</i> | 120b |
| 10. (2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : (2009) 2 SCC (Civ) 451, <i>Destruction of Public and Private Properties, In re</i> | 58h, 104c |
| 11. (2005) 8 SCC 796, <i>Noise Pollution (7), In re</i> | 120e |
| 12. (2005) 8 SCC 534, <i>State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat</i> | 36f-g |
| 13. (2005) 1 SCC 496, <i>District Registrar and Collector v. Canara Bank</i> | 120b |
| 14. (2004) 4 SCC 684 : 2004 SCC (Cri) 1387, <i>State of Karnataka v. Praveen Bhai Thogadia</i> | 43e, 45e, 100f |
| 15. (2004) 2 SCC 510, <i>Union of India v. Naveen Jindal</i> | 39a-b |

| | |
|---|----------------|
| 16. (2003) 8 SCC 731 : 2004 SCC (Cri) 252, <i>Municipal Corpn. of Greater Bombay v. Laxman Iyer</i> | 107e |
| 17. (2003) 4 SCC 493, <i>Sharda v. Dharpal</i> | 120a-b |
| 18. (2003) 4 SCC 399, <i>People's Union for Civil Liberties v. Union of India</i> | 120a-b |
| 19. (2002) 5 SCC 294, <i>Union of India v. Assn. for Democratic Reforms</i> | 104d |
| 20. (2000) 7 SCC 282 : 2000 SCC (Cri) 1350, <i>Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn.</i> | 120e |
| 21. (1998) 8 SCC 296, <i>Mr 'X' v. Hospital 'Z'</i> | 120a-b |
| 22. AIR 1998 Cal 121, <i>Burrabazar Fire Works Dealers Assn. v. Commr. of Police</i> | 120e |
| 23. (1997) 7 SCC 91, <i>Amitabh Bachchan Corpn. Ltd. v. Mahila Jagran Manch</i> | 100f |
| 24. (1997) 1 SCC 416 : 1997 SCC (Cri) 92, <i>D.K. Basu v. State of W.B.</i> | 118f-g |
| 25. (1997) 1 SCC 301, <i>People's Union for Civil Liberties v. Union of India</i> | 119b-c, 120a-b |
| 26. (1996) 5 SCC 216, <i>D.C. Saxena v. Chief Justice of India</i> | 38d-e |
| 27. (1994) 6 SCC 632, <i>R. Rajagopal v. State of T.N.</i> | 120a-b |
| 28. (1991) 1 SCC 57 : 1991 SCC (Cri) 1, <i>State of Maharashtra v. Madhukar Narayan Gardikar</i> | 120a |
| 29. (1989) 2 SCC 574, <i>S. Rangarajan v. P. Jagjivan Ram</i> | 35b-c |
| 30. AIR 1985 Cal 222, <i>Rabin Mukherjee v. State of W.B.</i> | 120e |

31. (1982) 1 SCC 71 : 1982 SCC (Cri) 82, *Gulam Abbas v. State of U.P.* 84g-h

 Page: 28

32. (1981) 1 SCC 608 : 1981 SCC (Cri) 212, *Francis Coralie Mullin v. UT of Delhi* 119a

33. (1981) 1 SCC 420 : 1981 SCC (Cri) 169, *Malak Singh v. State of P&H* 120a

34. (1979) 2 SCC 409 : 1979 SCC (Tax) 144, *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.* 118e

35. (1978) 3 SCC 544 : 1978 SCC (Cri) 468, *M.H. Hoskot v. State of Maharashtra* 33a-b

36. (1978) 1 SCC 248, *Maneka Gandhi v. Union of India* 32g-h

37. (1975) 2 SCC 148 : 1975 SCC (Cri) 468, *Gobind v. State of M.P.* 119b

38. (1973) 1 SCC 227 : 1973 SCC (Cri) 280, *Himat Lal K. Shah v. Commr. of Police* 42c-d, 97a, 103b, 103g-h

39. (1971) 1 SCC 85, *Madhav Rao Jivaji Rao Scindia v. Union of India* 118d

40. (1970) 3 SCC 746, *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr* 40d-e, 100f, 101a, 101a-b

41. (1970) 3 SCC 227 : 1971 SCC (Cri) 45, *R.K. Garg v. Supt., District Jail* 100f

42. (1969) 3 SCC 337, *State of Bihar v. Kamla Kant Misra* 41a

43. (1969) 1 SCC 502 : (1969) 3 SCR 548, *Railway Board v. Niranjan Singh* 42e-f

44. AIR 1966 SC 740 : 1966 Cri LJ 608, *Ram Manohar Lohia v. State of Bihar* 37d-e, 43b-c
45. AIR 1964 SC 72 : (1964) 4 SCR 733, *Pratap Singh v. State of Punjab* 54d
46. AIR 1963 SC 1295 : (1963) 2 Cri LJ 329, *Kharak Singh v. State of U.P.* 119b, 119b-c
47. AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423, *Babulal Parate v. State of Maharashtra* 31a, 40b, 42a-b, 46c, 81g-h, 100e-f, 101a-b
48. AIR 1959 SC 1383, *State of Saurashtra v. Memon Haji Ismail Haji Valimohammed* 118e
49. (1953) 2 SCC 688 : AIR 1954 SC 92, *State of W.B. v. Subodh Gopal Bose* 32d
50. (1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 Cri LJ 966, *State of Madras v. V.G. Row* 36c
51. 1951 AC 601 : (1951) 2 All ER 448 (PC), *Nance v. British Columbia Electric Railway Co. Ltd.* 106f-g
52. 1950 SCC 695 : AIR 1951 SC 118, *Chintamanrao v. State of M.P.* 36e
53. 95 L Ed 295 : 340 US 315 (1951), *Feiner v. New York* 44c
54. 95 L Ed 267, at 276 : 340 US 268, at 282 (1951), *Niemotko v. Maryland* 29e
55. AIR 1950 SC 124 : (1950) 51 Cri LJ 1514, *Romesh Thappar v. State of Madras* 37c-d, 45a-b
56. 93 L Ed 1782 : 338 US 25 (1949), *Wolf v. Colorado* 119f-g
57. (1936) 37 Cri LJ 95 (Pat), *Jagrupa Kumari v. Chobey Narain Singh* 41c-d

58. 63 L Ed 470 : 249 US 47 (1919), *Schenck v. United States*

29c-d, 30b-c, 30f-g

The Judgments⁺⁺ of the Court were delivered by

SWATANTER KUMAR, J.— At the very outset, I would prefer to examine the principles of law that can render assistance in weighing the merit or otherwise of the contentious disputations asserted before the Court by the parties in the present suo motu petition. Besides restating the law governing Articles 19(1)(a) and 19(1)(b) of the Constitution of India and the parallel restrictions contemplated under Articles 19(2) and 19(3) respectively, I would also gauge the dimensions of legal provisions in relation to the exercise of jurisdiction by the empowered officer in passing an order under Section 144 of the Code of Criminal Procedure, 1973 (for short “CrPC”).



Page: 29

2. It appears justified here to mention the First Amendment to the United States (US) Constitution, a bell-wether in the pursuit of expanding the horizon of civil liberties. This Amendment provides for the freedom of speech of press in the American Bill of Rights. This Amendment added new dimensions to this right to freedom and purportedly, without any limitations. The expressions used in wording the First Amendment have a wide magnitude and are capable of liberal construction. It reads as under:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The effect of use of these expressions, in particular, was that the freedom of speech of press was considered absolute and free from any restrictions whatsoever.

3. Shortly thereafter, as a result of widening of the power of judicial review, the US Supreme Court preferred to test each case on the touchstone of the rule of “clear and present danger”^{*}. However, application of this rule was unable to withstand the pace of development of law and, therefore, through its judicial pronouncements, the US Supreme Court applied the doctrine of “balancing of interests”. The cases relating to speech did not simply involve the rights of the offending speaker but typically they presented a clash of several rights or a conflict between individual rights and necessary functions of the Government. Frankfurter, J. often applied the abovementioned balancing formula and concluded that “while the court has emphasised the importance of ‘free speech’, it has recognised that free speech is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if free expression of ideas is not found to be the overbalancing considerations.”^{**}

4. The “balancing of interests” approach is basically derived from Roscoe Pound's theories of social engineering. Pound had insisted that his structure of public, social

and individual interests are all, in fact, individual interests looked at from different points of view for the purpose of clarity. Therefore, in order to make the system work properly, it is essential that when interests are balanced, all claims must be translated into the same level and carefully labelled. Thus, a social interest may not be balanced against individual interest, but only against another social interest. The author points out that throughout the heyday of the "clear and present danger" and "preferred position" doctrines, the language of balancing, weighing or accommodating interests was employed as an integral part of the libertarian position. (*Freedom of Speech : The Supreme Court and Judicial Review*, by Martin Shapiro, 1966.)



5. Even in the United States there is a recurring debate in modern First Amendment jurisprudence as to whether First Amendment rights are "absolute" in the sense that the Government may not abridge them at all or whether the First Amendment requires the "balancing of competing interests" in the sense that free speech values and the Government's competing justification must be isolated and weighted in each case. Although the First Amendment to the American Constitution provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of the constitutional Government to survive. If it is to survive, it must have power to protect itself against unlawful conduct and under some circumstances against incitements to commit unlawful acts. Freedom of speech, thus, does not comprehend the right to speak on any subject at any time.

6. In *Schenck v. United States*¹ the Court held : (L Ed pp. 473-74)


"... the character of every act depends upon the circumstances in which it is done. ... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre, and causing a panic. It does not even protect a man from an injunction against uttering words that have all the effect of force. ... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

[*Constitution of India* (2nd Edn.), Vol. 1 by Dr L.M. Singhvi.]

7. In contradistinction to the above approach of the US Supreme Court, the Indian Constitution spells out the right to freedom of speech and expression under Article 19 (1)(a). It also provides the right to assemble peacefully and without arms to every citizen of the country under Article 19(1)(b). However, these rights are not free from any restrictions and are not absolute in their terms and application. Articles 19(2) and 19(3), respectively, control the freedoms available to a citizen. Article 19(2) empowers the State to impose reasonable restrictions on exercise of the right to freedom of speech and expression in the interest of the factors stated in the said clause. Similarly, Article 19(3) enables the State to make any law imposing reasonable restrictions on the exercise of the right conferred, again in the interest of the factors stated therein.

8. In face of this constitutional mandate, the American doctrine adumbrated in *Schenck case*¹ cannot be imported and applied. Under our Constitution, this right is not an absolute right but is subject to the abovenoticed restrictions. Thus, the position under our Constitution is different.

9. In *Constitutional Law of India* by H.M. Seervai (4th Edn.), Vol. 1, the author has noticed that the provisions of the two Constitutions as to freedom of speech and expression are essentially different. The difference being accentuated by the provisions of the Indian Constitution for preventive detention which have no counterpart in the US Constitution. Reasonable

 Page: 31

restriction contemplated under the Indian Constitution brings the matter in the domain of the court as the question of reasonableness is a question primarily for the court to decide. (*Babulal Parate v. State of Maharashtra*²)


10. The fundamental right enshrined in the Constitution itself being made subject to reasonable restrictions, the laws so enacted to specify certain restrictions on the right to freedom of speech and expression have to be construed meaningfully and with the constitutional object in mind. For instance, the right to freedom of speech and expression is not violated by a law which requires that the name of the printer and publisher and the place of printing and publication should be printed legibly on every book or paper.

11. Thus, there is a marked distinction in the language of law, its possible interpretation and application under the Indian and the US laws. It is significant to note that the freedom of speech is the bulwark of a democratic Government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press.

12. In order to effectively consider the rival contentions raised and in the backdrop of the factual matrix, it will be of some concern for this Court to examine the constitutional scheme and the historical background of the relevant articles relating to the right to freedom of speech and expression in India. The Framers of our Constitution, in unambiguous terms, granted the right to freedom of speech and expression and the right to assemble peaceably and without arms. This gave to the citizens of this country a very valuable right, which is the essence of any democratic system. There could be no expression without these rights. Liberty of thought enables liberty of expression. Belief occupies a place higher than thought and expression. Belief of people rests on liberty of thought and expression. Placed as the three angles of a triangle, thought and expression would occupy the two corner angles on the baseline

while belief would have to be placed at the upper angle. Attainment of the preambled liberties is eternally connected to the liberty of expression. (*Preamble : The Spirit and Backbone of the Constitution of India*, by Justice R.C. Lahoti.)

13. These valuable fundamental rights are subject to restrictions contemplated under Articles 19(2) and 19(3), respectively. Article 19(1) was subjected to just one amendment, by the Constitution (Forty-fourth Amendment) Act, 1978, vide which Article 19(1)(f) was repealed. Since Parliament felt the need of amending Article 19(2) of the Constitution, it was

 Page: 32

substituted by the Constitution (First Amendment) Act, 1951 with retrospective effect. Article 19(2) was subjected to another amendment and vide the Constitution (Sixteenth Amendment) Act, 1963, the expression “the sovereignty and integrity of India” was added. The pre-amendment article had empowered the State to make laws imposing reasonable restrictions in exercise of the rights conferred under Article 19(1) (a) in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. To introduce a more definite dimension with regard to the sovereignty and integrity of India, this amendment was made. It provided the right spectrum in relation to which the State could enact a law to place reasonable restrictions upon the freedom of speech and expression.

14. This shows that the State has a duty to protect itself against certain unlawful actions and, therefore, may enact laws which would ensure such protection. The right that springs from Article 19(1)(a) is not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder. (*State of W.B. v. Subodh Gopal Bose*³)

15. I consider it appropriate to examine the term “liberty”, which is subject to reasonable restrictions, with reference to the other constitutional rights. Article 21 is the foundation of the constitutional scheme. It grants to every person the right to life and personal liberty. This article prescribes a negative mandate that:

“21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The procedure established by law for deprivation of rights conferred by this article must be fair, just and reasonable. The rules of justice and fair play require that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness, thereby vitiating the law which prescribed that procedure and, consequently, the action taken thereunder.

16. Any action taken by a public authority which is entrusted with the statutory power has, therefore, to be tested by the application of two standards—first, the action must be within the scope of the authority conferred by law and, second, it must be reasonable. If any action, within the scope of the authority conferred by law is found to be unreasonable, it means that the procedure established under which that action is

.....
taken is itself unreasonable. The concept of "procedure established by law" changed its character after the judgment of this Court in *Maneka Gandhi v. Union of India*⁴, where this Court took the view as under : (SCC p. 284, para 7)

"7. ... The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness



Page: 33

pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

This was also noted in *M.H. Hoskot v. State of Maharashtra*⁵ where this Court took the following view : (SCC p. 551, para 10)

"10. ... 'Procedure established by law' are words of deep meaning for all lovers of liberty and judicial sentinels."

17. What emerges from the above principles, which has also been followed in a catena of judgments of this Court, is that the law itself has to be reasonable and furthermore, the action under that law has to be in accordance with the law so established. Non-observance of either of this can vitiate the action, but if the former is invalid, the latter cannot withstand.

18. Article 13 is a protective provision and an index of the importance and preference that the Framers of the Constitution gave to Part III. In terms of Article 13 (1), the laws in force before the commencement of the Constitution, insofar as they were inconsistent with the provisions of that Part were, to the extent of such inconsistency, void. It also fettered the right of the State in making laws. The State is not to make any law which takes away or abridges the rights conferred by this Part and if such law is made then to the extent of conflict, it would be void. In other words, except for the limitations stated in the articles contained in Part III itself and Article 13 (4) of the Constitution, this article is the reservoir of the fundamental protections available to any person/citizen.

19. While these are the guaranteed fundamental rights, Article 38, under the directive principles of State policy contained in Part IV of the Constitution, places a constitutional obligation upon the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice—social, economic and political—shall inform all the institutions of the national life. Article 37 makes the directive principles of State policy fundamental in the governance of the country and provides that it shall be the duty of the State to apply these principles in making laws.

20. With the development of law, even certain matters covered under this Part relating to directive principles have been uplifted to the status of fundamental rights, for instance, the right to education. Though this right forms part of the directive principles of State policy, compulsory and primary education has been treated as a part

of Article 21 of the Constitution of India by the courts, which consequently led to the enactment of the Right of Children to Free and Compulsory Education Act, 2009.

21. Article 51-A deals with the fundamental duties of the citizens. It, inter alia, postulates that it shall be the duty of every citizen of India to abide

 Page: 34

by the Constitution, to promote harmony and the spirit of common brotherhood, to safeguard public property and to abjure violence.

22. Thus, a common thread runs through Parts III, IV and IV-A of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these Parts.

23. It is necessary to be clear about the meaning of the word “fundamental” as used in the expression “fundamental in the governance of the State” to describe the directive principles which have not legally been made enforceable. Thus, the word “fundamental” has been used in two different senses under our Constitution. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law *pretendo* void. The word “fundamental” in Article 37 also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve. As already noticed, the significance of the fundamental principles stated in the directive principles has attained greater significance through judicial pronouncements.

24. As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine the existence of a right not coupled with a duty. The duty may be a direct or indirect consequence of a fair assertion of the right. Part III of the Constitution of India although confers rights, still duties and restrictions are inherent thereunder. These rights are basic in nature and are recognised and guaranteed as natural rights, inherent in the status of a citizen of a free country, but are not absolute in nature and uncontrolled in operation. Each one of these rights is to be controlled, curtailed and regulated, to a certain extent, by laws made by Parliament or the State Legislature.

25. In spite of there being a general presumption in favour of the constitutionality of a legislation under challenge alleging violation of the right to freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation being made out, the onus shifts upon the State to show that the legislation comes within the permissible restrictions set out in clauses (2) to (6) of Article 19 and that the particular restriction is reasonable. It is for the State to place on record appropriate material justifying the restriction and its reasonability. Reasonability of restriction is a matter which squarely falls within the power of judicial review of the courts. Such limitations, therefore, indicate two purposes; one that the freedom is not absolute and is subject to regulatory measures and the second that there is also a limitation on the

power of the legislature to restrict these freedoms. The legislature has to exercise these powers within the ambit of Article 19(2) of the Constitution.



Page: 35

26. Further, there is a direct and not merely implied responsibility upon the Government to function openly and in public interest. The right to information itself emerges from the right to freedom of speech and expression. Unlike an individual, the State owns a multi-dimensional responsibility. It has to maintain and ensure security of the State as well as the social and public order. It has to give utmost regard to the right to freedom of speech and expression which a citizen or a group of citizens may assert. The State also has a duty to provide security and protection to the persons who wish to attend such assembly at the invitation of the person who is exercising his right to freedom of speech or otherwise.

27. In *S. Rangarajan v. P. Jagjivan Ram*⁶ this Court noticed as under : (SCC pp. 595 -96, para 45)

“45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in a power keg’.”

28. Where the court applies the test of “proximate and direct nexus with the expression”, the court also has to keep in mind that the restriction should be founded on the principle of least invasiveness i.e. the restriction should be imposed in a manner and to the extent which is unavoidable in a given situation. The court would also take into consideration whether the anticipated event would or would not be intrinsically dangerous to public interest.

29. Now, I would examine the various tests that have been applied over the period of time to examine the validity and/or reasonability of the restrictions imposed upon the rights.

Upon the rights enshrined in the Constitution

30. No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:

(a) The restriction can be imposed only by or under the authority of law. It

cannot be imposed by exercise of executive power without any law to back it up.



Page: 36

(b) Each restriction must be reasonable.

(c) A restriction must be related to the purpose mentioned in Article 19(2).

The questions before the Court, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above.

31. The legislative determination of what restriction to impose on a freedom is final and conclusive, as it is not open to judicial review. The judgments of this Court have been consistent in taking the view that it is difficult to define or explain the word “reasonable” with any precision. It will always be dependent on the facts of a given case with reference to the law which has been enacted to create a restriction on the right. It is neither possible nor advisable to state any abstract standard or general pattern of reasonableness as applicable uniformly to all cases. This Court in *State of Madras v. V.G. Row*⁷ held : (AIR p. 200, para 15)

“15. ... It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases.”

32. For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorised, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, amongst others, enter into the judicial verdict. (See *Chintamanrao v. State of M.P.*⁸)

33. The courts must bear a clear distinction in mind with regard to “restriction” and “prohibition”. They are expressions which cannot be used interchangeably as they have different connotations and consequences in law. Wherever a “prohibition” is imposed, besides satisfying all the tests of a reasonable “restriction”, it must also satisfy the requirement that any lesser alternative would be inadequate. Furthermore, whether a restriction, in effect, amounts to a total prohibition or not, is a question of fact which has to be determined with regard to facts and circumstances of each case.

34. This Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*⁹ held as under : (SCC p. 573, para 75)

“75. Three propositions are well settled : (i) ‘restriction’ includes cases of ‘prohibition’; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and (iii) whether a restriction in effect



amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right.”

35. The obvious result of the above discussion is that a restriction imposed in any form has to be reasonable and to that extent, it must stand the scrutiny of judicial review. It cannot be arbitrary or excessive. It must possess a direct and proximate nexus with the object sought to be achieved. Whenever and wherever any restriction is imposed upon the right to freedom of speech and expression, it must be within the framework of the prescribed law, as subscribed by Article 19(2) of the Constitution.

36. As already noticed, rights, restrictions and duties coexist. As, on the one hand, it is necessary to maintain and preserve the freedom of speech and expression in a democracy, there, on the other, it is also necessary to place reins on this freedom for the maintenance of social order. The term “social order” has a very wide ambit. It includes “law and order”, “public order” as well as “the security of the State”. The security of the State is the core subject and public order as well as law and order follow the same.

37. In *Romesh Thappar v. State of Madras*¹⁰ this Court took the view that local breaches of public order were no grounds for restricting the freedom of speech guaranteed by the Constitution. This led to the Constitution (First Amendment) Act, 1951 and consequently, this Court in *Ram Manohar Lohia v. State of Bihar*¹¹ stated that an activity which affects “law and order” may not necessarily affect “public order” and an activity which might be prejudicial to “public order” may not necessarily affect “security of the State”. Absence of “public order” is an aggravated form of disturbance of public peace which affects the general current of public life. Any act which merely affects the security of others may not constitute a breach of “public order”.

38. The expression “in the interest of” has given a wide amplitude to the permissible law which can be enacted to impose reasonable restrictions on the rights guaranteed by Article 19(1) of the Constitution.

39. There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51-A are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant. Part IV of the Constitution relates to the



directive principles of the State policy. Article 38 was introduced in the Constitution as an obligation upon the State to maintain social order for promotion of welfare of the people. By the Constitution (Forty-second Amendment) Act, 1976, Article 51-A was added to comprehensively state the fundamental duties of the citizens to complement the obligations of the State. Thus, all these duties are of constitutional significance.

40. It is obvious that Parliament realised the need for inserting the fundamental duties as a part of the Indian Constitution and required every citizen of India to adhere to those duties. Thus, it will be difficult for any court to exclude from its consideration any of the abovementioned articles of the Constitution while examining the validity or otherwise of any restriction relating to the right to freedom of speech and expression available to a citizen under Article 19(1)(a) of the Constitution. The restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties and non-interference with the liberty of others. Therefore, a restriction on the right to assemble and raise protest has also to be examined on similar parameters and values. In other words, when you assert your right, you must respect the freedom of others. Besides imposition of a restriction by the State, non-interference with the liberties of others is an essential condition for assertion of the right to freedom of speech and expression.

41. In *D.C. Saxena v. Chief Justice of India*¹² this Court held : (SCC pp. 242-43, para 31)

“31. If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious viz. that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation. Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libellous, so that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right.”



42. Every right has a corresponding duty. Part III of the Constitution of India although confers rights and duties, restrictions are inherent thereunder. Reasonable

regulations have been found to be contained in the provisions of Part III of the Constitution of India, apart from clauses (2) to (4) and (6) of Article 19 of the Constitution. (See *Union of India v. Naveen Jindal*¹³.)

43. As I have already discussed, the restriction must be provided by law in a manner somewhat distinct to the term “due process of law” as contained in Article 21 of the Constitution. If the orders passed by the executive are backed by a valid and effective law, the restriction imposed thereby is likely to withstand the test of reasonableness, which requires it to be free of arbitrariness, to have a direct nexus to the object and to be proportionate to the right restricted as well as the requirement of the society, for example, an order passed under Section 144 CrPC. This order is passed on the strength of a valid law enacted by Parliament. The order is passed by an executive authority declaring that at a given place or area, more than five persons cannot assemble and hold a public meeting. There is a complete channel provided for examining the correctness or otherwise of such an order passed under Section 144 CrPC and, therefore, it has been held by this Court in a catena of decisions that such order falls within the framework of reasonable restriction.

44. The distinction between “public order” and “law and order” is a fine one, but nevertheless clear. A restriction imposed with “law and order” in mind would be least intruding into the guaranteed freedom while “public order” may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, “security of the State” is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of “public order” and “law and order”. However stringent may these restrictions be, they must stand the test of “reasonability”. The State would have to satisfy the court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution.

45. It is keeping this distinction in mind, the legislature, under Section 144 CrPC, has empowered the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf, to direct any person to abstain from doing a certain act or to take action as directed, where sufficient ground for proceeding under this section exists and immediate prevention and/or speedy remedy is desirable. By virtue of Section 144-A CrPC, which itself was introduced by Act 25 of 2005[±], the District Magistrate has been empowered to pass an order prohibiting, in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of any mass drill or mass training with arms in any public place, where it is necessary for him to do so for the

preservation of public peace, public safety or maintenance of public order. Section 144 CrPC, therefore, empowers an executive authority, backed by these provisions, to impose reasonable restrictions vis-à-vis the fundamental rights. The provisions of Section 144 CrPC provide for a complete mechanism to be followed by the Magistrate

concerned and also specify the limitation of time till when such an order may remain in force. It also prescribes the circumstances that are required to be taken into consideration by the said authority while passing an order under Section 144 CrPC.

46. In *Babulal Parate*² where this Court was concerned with the contention raised on behalf of the union of workers that the order passed in anticipation by the Magistrate under Section 144 CrPC was an encroachment on their rights under Articles 19(1)(a) and 19(1)(b), it was held that the provisions of the section, which commit the power in this regard to a Magistrate belonging to any of the classes referred to therein cannot be regarded as unreasonable. While examining the law in force in the United States, the Court further held that an anticipatory action of the kind permissible under Section 144 CrPC is not impermissible within the ambit of clauses (2) and (3) of Article 19. Public order has to be maintained at all times, particularly prior to any event and, therefore, it is competent for the legislature to pass a law permitting the appropriate authority to take anticipatory action or to place anticipatory restrictions upon particular kind of acts in an emergency for the purpose of maintaining public order.

47. In *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*¹⁴ a Constitution Bench of this Court took the following view : (SCC pp. 757-58, paras 23-27)

"23. The procedure to be followed is next stated. Under sub-section (2) if time does not permit or the order cannot be served, it can be made ex parte. Under sub-section (3) the order may be directed to a particular individual or to the public generally when frequenting or visiting a particular place. Under sub-section (4) the Magistrate may either suo motu or on an application by an aggrieved person, rescind or alter the order whether his own or by a Magistrate subordinate to him or made by his predecessor-in-office. Under sub-section (5) where the Magistrate is moved by a person aggrieved he must hear him so that he may show cause against the order and if the Magistrate rejects wholly or in part the application, he must record his reasons in writing. This sub-section is mandatory. An order by the Magistrate does not remain in force after two months from the making thereof but the State Government may, however, extend the period by a notification in the Gazette but, only in cases of danger to human life, health or safety or where there is a likelihood of a riot or an affray. But the second portion of the sub-section was declared

violative of Article 19 in *State of Bihar v. Kamla Kant Misra*¹⁵. It may be pointed out here that disobedience of an order lawfully promulgated is made an offence by Section 188 of the Penal Code, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed. It is punishable with simple imprisonment for one month or a fine of Rs 200 or both.

24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power

would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence : see *Jagrupa Kumari v. Chobey Narain Singh*¹⁶ which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. Insofar as the other parts of the section are concerned the keynote of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualises as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.

25. The criticism, however, is that the section suffers from over broadness and the words of the section are wide enough to give an absolute power which may be exercised in an unjustifiable case and then there would be no remedy except to ask the Magistrate to cancel the order which he may not do. Revision against his determination to the High Court may prove illusory because before the High Court can intervene the mischief will be done. Therefore, it is submitted that an inquiry should precede the making of the order. In other words, the burden should not be placed upon the person affected to clear his position. Further the order may be so general as to affect not only a

particular party but persons who are innocent, as for example when there is an order banning meetings, processions, playing of music, etc.

26. The effect of the order being in the interest of public order and the interests of the general public, occasions may arise when it is not possible to distinguish between those whose conduct must be controlled and those whose conduct is clear. As was pointed out in *Babulal Parate case*² where two rival trade unions clashed and it was difficult to say whether a person belonged to one of the unions or to the general public, an order restricting the activities of the general public in the particular area was justified.

27. ... A general order may be necessary when the number of persons is so large that distinction between them and the general public cannot be made without the risks mentioned in the section. A general order is thus justified but if the action is too general, the order may be questioned by appropriate remedies for which there is

.....
ample provision in the law.”

48. In *Himat Lal K. Shah v. Commr. of Police*¹⁷, again a Constitution Bench of this Court, while dealing with a situation where a person seeking permission to hold a public meeting was denied the same on the ground that under another similar permission, certain elements had indulged in rioting and caused mischief to private and public properties, held Rule 7 framed under the Bombay Police Act, 1951 as being arbitrary and observed as under : (SCC p. 239, para 32)

“32. ... It is not surprising that the Constitution makers conferred a fundamental right on all citizens ‘to assemble peaceably and without arms’. While prior to the coming into force of the Constitution the right to assemble could have been abridged or taken away by law, now that cannot be done except by imposing reasonable restrictions within Article 19(3). But it is urged that the right to assemble does not mean that that right can be exercised at any and every place.

This Court held in *Railway Board v. Niranjana Singh*¹⁸ that there is no fundamental right for any one to hold meetings in government premises. It was observed : (SCC p. 507, para 12)

‘12. ... The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please.’”

49. Section 144 CrPC is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or

.....
 Page: 43

safety or disturbance of public tranquillity or a riot or an affray. These features must coexist at a given point of time in order to enable the authority concerned to pass appropriate orders. The expression “law and order” is a comprehensive expression which may include not merely “public order” but also matters such as “public peace”, “public tranquillity” and “orderliness” in a locality or a local area and perhaps some other matters of public concern too. “Public order” is something distinct from order or orderliness in a local area. Public order, if disturbed, must lead to public disorder whereas every breach of peace may not always lead to public disorder.

50. This concept came to be illustratively explained in the judgment of this Court in *Ram Manohar Lohia*¹¹ wherein it was held that : (AIR p. 758, para 51)

“51. ... When two drunkards quarrel and fight, there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order.”


However, where the two persons fighting were of rival communities and one of them tried to raise communal passions, the problem is still one of “law and order” but it raises the apprehension of public disorder. The main distinction is that where it affects the community or public at large, it will be an issue relatable to “public order”. Section

144 CrPC empowers passing of such order in the interest of public order equitable to public safety and tranquillity. The provisions of Section 144 CrPC empowering the authorities to pass orders to tend to or to prevent the disturbances of public tranquillity is not ultra vires the Constitution.

51. In *State of Karnataka v. Praveen Bhai Thogadia*¹⁹ (SCC p. 691, para 6), this Court, while observing that each person, whatever be his religion, must get the assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and the freedom of conscience, held more emphatically that the

“courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and handle the situation depending upon the peculiar needs and necessities within their special knowledge”.

52. The scope of Section 144 CrPC enumerates the principles and declares the situations where exercise of rights recognised by law, by one or few, may conflict with other rights of the public or tend to endanger public peace, tranquillity and/or harmony. The orders passed under Section 144 CrPC are attempted to serve larger public interest and purpose. As already noticed, under the provisions of CrPC complete procedural mechanism is provided for examining the need and merits of an order passed under Section 144 CrPC. If one reads the provisions of Section 144 CrPC along

 Page: 44


with other constitutional provisions and the judicial pronouncements of this Court, it can undisputedly be stated that Section 144 CrPC is a power to be exercised by the specified authority to prevent disturbance of public order, tranquillity and harmony by taking immediate steps and when desirable, to take such preventive measures. Further, when there exists freedom of rights which are subject to reasonable restrictions, there are contemporaneous duties cast upon the citizens too. The duty to maintain law and order lies on the authority concerned and, thus, there is nothing unreasonable in making it the initial judge of the emergency. All this is coupled with a fundamental duty upon the citizens to obey such lawful orders as well as to extend their full cooperation in maintaining public order and tranquillity.

53. The concept of orderly conduct leads to a balance for assertion of a right to freedom. In *Feiner v. New York*²⁰ the Supreme Court of the United States of America dealt with the matter where a person had been convicted for an offence of disorderly conduct for making derogatory remarks concerning various persons including the President, political dignitaries and other local political officials during his speech, despite warning by the police officers to stop the said speech. The Court, noticing the condition of the crowd as well as the refusal by the petitioner to obey the police requests, found that the conduct of the convict was in violation of public peace and order and the authority did not exceed the bounds of proper State police action, held as under : (L Ed p. 300)

“... It is one thing to say that the police cannot be used as an instrument for the

suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the State courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech."

54. Another important precept of exercise of power in terms of Section 144 CrPC is that the right to hold meetings in public places is subject to control of the appropriate authority regarding the time and place of the meeting. Orders, temporary in nature, can be passed to prohibit the meeting or to prevent an imminent breach of peace. Such orders constitute reasonable restriction upon the freedom of speech and expression. This view has been followed consistently by this Court. To put it with greater clarity, it can be stated that the content is not the only concern of the controlling authority but the time and place of the meeting is also well within its jurisdiction. If the authority anticipates an imminent threat to public order or public tranquillity, it would be free to pass desirable directions within the parameters of

 Page: 45

reasonable restrictions on the freedom of an individual. However, it must be borne in mind that the provisions of Section 144 CrPC are attracted only in emergent situations. The emergent power is to be exercised for the purposes of maintaining public order.

55. It was stated by this Court in *Romesh Thappar*¹⁰ that the Constitution requires a line to be drawn in the field of public order and tranquillity, marking off, may be roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of peace of a purely local significance, treating for this purpose differences in degree as if they were different in kind. The significance of factors such as security of State and maintenance of public order is demonstrated by the mere fact that the Framers of the Constitution provided these as distinct topics of legislation in Entry 3 of the Concurrent List of the Seventh Schedule to the Constitution.

56. Moreover, an order under Section 144 CrPC being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of CrPC, such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction. In *Praveen Bhai Thogadia*¹⁹, this Court took the view that the Court, while dealing with such orders, does not act like an appellate authority over the decision of the official concerned. It

would interfere only where the order is patently illegal and without jurisdiction or with ulterior motive and on extraneous consideration of political victimisation by those in power. Normally, interference should be the exception and not the rule.

57. A bare reading of Section 144 CrPC shows that:

- (1) It is an executive power vested in the officer so empowered;
- (2) There must exist sufficient ground for proceeding;
- (3) Immediate prevention or speedy remedy is desirable; and
- (4) An order, in writing, should be passed stating the material facts and the same be served upon the person concerned.

These are the basic requirements for passing an order under Section 144 CrPC. Such an order can be passed against an individual or persons residing in a particular place or area or even against the public in general. Such an order can remain in force, not in excess of two months. The Government has the power to revoke such an order and wherever any person moves the Government for revoking such an order, the State Government is empowered



to pass an appropriate order, after hearing the person in accordance with sub-section (7) of Section 144 CrPC.

58. Out of the aforesaid requirements, the requirements of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance. In this context, the perception of the officer recording the desired/contemplated satisfaction has to be reasonable, least invasive and bona fide. The restraint has to be reasonable and further must be minimal. Such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration. The most onerous duty that is cast upon the empowered officer by the legislature is that the perception of threat to public peace and tranquillity should be real and not quandary, imaginary or a mere likely possibility.

59. This Court in *Babulal Parate*² had clearly stated the following view : (AIR p. 890, para 26)

“26. The language of Section 144 is somewhat different. The test laid down in the section is not merely ‘likelihood’ or ‘tendency’. The section says that the Magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety, etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger.”

The abovestated view of the Constitution Bench is the unaltered state of law in our country. However, it needs to be specifically mentioned that the “apprehension of danger” is again what can inevitably be gathered only from the circumstances of a given case.

60. Once an order under Section 144 CrPC is passed, it is expected of all concerned to implement the said order unless it has been rescinded or modified by a forum of competent jurisdiction. Its enforcement has legal consequences. One of such

consequences would be the dispersement of an unlawful assembly and, if necessitated, by using permissible force. An assembly which might have lawfully assembled would be termed as an "unlawful assembly" upon the passing and implementation of such a preventive order. The empowered officer is also vested with adequate powers to direct the dispersement of such assembly. In this direction, he may even take the assistance of officers concerned and armed forces for the purposes of dispersing such an assembly. Furthermore, the said officer has even been vested with the powers of arresting and confining the persons and, if necessary, punishing them in accordance with law in terms of Section 129 CrPC. An order under Section 144 CrPC would have an application to an "actual" unlawful assembly as well as a "potential" unlawful assembly. This is precisely the scope of application and enforcement of an order passed under Section 144 CrPC.



61. Having noticed the legal precepts applicable to the present case, it will be appropriate to notice, at this stage, the factual matrix advanced by each of the parties to the case before this Court.

Version put forward by learned amicus curiae

62. In 2008, Baba Ramdev was the first person to raise the issue of black money publicly. The black money outside the country was estimated at total of Rs 400 lakh crores or nearly nine trillion US dollars. On 27-2-2011, an anti-corruption rally was held at the Ramlila Maidan, New Delhi where more than one lakh persons are said to have participated. The persons present at the rally included Baba Ramdev, Acharya Balakrishna, Ram Jethmalani, Anna Hazare and many others. On 20-4-2011, the President of Bharat Swabhiman Trust, Delhi Pradesh submitted an application to the MCD proposing to take the Ramlila Maidan on rent, subject to the general terms and conditions, for holding a yoga training camp for 4 to 5 thousand people between 1-6-2011 to 20-6-2011. He had also submitted an application to the Deputy Commissioner of Police (Central District) seeking permission for holding the yoga training camp which permission was granted by the DCP (Central District) vide his letter dated 25-4-2011. This permission was subject to the terms and conditions stated therein.

63. Permission letter dated 25-4-2011 reads as under:


"With reference to your Letter No. Nil, dated 20-4-2011, on the subject cited above, I am directed to inform you that your request for permission to organise yoga training session at Ramlila Ground from 1-6-2011 to 20-6-2011 by Bharat Swabhiman Trust, Delhi Pradesh has been considered and permission is granted for the same subject to the conditions that there should not be any obstruction to the normal flow of traffic and permission from land owing agency is obtained. Besides this, you will deploy sufficient number of volunteers at the venue of the function. Further, you are requested to comply with all the instructions given by police authorities time to time, failing which this permission can be revoked at any time."

64. Continuing with his agitation for the return of black money to the country, Baba Ramdev wrote a letter to the Prime Minister on 4-5-2011 stating his intention to go on

a fast to protest against the Government's inaction in that regard. The Government made attempts to negotiate with Baba Ramdev and to tackle the problem on the terms, as may be commonly arrived at between the Government and Baba Ramdev. This process started with effect from 19-5-2011 when the Prime Minister wrote a letter to Baba Ramdev asking him to renounce his fast. The Finance Minister also wrote a letter to Baba Ramdev informing him about the progress in the matter.

65. On 23-5-2011, Baba Ramdev submitted an application for holding a dharna at Jantar Mantar, which permission was also granted to him vide letter dated 24-5-2011, which reads as follows:

"With reference to your letter dated 23-5-2011, on the subject mentioned above, I have been directed to inform you that you are

 Page: 48

permitted dharna/satyagraha at Jantar Mantar on 4-6-2011 from 0800 hrs to 1800 hrs with a very limited gathering."

In furtherance to the aforesaid permission, it was clarified vide letter dated 26-5-2011 informing the organisers that the number of persons accompanying Baba Ramdev should not exceed two hundred.

66. On 27-5-2011, the DCP (Central District), on receiving the media reports about Baba Ramdev's intention to organise a fast unto death at the yoga training camp, made further enquiries from Acharya Virendra Vikram requiring him to clarify the actual purpose for such huge gathering. His response to this, vide letter dated 28-5-2011, was that there would be no other programme at all, except residential yoga camp. However, the Special Branch, Delhi Police also issued a special report indicating that Baba Ramdev intended to hold indefinite hunger strike along with 30,000-35,000 supporters and that the organisers were further claiming that the gathering would exceed one lakh.

67. According to Dr Dhavan, the learned amicus curiae, there is still another angle to this whole episode. When Baba Ramdev arrived at Delhi airport on 1-6-2011, four senior Ministers of the UPA Government met him at the airport and tried to persuade him not to pursue the said fast unto death since the Government had already taken initiative on the issue of corruption.

68. In the meanwhile, large number of followers of Baba Ramdev had gathered at the Ramlila Maidan by the afternoon of 4-6-2011. In the evening of that very day, one of the Ministers who had met Baba Ramdev at the airport, Mr Kapil Sibal, made public a letter from Baba Ramdev's camp calling off their agitation. This was not appreciated by Baba Ramdev, as, according to him, the Government had not stood by its commitments and, therefore, he hardened his position by declaring not to take back his satyagraha until a proper government ordinance was announced in place of forming a committee. The Ministers talked to Baba Ramdev in great detail but of no avail. It is stated that even the Prime Minister had gone the extra mile to urge Baba Ramdev not to go ahead with the hunger strike, promising him to find a "pragmatic and practical" solution to tackle the issue of corruption. Various attempts were made at different levels of the Government to resolve this issue amicably. Even a meeting of the

Ministers with Baba Ramdev was held at Hotel Claridges.

69. It was reported by the press/media that many others supported the stand of Baba Ramdev. It was widely reported that Mr Sibal had said: "We hope he honours his commitment and honours his fast. This Government has always reached out but can also rein in." The press reported the statement of the Chief Minister, Delhi as stated by the officials including police officers in the words: "Action would be taken if Baba Ramdev's yoga shivir turns into an agitation field and three-tier security arrangements have been made for the shivir which is supported to turn into a massive satyagraha." Even Anna's campaign endorsed Baba Ramdev's step. In this background, on 4-6-2011, Baba Ramdev's hunger strike began with the motto of "bhrashtachar mitao satyagraha", the key demands being the same as were stated on 27-2-2011.



Page: 49

70. As already noticed, Baba Ramdev had been granted permission to hold satyagraha at Jantar Mantar, of course, with a very limited number of persons. Despite the assurance given by Acharya Virendra Vikram, as noted above, the event was converted into an anshan and the crowd at the Ramlila Maidan swelled to more than fifty thousand. No yoga training was held for the entire day. At about 1.00 p.m., Baba Ramdev decided to march to Jantar Mantar for holding a dharna along with the entire gathering. Keeping in view the fact that Jantar Mantar could not accommodate such a large crowd, the permission dated 24-5-2011/26-5-2011 granted for holding the dharna was withdrawn by the authorities. Certain negotiations took place between Baba Ramdev and some of the Ministers on telephone, but, Baba Ramdev revived his earlier condition of time-bound action, an ordinance to bring black money back and the items missing on his initial list of demands.

71. At about 11.15 p.m., it is stated that the Centre's emissary reached Baba Ramdev at the Ramlila Maidan with the letter assuring a law to declare black money hoarded abroad as a national asset. The messenger kept his mobile on so the government negotiators could listen to Baba Ramdev and his aides. The conversation with Baba Ramdev convinced the Government that Baba Ramdev will not wind up his protest. At about 11.30 p.m., a team of police, led by the Joint Commissioner of Police, met Baba Ramdev and informed him that the permission to hold the camp had been withdrawn and that he would be detained.

72. At about 12.30 a.m., a large number of CRPF, Delhi Police Force and Rapid Action Force personnel, totalling approximately to 5000 (as stated in the notes of the amicus; however, from the record it appears to be 1200), reached the Ramlila Maidan. At this time, the protestors were peacefully sleeping. Thereafter, at about 1.10 a.m., the police reached the dais/platform to take Baba Ramdev out, which action was resisted by his supporters. At 1.25 a.m., Baba Ramdev jumped into the crowd from the stage and disappeared amongst his supporters. He, thereafter, climbed on the shoulders of one of his supporters, exhorting women to form a barricade around him. A scuffle between the security forces and the supporters of Baba Ramdev took place and eight rounds of tear gas shells were fired. By 2.10 a.m., almost all the supporters had

been driven out of the Ramlila Maidan. The police sent them towards the New Delhi Railway Station. Baba Ramdev, who had disappeared from the dais earlier, was apprehended by the police near Ranjit Singh Flyover at about 3.40 a.m. At that time, he was dressed in salwar-kameez with a dupatta over his beard. He was taken to the airport guest house. It was planned by the Government to fly Baba Ramdev in a chopper from Safdarjung Airport. However, at about 9.50 a.m. the Government shelved this plan and put him in an Indian Air Force helicopter and flew him out of the Indira Gandhi International Airport.

73. The learned amicus curiae has made twofold submissions. One on "facts and pleadings" and the other on "law". I may now refer to some of the submissions made on facts and pleadings.



74. The Ramlila Maidan provided an accurate barometer of the country's political mood in 1960s and 1970s which can be gauged from an article dated 18-8-2011 in *The Times of India*, which stated as under:

"It was in the Ramlila Ground that Jai Prakash Narain along with prominent opposition leaders, addressed a mammoth rally on 25-6-1975, where he urged the armed forces to revolt against Indira Gandhi's Government. Quoting Ramdhari Singh Dinkar, J.P. thundered, 'Singhasan khali karo, ki janta aati hai (vacate the throne, for the people are here to claim it)'. That very midnight, Emergency was declared in the country.

Less than two years later, the ground was the venue for another opposition rally that many political commentators describe as epoch-changing. In February 1977, more than a month before Emergency was lifted, opposition leaders led by Jagjivan Ram, his first public appearance after quitting the Congress, Morarji Desai, Atal Bihari Vajpayee, Charan Singh and Chandrashekar, held a joint rally. That the Ramlila Ground provided an accurate barometer of the country's political mood in the 1960s and 70s can be gauged from the fact that in 1972, just around three years before the J.P. rally, Indira Gandhi addressed a huge rally here following India's victory over Pakistan in the Bangladesh war. In 1965, again at a time when the country was at war with Pakistan, it was from here that the then Prime Minister Lal Bahadur Shastri gave the slogan 'Jai Jawan Jai Kisan'.

According to Delhi historian, Ronald Vivian Smith, the Maidan was originally a pond which was filled up in the early 1930s so that the annual Ramlila could be shifted here from the flood plains behind the Red Fort. It quickly became a popular site for political meetings, with Gandhiji, Nehru, Sardar Patel and other top nationalist leaders addressing rallies here. According to one account, as Jinnah was holding a Muslim League rally here in 1945, he heard someone in the crowd address him as 'Maulana'. He reacted angrily saying he was a political leader and that honorific should never be used for him.

In the 1980s and 90s, the Boat Club became the preferred site for shows of strength. But after the Narasimha Rao Government banned all meetings there

during the tumultuous Ayodhya movement, the political spotlight returned to the site where it originally belonged—the Ramlila Ground.”

75. Amongst other things, it is a place of protests. In Standing Order 309 issued by the police, it has been stated that “any gathering of over 50,000 should not be permitted at the Ramlila Maidan but should be offered the Burari Grounds as an alternative. If, however, the organisers select a park or an open area elsewhere in Delhi, the same can be examined on merits.”

76. Pointing out certain ambiguities and contradictions in various affidavits filed on behalf of various officers of the Government and the police, learned amicus curiae pointed out certain factors by way of conclusions:

“It may be concluded that:

(i) The ground became a major protest area after the Government abolished rallies at the Boat Club.



Page: 51

(ii) The police's capacity for Ramlila is 50,000 but it limited Baba Ramdev's meet to 5000.

(iii) The ground appears to be accommodative but with only one major exit and entrance.

(iv) There are aspects of the material that show considerable mobilisation. But the figure of 5000 inside the tent is exaggerated.

(v) The numbers of people in the tent has varied but seems, according to the police, 20,000 or so at the time of the incident. But the Home Secretary suggests 60,000 which is an exaggeration.

(vi) The logs, etc. supplied seem a little haphazard, but some logs reflect contemporary evidence which shows things to the court's notice especially.”

However, it may be noticed by this Court that as per the version of the police, Point (ii) ought to be read as under:

“The capacity for Ramlila Maidan is 50,000 but it limited Baba Ramdev's meet to 5000.”

77. After noticing certain detailed facts in relation to the “threat perception of police” and the “Trust's perception”, learned amicus curiae has framed certain questions and has given record-based information as follows:

“(I) Crowd peaceful and sleeping.

6.1. The crowd entered the Ramlila Ground from one entrance without any hassle and cooperatively (see CD marked CD 003163 of 23 minutes @ 17 minutes). Police was screening each and every individual entering the premises. On 4-6-2011 many TV new (sic) channel live coverage shows about two kilometres long queue to enter the Maidan not even a single was armed, lathi or baseball bats, etc. (p. 8, Vol. 2)

6.2. The crowd is already asleep by 10.00-10.30 p.m., shown in newspaper photographs of 5-6-2011 (see p. 9, Vol. 1 and Annexure R-9 pp. 37-38, Vol. 2).

People requesting the police with folded hands (Annexure R-9 p. 39, Vol. 2), also recorded in CCTV cameras and in CD 004026 (marked as Item 19, p. 39, Vol. 10).

(II) Did the police enter abruptly to rescind order and remove Baba Ramdev?

6.3. The CD marked CD 003163 of 23 minutes on police entry and Baba Ramdev's reaction @ 10 minutes — Baba requests that he should be arrested in the morning with a warrant.

(III) Did Baba Ramdev make an incitory speech?

6.4. In general Baba Ramdev's speech carry aggressive issues but on 4-6-2011,

- no provocation was made by Baba Ramdev in any manner;
- says he is read (sic ready) to get arrested but his followers should not be harmed;
- asks his women supporters to form a security ring around him;
- also requests participants not to fight with police and be calm;
- also requests police not to manhandle his supports. (CDs handed by the Trust in court, the CD marked CD 003163 of 23 minutes @ 10 minutes.)

 Page: 52

(IV) Was the lathi-charge (sic charge) ordered? Were lathis used?

6.5. The police itself admits use of water cannon and tear gas but denies lathi-charge. No lathi-charge even ordered on public, no organised lathi-charge by policemen @ Vol. 3, p. 8, paras 30 and 33 at pp. 8-9; but evidence shows that lathi being used; see police beating people with lathis (Vol. 2, photographs at pp. 44-45), also in CD 004026 marked as Item 19, p. 39, Vol. 10 @ 47 minute shows lathi-charge.

(V) Bricks.

6.6. The CD marked R4-TIMEWISE-'B' @ 1 hr 11 m—Police entering from the back area and throwing bricks on the crowd inside the pandal.

(VI) Water cannon and tear gas.

6.7. Initially water cannon used; after it proved ineffective, tear gas fired towards right side of the stage resulting in a small fire. (Para 33, p. 9, Vol. III)

(VII) Injuries.

6.8. On injuries the figures are not clear as per the Commissioner of Police, Delhi Affidavit only *two persons* required hospitalisation for surgery. (Annexure S colly pp. 49-142, Vol. III)

| <i>Injured</i> | <i>Numbers</i> | <i>Released on first day</i> | <i>Released on second day</i> | <i>Treatment</i> |
|----------------|----------------|------------------------------|-------------------------------|------------------|
| Public | 48 | 41 | 05 | diagnosis/first |

| | | | | |
|-----------|----|--|--|-----|
| persons | | | | aid |
| Policemen | 38 | | | |

Injury sheets predominantly indicate injuries received during the minor stampede in one part of the enclosure.

6.9. Newspaper *The Times of India* gives the figure of 62 persons injured and 29 of the injured were discharged during the day in LNJP Hospital. What about those who were in other hospitals? Even there are many who failed to get recorded in the list of injured or to approach hospital for the medical aid. Only 62 injured, that too without lathi-charge.

7. It will also be (sic) demonstrate that

(i) The crowd does not appear to be armed in anyway—not even with baseball bats.

(ii) The police (sic personnel) were throwing bricks.

(iii) Baba Ramdev was abruptly woken up.

(iv) The crowd was asleep.

(v) The police used lathis.

(vi) The crowd also threw bricks.

(vii) The police used tear gas around that time. It is not clear what occurred first.

(viii) Water cannon was also used by the police.



(VIII) Speech.

7.1. From the videos of Zee News and ANI, it appears that Baba Ramdev

(i) exhorted people not to fight with police.

(ii) said, 'arrest me in the morning with a warrant'.

(iii) requesting first the women then young boys and then the old to make a protective kavach around him."

78. On these facts, it is the submission of learned amicus curiae that neither the withdrawal of permissions for the Ramlila Maidan and Jantar Mantar nor the imposition of restriction by passing an order under Section 144 CrPC was for valid and good cause/reason. On the contrary, it was for political and mala fide reasons. The purpose was to somehow not permit the continuation of the peaceful agitation at any of these places and for that reason, there was undue force used by the Government. The entire exercise was violative of the rights of an individual. A mere change in the number of persons present and an apprehension of the police could not be a reasonable ground for using tear gas and lathi-charge and thereby unduly disturbing the people who were sleeping peacefully up to 1.00 a.m. on the night of 4-6-2011/5-6-2011 at Ramlila Maidan.

79. Referring to the affidavits of the Home Secretary, the Chief Secretary, the police

officers and the documents on record, the contention is that in these affidavits, the deponents do not speak what is true. The imposition of restriction, passing of the order under Section 144 and the force and brutality with which the persons present at the Ramlila Maidan were dispersed is nothing but a show of power of the State as opposed to a citizen's right. Even the test of "in terrorem" requires to act in a manner and use such force which is least invasive and is in due regard to the right to assemble and hold peaceful demonstration. The threat perception of the authorities is more of a created circumstance to achieve the ultimate goal of rendering the agitation and the anshan unsuccessful by colourable exercise of State power.

80. It is also the contention of learned amicus that there are contradictions in the affidavits filed by the Home Secretary, Respondent 1 and the Commissioner of Police, Respondent 3. The affidavit of the Chief Secretary, Respondent 2, cannot be relied upon as he pleads ignorance in relation to the entire episode at the Ramlila Maidan. According to the Home Secretary, the Ministry of Home Affairs was routinely monitoring the situation and it is not the practice of the Ministry to confirm the grant of such permission. He also states that 60,000 persons came to the ground as against the estimated entry of 4000 to 5000 people. While according to the affidavit of the Police Commissioner, as a matter of practice, Delhi Police keeps the Ministry of Home Affairs duly informed in such matters as the said Ministry, for obvious reasons, is concerned about the preservation of law and order in the capital and carefully monitors all situations dealing with public order and tranquillity. From the affidavit of the Commissioner of Police, it is also clear that he was continuously in touch with the senior functionaries of the Ministry of Home Affairs and he kept them informed of the decisions taken



by the ACP and DCP to revoke the permission and promulgate the prohibitory orders under Section 144 CrPC.

81. Besides these contradictions, another very material fact is that the Home Minister, Shri P. Chidambaram had made a press statement on 8-6-2011, relevant part of which reads:

"A decision was taken that Shri Baba Ramdev would not be allowed to organise any protest or undertake any fast-unto-death at the Ramlila Ground and that if he persisted in his efforts to do so he would be directed to remove himself from Delhi."

82. Reference is also made to the statement of the Minister of Human Resource Development Shri Kapil Sibal, who had stated that the Government can rein in if persuasion fails.

83. Further, the contention is that these averments/reports have not been denied specifically in any of the affidavits filed on behalf of the Government and Delhi Police. The above statements and contradictions in the affidavits filed by these highly placed government officers should lead to a reasonable conclusion that the police had only carried out the decision, which was already taken by the Government. In these circumstances, even if there was no direct evidence, the Court can deduce, as a reasonable and inescapable inference from the facts proved, that exercise of power was

in bad faith. Reliance is placed upon *Pratap Singh v. State of Punjab*²¹.

84. The affidavits filed on behalf of the police and the Ministry of Home Affairs are at some variance. The variance is not of the nature that could persuade this Court to hold that these affidavits are false or entirely incorrect. This Court cannot lose sight of a very material fact that maintenance of law and order in a city like Delhi is not an easy task. Some important and significant decisions which may invite certain criticism, have to be taken by the competent authorities for valid reasons and within the framework of law. The satisfaction of the authority in such decisions may be subjective, but even this subjective satisfaction has to be arrived at objectively and by taking into consideration the relevant factors as are contemplated under the provisions of Section 144 CrPC. Some freedom or leverage has to be provided to the authority making such decisions. The courts are normally reluctant to interfere in exercise of such power unless the decision-making process is *ex facie* arbitrary or is not in conformity with the parameters stated under Section 144 CrPC itself.

85. From the record, it can reasonably be inferred that the Ministry of Home Affairs and Delhi Police were working in coordination and the police was keeping the Ministry informed of every development. There is some element of nexus between the Government's stand on the demands of Baba Ramdev, its decision in that regard and the passing of an order under Section 144 CrPC but, this by itself would not render the decision as that taken in bad faith. The decision of the Ministry or the police authorities may not be correct, but that *ipso facto* would not be a ground for the Court to believe that it was a colourable and/or mala fide exercise of power.



Version of Respondent 4

86. Now, I may refer to the case put forward by Respondent 4, the President of Bharat Swabhiman Trust, Delhi Area who has filed affidavits on behalf of that party. At the outset, it is stated in the affidavits filed that Baba Ramdev, the Trust and his followers are law-abiding citizens of the country and never had any intention to disturb the law and order, in any manner whatsoever. Various camps and meetings have been held by the Trust in various parts of the country and all such meetings have been peaceful and successful as well. Baba Ramdev had been travelling the length and breadth of the country explaining the magnitude of the problem of corruption and black money and failure of the Government to take effective steps. The anti-corruption movement had been at the forefront of the meetings held by Baba Ramdev at different places. Baba Ramdev is stated to have participated in a meeting against corruption at Jantar Mantar on 14-11-2010 where more than 10,000 people had participated. Similar meetings were organised at the Ramlila Maidan on 30-1-2011 and 27-2-2011, which also included a march to Jantar Mantar. None of these events were perceived by the Government as any threat to law and order and, in fact, they were peaceful and conveyed their theme of anti-corruption.

87. On 4-5-2011, Baba Ramdev had written a letter to the Prime Minister stating his intention to go on fast to protest against the Government's inaction against bringing

back the black money. This was responded to by the Prime Minister on 19-5-2011 assuring him that the Government was determined to fight the problem of corruption and black money in the economy and illegal deposits in the foreign countries and asking him to drop the idea of going on a hunger strike till death. On 20-5-2011, the Trust had written a letter to the police seeking permission to hold a fast unto death at Jantar Mantar protesting against the Government's inaction against corruption. The Finance Minister had also written a letter to Baba Ramdev on 20-5-2011 regarding the same issue. The dates of applying for permission to hold yoga camp and to hold dharna at Jantar Mantar and dates of granting of such permissions are not in dispute. The abovenoticed dates of applying for permission and to hold dharna at Jantar Mantar and their consequential approval are not disputed by this respondent.

88. According to this respondent, the police had attempted to make a huge issue that the permission granted to the trust was to hold a yoga camp of approximately 5000 persons and not a fast with thousands of persons attending. It is submitted by this respondent that police was concerned with the maintenance of law and order, free flow of traffic, etc. The use of land was the concern of the owner of the land, in the present case, Municipal Corporation of Delhi (MCD). The Trust had applied to MCD requesting it for giving on rent/lease the Ramlila Maidan for the period commencing from 1-6-2011 to 20-6-2011. Before grant of its permission, MCD had written to the Trust that they should obtain NOC from the Commissioner of Police, Delhi which was duly applied for and, as already noticed, obtained by the Trust. Of course, it was a conditional NOC and the conditions stated therein




had been adhered to, whereafter, MCD had given the Ramlila Maidan on lease to the Trust. The permission was revoked by the police and not by MCD and MCD never asked the Trust to vacate the premises i.e. the Ramlila Maidan.

89. Before the fateful night i.e. 4-6-2011/5-6-2011, it has been stated that Baba Ramdev had reached New Delhi and was received at the airport by the Ministers. There, at the airport itself, an attempt was made to persuade Baba Ramdev to call off his fast. Thereafter, a meeting was held at Hotel Claridges on 3-6-2011 wherein Baba Ramdev was assured that the Government would take concrete steps to bring back the black money from abroad and they would also issue an ordinance, whereupon he should call off his fast.

90. On 4-6-2011, from 5.00 a.m., the yoga camp was started at the Ramlila Maidan. This was also telecast live on Astha TV and other channels. During the yoga camp, Baba Ramdev stated that he will request the Government to follow the path of satya and ahinsa aparigriha and he would make efforts to eradicate corruption from the country. He also informed that the black money should be brought back and he would perform tapas for the nation in that shivir. Thousands of people had gathered at the venue. The police was present there all this time and the number of persons was already much in excess of 5000. It is emphasised, in the affidavit of this respondent, that as per the directions of the police, only one entry and one exit gate were being kept open and this gate was manned by the police personnel themselves, who were

screening each and every person who entered the premises. There was no disturbance or altercation, whatsoever, and the followers of Baba Ramdev were peacefully waiting in queues that stretched for over two kilometres. If the police wanted to limit the number to 5000, it could have easily stopped the people at the gate itself. However, no such attempt was made. This conduct of the police goes to indicate that the police action resulted from instructions from the Government and their current stand regarding the number of persons present is nothing but an afterthought. This respondent further asserts that there was no impediment to the free flow of traffic at any time on the day of the incident.

91. In the afternoon of 4-6-2011, when the preparations for starting the fast at Jantar Mantar began, senior officers of Delhi Police requested the officials of the Trust not to proceed to Jantar Mantar. In obedience of this order, the fast was begun at the Ramlila Maidan itself. During the course of negotiations with the Government, Baba Ramdev was assured that their demands in relation to black money and corruption would be met. This led to a festive atmosphere at the Ramlila Maidan at around 7.00 p.m. However, later on, the government representatives took the stand that no such assurances were given by them. Consequently, Baba Ramdev issued a statement that he will discuss the matter only with the Finance Minister or any other responsible person. At around 10.00 p.m., shanti paath was performed and everybody went to sleep as ashtang yoga training was scheduled for 5.00 a.m. next morning.

 Page: 57

92. At around 11.00 p.m., the Personal Assistant of Shri Sibal delivered a letter to Acharya Balkrishna as Baba Ramdev was asleep at that time, stating as follows:

“This is to clarify that the Government is committed to build a legal structure through which wealth generated illegally is declared as a national asset and that such assets nare (sic) subject to confiscation. Laws also provide for exemplary punishment for those who perpetrate ill-gotten wealth. This clearly declares the intention of the Government. You have already publicly stated that upon receiving this letter, you will end your tapa. We hope that you will honour this public commitment forthwith.”

This letter, it is stated, was found to be vague and non-committal as it was not mentioned in this letter as to what concrete steps the Government would take to tackle these national economic and moral crises.

93. At nearly midnight, by way of an unprecedented action, an order under Section 144 CrPC along with an order cancelling the permission granted earlier by the police, was issued, illegally, without any justification and without adequate warning. It is specifically denied that this order was served on any officer of the Trust. Around 12.30 a.m., more than 5000 policemen (as stated in the notes of the amicus; however, from the record it appears to be 1200 police personnel) had surrounded the tent while everyone inside it was sleeping. When asked by Baba Ramdev to furnish the arrest warrant, the police refused to do so. Baba Ramdev requested all the sadhakas to maintain peace and ahimsa.

94. This respondent also alleges that the police disabled the public address system. Consequently, Baba Ramdev got off the stage and exhorted his followers to maintain peace and calm. There was an apprehension that the police intended to kill Baba Ramdev and therefore, protective cordons were formed around Baba Ramdev. In order to gain access to Baba Ramdev, police launched brutal attack on the crowd, including women. Use of tear gas shells was also resorted to, causing a part of the stage to catch fire which could potentially have caused serious casualties. Policemen were also engaged in stone-pelting and looting. This event lasted till 4.00 a.m. As a result several people including women received injuries. Spinal cord of a woman named Rajbala was broken that left her paralysed. Respondent 4 contends that the media footage publicly available substantiates these contentions.

95. While leaving the Ramlila Maidan, the police allegedly sealed access to the help camp at Bangla Saheb Gurdwara. The press release and interview given by the Minister of Home Affairs on 8-6-2011 stresses that the order of externment of Baba Ramdev from Delhi after cancellation of permission for the fast/protest was determined in advance and was to be enforced in the event he "persisted" in his efforts to protest. The requirements for an order of externment under Section 47 of the Delhi Police Act, 1978 (for short "the DP Act") had, therefore, not been satisfied at the time of such decision and



such order was not served on Baba Ramdev at any point. They also failed to make Baba Ramdev aware of any alleged threat to his life. It is stated that the police have failed to register FIRs on the basis of complaints of 50 to 60 people including that given by one Shri Jagmal Singh dated 10-6-2011.

96. On these facts, it is the submission of Respondent 4 that it is ironic that persons fasting against failure of the Central Government to tackle the issue of corruption and black money have been portrayed as threats to law and order. Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action. The law prescribes no requirements for taking of permission to go on a fast. Respondent 4 suggests that in order to establish the truth of the incident, an independent Commission should be constituted, based on whose report, legal action to be taken in such situations should be determined.

97. With reference to the above factual averments made by Respondent 4, the argument advanced by Mr Ram Jethmalani, Senior Advocate, is that, in the earlier meetings, both at the Ramlila Maidan and Jantar Mantar, no untoward incident had occurred, which could, by any standard, cause an apprehension in the mind of the police that there could occur an incident, communal or otherwise, leading to public disorder, in any way. The revocation of permissions as well as the brutality with which the gathering at the Ramlila Maidan was dispersed is impermissible and, in any case, contrary to law. The Ground belongs to Municipal Corporation of Delhi and the permission had duly been granted by the said Corporation for the entire relevant period. This permission had never been revoked by the Corporation and as such the police had no power to evict the public from the premises of the Ramlila Maidan.

98. The police had also granted a “no-objection certificate” (NOC) for holding the meeting and the withdrawal of NOC is without any basis and justification. The purpose for granting of permission by the police was primarily for the reason that:

- (a) The Corporation had required such permission to be obtained;
- (b) There should be no obstruction to the traffic flow; and
- (c) There should be proper deployment of volunteers in adequate number.

None of the stated conditions, admittedly, had been violated and as such there was no cause for the police authorities to withdraw the said permission.

99. In fact, it is the contention on behalf of this respondent that there was no requirement or need for taking the permission of the police for holding such a function. Reliance in this regard is placed upon the judgment of this Court in *Destruction of Public and Private Properties, In re*²². Even if for the sake of arguments, it is assumed that there was a requirement for seeking permission from the police and the police had the authority to refuse such a



permission and such authority was exercised in accordance with law, then also this respondent and the public at large were entitled to a clear and sufficient notice before the police could use force to disperse the persons present at the site.

100. Imposition of an order under Section 144 CrPC was neither called for nor could have been passed in the facts and circumstances of the present case. It is contended that the police itself was an unlawful assembly. It had attacked the sleeping persons, after midnight, by trespassing into the property, which had been leased to the respondent Trust. The use of tear gas, lathi-charge, brickbattling and chasing the people out of the Ramlila Maidan were unjustifiable and brutal acts on the part of the police. It was completely disproportionate not only to the exercise of the rights to freedom of speech and expression and peaceful gathering, but also to the requirement for the execution of a lawful order. The restriction imposed, being unreasonable, its disproportionate execution renders the action of the police unlawful. This brutality of the State resulted in injuries to a large number of persons and even in death of one of the victims. There has also been loss and damage to the property.

101. Another aspect that has been emphasised on behalf of this respondent is that there was only one gate for “entry” and one for “exit”, besides the VIP entry near the stage. This was done as per the directive of the police. The entry gate was completely manned by the police and each entrant was frisked by the police to ensure security. Thus, the police could have easily controlled the number and manner of entry to the Ramlila Maidan as they desired. At no point of time were there more than 50,000 people present at the premises. On the contrary, in the midnight, when the police used force to evict the gathering, there were not even 20,000 people sleeping in the tent.

102. Lastly, it is also contended that the people at the Ramlila Maidan were sleeping at the time of the occurrence. They were woken up by the police, beaten and physically thrown out of the tents. In that process, some of the persons lost their belongings and even suffered damage to their person as well as property. Neither was there any threat

to public tranquillity nor any other material fact existed which could provide adequate basis or material to the authorities on the basis of which they could take such immediate preventive steps, including imposition of the prohibitory order under Section 144 CrPC. In fact, the order was passed in a pre-planned manner and with the only object of not letting Baba Ramdev to continue his fast at the relevant date and time. All this happened despite full cooperation by Baba Ramdev. He had voluntarily accepted the request of the police not to visit Jantar Mantar along with his followers on 4-6-2011 itself. Everything in the Ramlila Maidan was going on peacefully and without giving rise to any reasonable apprehension of disturbance of public order/public tranquillity. These orders passed and executed by the executive and the police did not satisfy any of the essential conditions as postulated under Section 144 CrPC.



Police version

103. The Commissioner of Police, Delhi has filed various affidavits to explain the stand of the police in the present case. I may notice that there is not much variation in the dates on which and the purpose for which the permissions were granted by the competent authority as well as the fact that the Ramlila Maidan was given by MCD to Respondent 4.

104. According to the police also, the Trust, Respondent 4, had sought permission to hold yoga camp for 4000 to 5000 people from 1-6-2011 to 20-6-2011 and the same was granted subject to the conditions stated above. Baba Ramdev had made a statement in the media indicating his intention to hold anshan. Upon seeking clarification by the DCP, Central District vide letter dated 27-5-2011, the Acharya by their letter dated 28-5-2011 had reaffirmed their stand that a yoga camp was to be held. It is the case of Respondent 3 that on 30-5-2011, Special Branch, Delhi Police had issued a special report that Baba Ramdev would proceed on an indefinite hunger strike with 30,000-35,000 persons and, in fact, the organisers of Respondent 4 were claiming that the gathering may exceed even one lakh in number.

105. The permission to hold the yoga camp was granted to Respondent 4. Citing certain inputs, the DCP issued a warning to Respondent 4 expressing his concern about the variance of the purpose as well as that there should be a limited gathering, otherwise the authorities would be compelled to review the permission. The DCP issued law and order arrangements detailing the requirement of force for dealing with such a large gathering. Further, inputs given on 3-6-2011 had indicated that Baba Ramdev was being targeted by certain elements so as to disrupt communal harmony between Hindus and Muslims. Advice was made for review and strengthening of security arrangements. As a result thereto, security of Baba Ramdev was upgraded to Z+ category vide order dated 3-6-2011 and a contingency plan was also drawn.

106. On 4-6-2011, despite assurances, the yoga training was converted into anshan at about 1300 hrs and Baba Ramdev decided to march to Jantar Mantar for "dharna" with the entire gathering, the permission for which was limited to only 200 people. Therefore, in view of the huge mass of people likely to come to Jantar Mantar, the said

permission was withdrawn on 4-6-2011. Baba Ramdev refused to accept the order and, in fact, exhorted his followers to stay back in Delhi and called for more people to assemble at Ramlila Maidan, which was already full. The verbal inputs received by the Joint Commissioner of Police indicated the possibility of further mobilisation of large number of people by the next morning. The Ramlila Maidan is surrounded by communally hypersensitive localities. Late at night, the crowd had thinned down to a little over 20,000. Since a large number of people were expected to gather on the morning of 5-6-2011, the permission granted to the Trust was also withdrawn and prohibitory orders under Section 144 CrPC were issued.

 Page: 61

107. In view of the above, the DCP considered it appropriate to immediately serve the order on Baba Ramdev requiring him and the people present to vacate the Ramlila Maidan.

108. According to these affidavits, force was deployed to assist the public in vacating the Ramlila Maidan. Buses were deployed at gates and ambulances, fire tenders, PCR vans were also called for. Baba Ramdev refused to comply with the orders. On the contrary, he jumped into the crowd, asked women and elderly persons to form a cordon around him in order to prevent the police from reaching him. No hearing was claimed by Baba Ramdev or any of his associates. This sudden reaction of Baba Ramdev created commotion and resulted in melee. Baba Ramdev exhorted his followers not to leave the Ramlila Maidan. Baba Ramdev, later on along with his followers, went on to climb the stage which is stated to have collapsed. The supporters of Respondent 4 had stocked the bricks behind the stage and were armed with sticks and baseball bats. The crowd started brickbattling and throwing security gadgets, flower pots, etc. at the police from the stage resulting in injuries to policemen and a minor stampede in public in a part of the enclosure. Baba Ramdev vanished from the stage with his female followers. A few members of the public jumped from the stage and got injured. Police exercised maximum restraint and used minimum force. To disperse the crowd, they initially used water cannons, which when proved ineffective, tear gas shells, only on right side of the stage, were used in a controlled manner. It is stated that this situation continued for around two hours and the police did not have any intention to forcibly evacuate the public from the Ramlila Maidan. As Baba Ramdev decided to evade the police, the situation at the Ramlila Maidan became volatile. The print media have given reports on the basis of incorrect facts or hearsay.

109. It is also stated in this affidavit that a total of 38 policemen and 48 public persons were injured and according to the medical reports, public persons sustained injuries during the minor stampede which occurred in one part of the enclosure. Most of these persons were discharged on the same date. The press clipping/reports do not present a complete picture of the incident and contained articles based on incorrect facts. The incident was unfortunate but was avoidable, had the organisers acted as law-abiding citizens and accepted the lawful directions of the police.

110. Having stated that the tear gas shelling and other force was used as a

response to the brickbatting and misbehaviour by the gathering, it is also averred that the affidavit filed on behalf of Respondent 4 could not be relied upon as the person swearing it was admittedly not present at the venue after 10.30 p.m. on 4-6-2011. All these actions are stated to have been taken by the police force in consultation with the senior officers and no instructions are stated to have been received from the Ministry of Home Affairs, although the said Ministry was kept informed and apprised of the development from time to time. All this was done in the interest of public order, larger security concern and preservation of law and order.



111. Permission of Delhi Police is required by anyone planning to hold public functions at public places. Delhi Police, having granted such permission, was fully competent to revoke it as well as to pass orders under Section 144 CrPC. The organisers of Respondent 4 had misled the police and the Special Branch report had clarified the situation on 30-5-2011 that the intention was to hold indefinite hunger strike. It is stated that by the evening of 3-6-2011, only 5000 persons had arrived. It is the case of the police that they had persuaded Baba Ramdev not to go to Jantar Mantar with his followers and, therefore, the dharna at Jantar Mantar was cancelled. It was the apprehension of the police that the gathering would increase several folds by the next morning and that could raise a major law and order problem and there was a possible imminent threat to public safety. Thus, the permission was withdrawn and order under Section 144 CrPC was passed.

112. Delhi Police confirms that it had been communicating information at the level of the Secretary to the Ministry of Home Affairs and any discussion or communication beyond that level is a matter in the domain of that Ministry itself. It was only in consequence of the violent retaliation by the crowd that use of tear gas, water cannons and finally lathi-charge was taken recourse to by the police. The video footage shows that a group of supporters of Respondent 4 standing on one side of the stage started throwing bricks and flower pots, etc. The police also found the bricks stacked behind the stage. It was the brickbatting and the atmosphere created by the crowd that resulted in a minor stampede.

113. Further, it is stated that the pandal was open on all sides, ceiling was high and there were enough escape routes and the use of tear gas in such a situation is not prohibited. Eight tear gas shells were used to prevent the police from being targeted or letting the situation turn violent and all precautions were taken before such use. No police officer was found to be hitting any person. Respondent 4 had been asked to install sufficient CCTV cameras and M/s Sai Wireless removed the cameras and DVRs installed by them immediately after the incident on 5-6-2011. The proprietor had even lodged a complaint at Police Station Kamla Market and a case of theft under FIR No. 49 of 2011 was registered. The said concern, upon being called for the same by a notice under Section 91 CrPC, produced 10 DVRs containing more than 190 hours of video. The investigation of that case revealed that out of 48 cameras ordered by the organisers, only 44 were installed, 42 were made operational out of which two

remained non-functional and recording of one could not be retrieved due to technical problems. Recording of eight cameras and two DVRs were not available as these equipments were reportedly stolen, as noted above. Thus, the recordings from only 41 cameras/DVRs were available.

114. The primary aim of MCD is to earn revenue from commercial use of the land and it is for the police to take care of the law and order situation and to regulate demonstrations, protests, marches, etc. No eviction order was passed except that the permissions were cancelled and order under Section 144 CrPC was made.

 Page: 63

115. On 25-7-2011, another affidavit was filed by the Commissioner of Police stating that nearly 155 complaints in writing and/or through email were received by Police Station Kamla Market alleging beating by the police, theft and loss of property i.e. belongings of the complainants, 13 out of them were duplicate, 11 anonymous and 35 emails were in the nature of comments. On investigation, only four persons responded to the notice under Section 91 CrPC, but stated facts different from what had been noticed in the complaints. Some complaints were also being investigated in case FIR No. 45 of 2011 registered at the same police station.


116. It is further the case, as projected during hearing, that probably one Smt Rajbala, who was on the stage with Baba Ramdev, had fallen from the stage and became unconscious. This complaint was also received at Police Station Kamla Market and was entered at Para 26-A dated 6-6-2011.

117. Still, in another affidavit dated 20-9-2011 filed on behalf of Respondent 3, it was specifically denied that any footages had been tampered with. The police had climbed to the stage, firstly, to serve the order and, thereafter, only when the entire incident was over and it was denied that Rajbala was beaten by the police. It is stated that the respondents, including Respondent 4, have isolated a segment of footage wherein few policemen are throwing bricks on tents near the stage. It is stated to be an isolated incident and was a reaction of few policemen to a spate of bricks thrown by Baba Ramdev's supporters. With regard to the injuries and cause of death of Smt Rajbala who died subsequent to the issuance of notice by this Court, it is averred that she was given medical aid and was admitted to the ICU. There was no external injury on her body. It is also stated that she was offered medical help of rupees two lakhs which was not accepted. She was a case of "gross osteoporosis", that too, to the extent that she was being managed by "endocrinologist" during her treatment. As stated, according to the medical literature, osteoporosis of this degree could make her bones brittle and prone to fracture even by low intensity impact.

118. While relying upon the above averments made in different affidavits, the submission on behalf of Respondent 3 is that there being no challenge to Standing Order 309, provisions of the DP Act and the Punjab Police Rules and even the order passed under Section 144 CrPC, the action of Delhi Police has to be treated as a reasonable and proper exercise of power. The organisers of Respondent 4 had misrepresented to the Government and the police authorities with regard to holding of

the yoga camp. The Trust is guilty of seeking permission on incorrect pretext. The effort on behalf of the police was that of carefully watching the development rather than taking any rash decisions and cancelling the permission earlier than when it was actually cancelled.

119. The right to freedom in a democracy has to be exercised in terms of Article 19 (1)(a) subject to public order. Public order and public tranquillity is a function of the State which duty is discharged by the State in the larger public interest. The private right is to be waived against public interest. The action of the State and the police was in conformity with law. As a large number of persons were to assemble on the morning of 5-6-2011 and

 Page: 64

considering the other attendant circumstances seen in the light of the inputs received from the intelligence agencies, the permission was revoked and the persons attending the camp at the Ramlila Maidan were dispersed.

120. Even if for the sake of argument, it is taken that there were some stray incidents of police excessiveness, the act at best can be attributable to individual actions and cannot be treated or termed as an organisational brutality or default. Individual responsibility is different from responsibility of the force. Abuse by one may not necessarily be an abuse of exercise of power by the force as a whole. The police had waited for a considerable time inasmuch as the order withdrawing the permission was passed at about 9.30 p.m. and was brought to the notice of the representatives of Respondent 4 at about 10.30 p.m. and no action was taken by the police till approximately 1 a.m. This was for the fact that the persons were sleeping and the police wanted them to disperse in a peaceful manner, but it was the stone-pelting, the panic created by the organisers and the consequent stampede that resulted in injuries to some persons. The contention is also that the organisers are responsible for creating the unpleasant incident on the midnight of 4-6-2011/5-6-2011 and they cannot absolve themselves of the responsibilities and liabilities arising therefrom. The police had acted in good faith and bona fide. Therefore, the action of the police cannot be termed as arbitrary, mala fide or violative of the basic rule of law.

121. Lastly, Mr Harish Salve, learned Senior Counsel appearing for Respondent 3, contended that there are certain issues which this Court need not dwell upon and decide as they do not directly arise for determination in the facts and circumstances of the present case:

(a) Whether it was necessary for MCD to direct and for organisers to take permission from Delhi Police?

(b) Cancellation of permission for holding of dharna/agitation at Jantar Mantar.

(c) Validity of the orders passed by the State including the order passed under Section 144 CrPC.

122. I have noticed, in some detail, the version of each of the parties before the Court in response to the suo motu notice. Before analysing the respective versions put before the Court by the parties and recording the possible true version of what happened which made the unfortunate incident occur, I would like to notice that I am

not prepared to fully accept the last contention raised by Mr Harish Salve, in its entirety. Of course, it may not be necessary for this Court to examine the effect of the cancellation of permission for Jantar Mantar and validity of the orders passed by the Government, but this Court is certainly called upon to deal with the question whether it was obligatory for the organisers, Respondent 4, to seek the permission of the police for holding such a large public demonstration. Therefore, I would be touching the various aspects of this issue and would deal with the orders of the State to the extent it is necessary to examine the main issue in regard to the excessive use of force and brutality and absolute organisational default by the police, if any.



Page: 65

Findings on incident of midnight of 4-6-2011/5-6-2011 and the role of police and members/followers of Respondent 4

123. All national and Delhi edition newspapers dated 5-6-2011 as well as the media reports had reported the unfortunate incident that occurred on the midnight of 4-6-2011/5-6-2011 at the Ramlila Maidan in Delhi. On the night of 4-6-2011, all the men and women, belonging to different age groups, who had come to the Ramlila Maidan to participate in the yoga training camp called as "Nishulk Yoga Vigyan Shivir", were comfortably sleeping at the Ramlila Maidan, when suddenly at about midnight, the people were woken up. The Joint Commissioner of Police sought to serve the order revoking the permission granted to hold the said yoga camp and imposing Section 144 CrPC, purportedly to curb any agitation at the Ramlila Maidan. There was commotion at the Ramlila Maidan. Persons who had suddenly woken up from sleep could not know where and how to go. It appears that Baba Ramdev did not receive the orders. However, some of the officials of Bharat Swabhiman Trust were made aware of the orders.

124. Thereafter, the police made an attempt to disperse the gathering at about and after 1.00 a.m. on 4-6-2011/5-6-2011. They are stated to have resorted to use of tear gas and lathi-charge in order to disperse the crowd as they were unable to do so in the normal course. Since there was protest by the people and some violence could result, the police used tear gas and lathi-charge to ensure dispersement of the assembly which had, by that time, been declared unlawful. As a result of this action by the police, a number of men and women were injured, some seriously. This also finally resulted into the death of one Smt Rajbala.

125. This action of the police was termed as brutal and uncalled for by the press. Headlines in the various newspapers termed this unfortunate incident as follows:

Times of India dated 6-6-2011:

- "Why Centre went from licking to kicking"
- "Ramleela Ground never saw so much drama"
- "She may be paralysed for life"
- "Women not spared, we were blinded by smoke"
- "Cops claim terror alert to justify midnight raid"

“Swoop not Sudden, cops trailed Ramdev for 3 days”

“After eviction they chant and squat on road”

“Protestors armed with bricks, baseball bats cops”


Indian Express dated 6-6-2011:

“Baba gives UPA a sleepless summer”

“Week ago, Home, Delhi Police told Government : look at plan the show”

“Getting Ramdev out”

“Yielding and bungling—Cong (Weak) Core Group”

 Page: 66

126. This event was described with great details in these news items and articles, along with photographs. Besides the fact that large number of persons were injured and some of them seriously, there was also damage to the property. The question raised before this Court, inter alia, included the loss and damage to the person and property that resulted from such unreasonable restriction imposed, its execution and invasion of fundamental right to speech and expression and the right to assembly, as protected under Articles 19(1)(a) and 19(1)(b). It is contended that the order was unreasonable, restriction imposed was contrary to law and the entire exercise by the police and the authorities was an indirect infringement of the rights and protections available to the persons present there, including Article 21 of the Constitution.

127. These events and the prima facie facts stated above, persuaded this Court to issue a suo motu notice vide its order dated 6-6-2011. This notice was issued to the Home Secretary, Union of India, the Chief Secretary, Delhi Administration and the Police Commissioner of Delhi to show cause and file their personal affidavits explaining the conduct of the police authorities and the circumstances which led to the use of such brutal force and atrocities against the large number of people gathered at Ramlila Maidan.

128. In reply to the above notice, different affidavits have been filed on behalf of these authorities justifying their action. A notice was issued to Bharat Swabhiman Trust vide order dated 20-6-2011²³. The application for intervention on behalf of Rajbala (now deceased) was allowed vide order dated 29-8-2011²⁴. They filed their own affidavit. In order to ensure proper independent assistance to the Court, the Court also appointed an amicus curiae and Dr Dhavan accepted the request of the Court to perform this onerous job.

129. Having taken into consideration the version of each party before this Court, I would now proceed to limn the facts and circumstances emerging from the record before the Court that led to the unfortunate incident of the midnight of 4-6-2011/5-6-2011. Without any reservation, I must notice that in my considered view, this unfortunate incident could have been avoided with proper patience and with mutual deliberations, taken objectively in the interest of the large gathering present at the Ramlila Maidan. Since this unfortunate incident has occurred, I have to state with clarity what emerges from the record and the consequences thereof.

130. As already noticed, the yoga camp at the Ramlila Maidan had begun with effect from 1-6-2011 and was continuing its normal functioning with permission from the police as well as with due grant of licence by MCD. Undoubtedly, Respondent 4 had the permission to also hold a dharna at Jantar Mantar on 4-6-2011 to raise a protest in relation to various issues that had been raised by Baba Ramdev in his letters to the Government and in his address to his followers. These permissions had been granted much in



Page: 67

advance. As a response to the pamphlets issued and the inputs of the intelligence agencies, the DCP (Central District), Delhi had expressed certain doubts vide his letter dated 27-5-2011 asking for clarification as to the actual number of persons and the real purpose for which the Ramlila Maidan would be used from 1-6-2011. To this, Respondent 4 had promptly replied stating that there will be no other event except the residential yoga camp. However, keeping in view the information received, the Deputy Commissioner of Police, Central District, vide his letter dated 1-6-2011 had issued further directions for being implemented by Respondent 4 and reiterated his earlier requirements, including that number of the gathering should remain within the limits conveyed. In this letter, it was also indicated that the authorities may review the position, if necessary.

131. However, on 3-6-2011, it had been noticed that a huge gathering was expected in the programme and also that the inputs had been received that Baba Ramdev would sit on an indefinite hunger strike with effect from 4-6-2011 in relation to the issues already raised publicly by him. After noticing various aspects, including that various terrorist groups may try to do something spectacular to hog publicity, Respondent 3 made a very objective assessment of the entire situation and issued a detailed plan of action to ensure smooth functioning of the agitation/yoga camp at the Ramlila Maidan without any public disturbance. The objectives stated in this planned programme have duly been noticed by me above.

132. All this shows that the authorities had applied their mind to all aspects of the matter on 2-6-2011 and had decided to permit Baba Ramdev to go on with his activities. In furtherance to it, the Deputy Commissioner of Police, Central District had also issued a restricted circular as contingency plan. It is obvious from various letters exchanged between the parties that as on 3-6-2011, there had been a clear indication on behalf of the authorities concerned that Baba Ramdev could go on with his plans and, in fact, proper plans had been made to ensure security and regulation of traffic and emergency measures were also put in place. As I have already indicated, there is nothing on record to show, if any information of some untoward incident or any other intelligence input was received by the authorities which compelled them to invoke the provisions of Section 144 CrPC, that too, as an emergency case without any intimation to the organisers and without providing them an opportunity of hearing.

133. The expression "emergency" even if understood in its common parlance would mean an exigent situation (see *Black's Law Dictionary*, 12th Edn.); a serious, unexpected, and potentially dangerous situation requiring immediate action (see

.....
Concise Oxford English Dictionary, 11th Edn.). Such an emergent case must exist for the purpose of passing a protective or preventive order. This may be termed as an "emergency protective order" or an "emergency preventive order". In either of these cases, the emergency must exist and that emergent situation must be reflected from the records which were before the authority concerned which passed the order under Section 144 CrPC. There are hardly any factual averments in the affidavit of



Page: 68

the Commissioner of Police which would show any such emergent event happening between 3-6-2011 and 4-6-2011.

134. Similarly, nothing appears to have happened on 4-6-2011 except that the permission to hold a dharna at Jantar Mantar granted to Respondent 4 was withdrawn and the police had requested Baba Ramdev not to proceed to Jantar Mantar with the large number of supporters, which request was acceded to by Baba Ramdev. He, in fact, did not proceed to Jantar Mantar at all and stayed at the Ramlila Maidan.

135. It is also noteworthy that after his arrival on 1-6-2011 at the airport, Baba Ramdev met few senior Ministers of the Government in power. He also had a meeting with some Ministers at Hotel Claridges on 3-6-2011. The issues raised by Baba Ramdev were considered and efforts were admittedly made to dissuade Baba Ramdev from holding satyagraha at Jantar Mantar or an indefinite fast at the Ramlila Maidan. However, these negotiations failed. According to the reports, the Government failed to keep its commitments, while according to the Government, Baba Ramdev failed to keep up his promise and acted contrary even to the letter that was given by him to the Ministers with whom he had negotiated at Hotel Claridges. Thus, there was a deadlock of negotiations for an amicable resolution of the problems.

136. This is the only event that appears to have happened on 3-6-2011 and 4-6-2011. On the morning of 4-6-2011, the yoga camp was held at the Ramlila Maidan peacefully and without disturbing public order or public tranquillity. After the day's proceedings, the large number of people who were staying at the Ramlila Maidan, went to sleep in the shamiana itself where due arrangements had already been made for their stay. Beds were supplied to them, temporary toilets were provided and water tanks and arrangements of food had also been made. The footages of the CCTV cameras, videos and the photographs, collectively annexed as Annexure 9 to the affidavit of Respondent 4, establish this fact beyond any doubt that all persons, at the relevant time, were peacefully sleeping.

137. According to the police, on 4-6-2011, Baba Ramdev had delivered a speech requesting people from various parts of the country to come in large number and join him for the satyagraha. The order withdrawing the permission for holding a yoga shivir at the Ramlila Maidan was passed at 9.30 p.m. The police reached the Ramlila Maidan in order to inform the representatives of Respondent 4 about the passing of the said order, after 10.30 p.m. At about 11.30 p.m., on the same date, the executive authority passed an order under Section 144 CrPC. The police officers came to serve this order upon the representatives of Respondent 4 much thereafter. The footages of the CCTV Cameras 2, 3, 4, 7, 8, 9, 12, 15, 17, 18 and 32 show that even at about 1.00 a.m. in

the night of 4-6-2011/5-6-2011, people were sleeping peacefully. The police arrived there and tried to serve the said order upon the representatives of Respondent 4 as well as asked for Baba Ramdev, who was stated to be taking rest in his rest room. However, the action of the police officers of going on the stage and of some of them moving where



Page: 69

people were sleeping obviously caused worry, fear and threat in the minds of the large number of persons sleeping in the tent. It is the conceded position before this Court that nearly 15,000 to 20,000 persons were present in the tent at the relevant time.

138. The CCTV camera footages clearly show the police officers talking to Baba Ramdev and probably they wanted to serve the said orders upon him. However, Baba Ramdev withdrew from the deliberations and jumped from the stage amidst the crowd. By this time, a large number of persons had gathered around the stage. After climbing on to the shoulders of one of his followers, Baba Ramdev addressed his followers. He exhorted them to form a cordon around him in the manner that the women forming the first circle, followed by youth and lastly by rest of his supporters. This circle is visible in the evidence placed before the Court. I do not consider it necessary to refer to the speech of Baba Ramdev to the crowd in any greater detail.

139. Suffice it to note that while addressing the gathering, Baba Ramdev referred to his conversations with the Government, urged the crowd to chant gayatri mantra, maintain shanti and not to take any confrontation with the police. He further stated that he would not advise the path of hinsa, but at the same time, he also stated about his talks with the Government and reiterated that he will not leave, unless the people so desired and it was the wish of God. He also chanted the gayatri mantra, and wished all the people around him. At the same time, it is also clear from the evidence of the CCTV cameras' footage and the photographs, that Baba Ramdev had referred to the failure of his talks with the Government and his desire to continue his anshan. He also, in no uncertain terms, stated, "Babaji will go only if people wanted and the God desires it."

140. Another significant part of Baba Ramdev's speech at that crucial time was that he urged the people not to have any confrontation with the police and that he had no intention/mind to follow the path of hinsa or to instigate quarrel with the authorities. By this time, all persons present in the tent had already woken up and were listening to Baba Ramdev interacting with the police. Some people left while a large number of people were still present in the shamiana. According to the police, brickbattling started from one corner of the stage and it was only in response thereto, they had fired the tear gas shells on and around the stage. In all, eight tear gas shells were fired. According to the police, they did not resort to any lathi-charge and, in fact, they had first used water cannons. According to Respondent 4, the police had first fired tear gas shells, then lathi-charged the persons present and never used water cannons. According to them, the police even threw bricks from behind the stage at the people and the control room and it was in response thereto that some people might have thrown bricks upon the police.

141. What is indisputable before this Court is that the police as well as the followers of Baba Ramdev indulged into brickbatting. Tear gas shells were fired at the crowd by the police and, to a limited extent, the police

 Page: 70

resorted to lathi-charge. After a large number of police personnel, who are stated to be more than a thousand, had entered the Ramlila Maidan and woken up the persons sleeping, there was commotion, confusion and fear amongst the people. Besides that, it had been reported in the press that there was lathi-charge. Men and women of different age groups were present at the Ramlila Maidan. The photographs also show that a large number of police personnel were carrying lathis and had actually beaten the persons, including those sitting on the ground or hiding behind the tin shed, with the same.

142. CCTV Camera 5 shows that the police personnel were also throwing bricks. The same camera also shows that even the followers of Baba Ramdev had used the fire extinguishing gas to create a curtain in front, when they were throwing bricks at the police and towards the stage. The CCTV cameras also show the police pushing the persons and compelling them to go out. The police personnel can also be seen breaking the barriers between the stage and the ground where the people were sitting during the yoga sessions. The photographs also show some police personnel lifting a participant from his legs and hands and trying to throw him out. The photographs also show an elderly sick person being attended to and carried by the volunteers and not by the police.

143. The documents on record show that some of the police personnel certainly abused their authority, were unduly harsh and violent towards the people present at the Ramlila Maidan, whereas some others were, in fact, talking to the members of the gathering as well as had adopted a helpful attitude. The brickbatting resorted to by both sides cannot be justified in any circumstances whatsoever. Even if the followers of Respondent 4 acted in retaliation to the firing of tear gas, still they had no cause or right in law to throw bricks towards the stage, in particular, towards the police and it is a hard fact that some police personnel were injured in the process. Similarly, the use of tear gas shells and the use of lathi-charge by the police, though limited, can hardly be justified. In no case, brickbatting by the police can be condoned. They are the protectors of the society and, therefore, cannot take recourse to such illegal methods of controlling the crowd. There is also no doubt that a large number of persons were injured in the action of the police and had to be hospitalised. Element of indiscipline on behalf of the police can be seen in the footage of the CCTV cameras as well as in the logbook entries of the police.

144. At this stage, it will be useful to examine the police records in this respect. Police arrangements had been made in furtherance to the arrangements planned by the Central District of Police, Delhi dated 2-6-2011. Copies of the police logbook have been placed on the file. As on 5-6-2011 at about 1.28 a.m., a message was flashed that the whole staff of the police stations concerned shall report to Police Station Kamla Market immediately. Then, an attempt was made to arrest Baba Ramdev and an

apprehension was expressed that there could be some deaths.

 Page: 71

145. I may reproduce here the relevant messages from the police logbook to avoid any ambiguity:

145.1. "District Net

| <i>Date</i> | <i>Start time</i> | <i>Duration</i> | <i>Call detail</i> |
|-------------|-------------------|-----------------|---|
| 5-6-2011 | 03 : 22 : 53 | 00 : 00 : 33 | Ramlila Ground, Kamla Market policemen are beating the people Ph. 971147860 W/Ct. Sheetal No. 8174/PCR" |

145.2. "Transcription of DM Net, dated 4-6-2011 from 0200 hrs to 0000 hrs

| |
|---|
| Inform C-28, C-31, C-35, C-32 & C-4 and C-5 that they would meet me after 30 min. and the 4 SHOs will bring about 20 personnel each from their PS." |
|---|

145.3. "Transcript of DM Net

Extract of Tetra DM Net of Central District, dated 5-6-2011 from 0100 hrs to 0500 hrs (taken from the tetra recording)

| | | | |
|------------|----------------------|---------------------|---|
| 218 | C-50 | C-2 | The force which is standing outside at Turkman gate and Gurunanak Chowk having gas gun will come inside through VIP gate instantly. |
| 225 | 12-D C-50 C-50 | C-50 12-D C-2 | Understood. The operator of gas gun which is sent has not reported yet only driver is sitting operator is to be sent quickly. |
| 225 | C-Q | C-50 | The officer who has sent the gas gun will send the operator, is driver to operate it. |
| 226 | 12-D | C-50 | Operator of gas gun is to be sent only driver has reached there with gas gun. |
| 227 227 | C-50 C-50 | 12-D C-50 C-2 | I don't have gas gun. SHOs has already reached inside with staff. How many water cannons are there? |
| 227 | C-2 | C-50 | Madam water cannon is outside at VIP gate where I have informed earlier. |
| 305 | C-50 | C-24 | This is informed that the force guard 88 Battalion CRPF is neither obeying any instruction nor ready to come at any cost." |

145.4. "Wireless log and diary, dated 5-6-2011 (Shift duty 9 a.m. to 9 p.m.)

T-52

| <i>Time</i> | | | <i>Call detail</i> |
|-------------|---------|--|---|
| 2.25 a.m. | 01-T-52 | | One injured, namely, Jagat Muni, s/o unknown, r/o VII-Pllana (Rohtak), Haryana. Age about 55-60 yrs admitted in JPN Hospital in unconscious condition." |

145.5. "Wireless log and diary, dated 4-6-2011/5-6-2011

| <i>Time</i> | | | <i>Call details</i> |
|-------------|-------|-------|---|
| 2.20 a.m. | L-100 | 0-1 | PCR call : That some casualties happened at Ramlila Ground. Direct the ambulance. |
| | 0-1 | L-100 | Noted position at Ramlila Ground. |
| 2.28 a.m. | 0-1 | L-100 | Injured not traceable. CATS ambulance also searching injured person." |

145.6. "Wireless log and diary, dated 4-6-2011/5-6-2011

L-100

| <i>Time</i> | | | <i>Call details</i> |
|-------------|------|------|--|
| 8 a.m. | | | Charge of 0-33 taken by ASI Ved Prakash 5150/PCR. |
| | 0-33 | 0-1 | Note down that in Ramlila Ground, police is beating the public persons. |
| | 0-1 | 0-33 | Road is blocked through barricades at Ajmeri Gate. We cannot leave the vehicle without staff." |

145.7. "Wireless log and diary, dated 4-6-2011/5-6-2011 (Shift night duty 8 p.m. to 8 a.m.)

0-60

| <i>Time</i> | | | <i>Call detail</i> |
|-------------|------|-----|--|
| 1.58 | 0-60 | 0-1 | Police is misbehaving with Baba Ramdev." |

145.8. "Wireless log and diary, dated 4-6-2011/5-6-2011 (Shift night duty 8 p.m. to 8 a.m.)

0-10

| <i>Time</i> | | | <i>Call details</i> |
|-------------|-----|------|---|
| 8 p.m. | | | Shift change and charge taken by HC Umed Singh, No. 899/PCR. |
| 2 a.m. | 0-1 | 0-10 | From 0-10 SI Jaspal PS Mangol Puri and Ct. Tarun 3036/DAP sustained injury and we are |

| | | | |
|------|-----|------|---|
| | | | taking them to JPN Hospital. |
| 2.10 | 0-1 | 0-10 | 0-10 told that both SI Jaspal and Ct. Tarun admitted in JPN Hospital through Duty Ct. Ajay 1195/C." |



145.9. "Wireless log and diary, dated 4-6-2011/5-6-2011 (Shift night duty 8 p.m. to 8 a.m.)

B-11

| <i>Time</i> | | | <i>Call detail</i> |
|-------------|--|--|--|
| 2.30 a.m. | | | Two injured persons taken to JPN Hospital, namely, Rajbala, w/o Jalbeer, r/o Gurgaon, age 54 yrs, Jagdish s/o Asha Nand, age 54 yrs. |


| | | | |
|-----|-------|-------|---|
| 207 | C-50 | C-12D | Both of vehicles are to be sent, water cannon is only one. |
| 207 | C-12D | C-50 | Right now only one is asked about so send only one. |
| 207 | C-12D | C-50 | Send one. Send one instantly. If other will be required it will be informed." |

146. The above entries of the police logbook clearly show that a number of persons were injured, including police personnel, and some of them even seriously. The water cannons were not available inside the tent and the same were asked to come towards the VIP gate. They were only two in number and were asked to be positioned at the VIP entrance. In fact, as recorded in one of the above entries, there was only one water cannon available which was positioned at the VIP entry gate and the version of the police that it had first used water cannons for dispersing the crowd before resorting to the use of tear gas, does not appear to be correct. The tear gas shells were fired at about 2.20 a.m. as per the footages of the CCTV cameras and around the same time, the bricks were thrown by the followers of Respondent 4 upon the police. This aggravated the situation beyond control and, thereafter, the police acted with greater force and fired more tear gas shells and even used lathis to disperse the crowd.

147. Another aspect reflecting the lacuna in planning of the police authorities for executing such an order at such odd hour is also shown in the logbook of the police where at about 2.39 a.m., a conversation between two police officers has been recorded. As per this conversation, it was informed, "You call at cellphone and inform 24-B that he will also talk and that gate towards JLN Marg which was to be opened is not open yet." Another conversation recorded at the same time was, "Then public will go at its own." When the police had decided to carry out such a big operation of

evicting such a large gathering suddenly, it was expected of it to make better arrangements, to cogitate over the matter more seriously and provide better arrangements.

148. From the entries made in the police logbook, certain acts come to surface. Firstly, that there were inadequate number of water cannons, as admittedly, there were more than 15,000 persons present at the Ramlila Maidan and secondly, that the police had started beating the people. Even the 88th Battalion of CRPF was not carrying out the orders and there was chaos

 Page: 74

at the premises. Even if all the documents filed by the police, the police logbook and the affidavits on behalf of the police are taken into consideration, it reflects lack of readiness on the part of the police and also that it had not prepared any action plan for enforcing the order of the executive authority passed under Section 144 CrPC. It was expected of the police to make elaborate, adequate and precise arrangements to ensure safe eviction of such a large number of persons, that too, at midnight.

149. Having dealt with this aspect, now I would proceed to discuss the injuries suffered and the medical evidence placed before the Court. As per the affidavit of the police dated 17-6-2011, total 38 policemen were injured, some of them because of brickbattling by the supporters of Baba Ramdev. 48 persons from public were also injured, 41 of them were discharged on the same date and 5 on the next day. Only 2 persons, including 1 woman, required hospitalisation for medical treatment and surgery. On the other hand, according to Respondent 4, hundreds of persons were injured. However, they have placed on record a list of the injured persons as Annexure R-13 wherein names of 55 persons have been given. Most of the injured persons were taken to Lok Nayak Hospital, New Delhi. Copies of their medico-legal enquiry register/reports have been placed on record. Some of these injured persons were taken to the hospital by the police while some of them went on their own.

150. In the medico-legal enquiry register relating to Rajbala, it has been stated that she suffered cervical vertebral fracture and associated spinal cord damage. She was unable to move both limbs, upper and lower, and complained of pain in the neck. She was treated in that hospital and subsequently shifted to the ICU where she ultimately died. As per the post-mortem report, the cause of death as opined by the doctor was stated as "death in this case occurred as septicaemia, following cervical vertebral fracture and associated spinal cord damage". In some of the reports, it is stated that the patient had informed of having suffered injury due to stampede at the Ramlila Maidan. The person who claims to have brought Rajbala to the hospital, Joginder Singh Bandral, has also filed an affidavit stating that the police had suddenly attacked from the stage side and she had suffered injuries and fell unconscious.

151. It is undisputed that Rajbala suffered injuries in this incident. The injuries as described in the medical records are as follows:

"Local examination:

1. Reddish-bluish discolouration below and behind left ear and another reddish-

blue discolouration in lateral middle of neck on (left) side present.

2. Reddish-bluish discolouration seen below and behind (right) ear C.
3. Large bluish discolouration present over left buttock.
4. Abrasion over medial aspects of left ankle.
5. Reddish discolouration over the flexor aspect of middle of left forearm.”



152. In addition, the medico-legal case sheet of one Deepak recorded, “alleged c/o assault while on hunger strike at Ramlila Maidan”. He was vomiting, bleeding and had suffered injuries and was complaining of pain at cervical region and right thigh. Similar was the noting with regard to one Ajay. Both of them had gone to Dr Ram Manohar Lohia Hospital and were not accompanied by the police. A number of such medico-legal case sheets have been placed on record with similar notings. I do not consider it necessary to discuss each and every medico-legal enquiry sheet or medico-legal report. It is clear from the bare reading of these reports that most of the persons who were taken to the hospital had suffered injuries on their hands, back, thighs, etc. and were complaining of pain and tenderness which was duly noticed by the doctors in these reports.

153. Constable Satpal had also gone to the hospital. According to him, he had suffered injury “a contusion” as a result of stone-pelting at the Ramlila Maidan. Copies of medico-legal enquiry register in relation to other police officers have also been placed on record. Some police personnel had also reported to Aruna Asaf Ali Government Hospital, Rajpura, Civil Lines, Delhi and had given the history of being beaten by the crowd at the Ramlila Maidan.

154. From these evidence placed on record, it is clear that both, the members of the public as well as the police personnel, had suffered injuries. It is obvious from various affidavits, that a large number of followers of Baba Ramdev got injured. The number of these persons was much higher in comparison to that of the police. I may also notice that in the affidavit filed by the Commissioner of Police, it has been stated that the police officers suffered injuries because of brickbatting by some members of the gathering at the Ramlila Maidan. However, the affidavit of the Commissioner of Police is totally silent as to how such a large number of persons suffered injuries, including plain injuries, cuts, open injuries and serious cases like those of Rajbala and Jagat Muni. According to Respondent 4, at least five persons had suffered serious injuries including head injury, fracture of hand, leg and backbone. This included Dharamveer, Madanlal Arya, Jagdish, Behen Rajbala, Swami Agnivesh and Jagat Muni, etc.

155. If this medico-legal evidence is examined in the light of the photographs placed on record and the CCTV camera footages, it becomes clear that these injuries could have been caused by lathi-charge and throwing of stone by the police as well as the members of the gathering. It cannot be doubted that some members of the police force had taken recourse to lathi-charge and in the normal course, a blow from such lathis could cause the injuries. which the members of the public had suffered.

156. I have no hesitation in rejecting the submission on behalf of the police that none of the police personnel lathi-charged the people present at the Ramlila Maidan. The factum of lathi-charge by some of the police personnel is demonstrated in the photographs, footages of CCTV cameras as well as from the medical evidence on record. One Dr Jasbir has filed an affidavit stating that he had made a call from his Cell Phone No. 9818765641



Page: 76

to No. 100 informing them of police assaulting the persons present and the fact that he suffered injury as a result of lathi-blows on his body. He had gone to Lok Nayak Hospital where he was medically examined. This medical record shows that he was assaulted by the police in Baba Ramdev's rally where he sustained injuries. The injuries were described as contusion injuries, one of which, was on the lumbar region and was advised x-ray. Even in some of the other medical records produced before this Court, it has been recorded that injuries were caused by blunt objects. This will go to show that they were not the injuries caused merely by fall or simply stampede.


157. The veracity of this affidavit was challenged on the ground that it has been filed belatedly and it was not supported by any other record. Both these aspects lose their significance because in the police logbook filed on record, call from this number has been shown, secondly, the medical record of Dr Jasbir has been placed on record. Also, the injuries received by the members of the police force are of the kind which could be caused by brickbatting. It is further possible that because of commotion, confusion and fear that prevailed at the stage during midnight and particularly when people were sleeping, the injuries could also have been suffered due to stampede. According to the police, Rajbala probably had suffered the fracture of the cervical spine as she fell from the stage and fell unconscious. This version does not find support from the CCTV camera footages inasmuch as that no elderly lady at all is seen on the stage during the entire episode shown to the Court. But, the fact of the matter is that she suffered serious injuries which ultimately resulted in her death. It could be that she received injury during use of lathis by the police or when the crowd rushed as a result of firing of tear gas shells, etc.

158. The police do not appear to have carried her on the stretcher or helped her in providing transportation to the hospital. Precisely who is to be blamed entirely and what compensation, if any, she is entitled to receive and from whom, will have to be examined by the court of competent jurisdiction before whom the proceedings, if any, are taken by the persons entitled to do so and in accordance with law. Certain disputed questions of fact arise in this regard and they cannot be decided by the court finally without granting opportunity to the appropriate parties to lead oral and documentary evidence, as the case may be. For the purposes of the present petition, it is sufficient for me to note that, prima facie, it was the negligence and a limited abuse of power by the police that resulted in injuries and subsequent death of Smt Rajbala. Thus, in my considered view, at least some ad hoc compensation should be awarded to the heirs of the deceased and other injured persons as well.

159. At this juncture, I would take note of the affidavits filed by the parties. In the

affidavit dated 6-7-2011 filed on behalf of Respondent 4, it has been specifically stated in Para 17:

“It must be noted that as per the directions of the police, only one entry/exit gate was being kept open and this gate was manned by the police themselves, who were screening each and every person who

 Page: 77

entered the premises. There was no disturbance or altercation whatsoever and followers of Baba Ramdevji were peacefully waiting in queues that stretched for over two kilometres. If the police wanted to limit the number of participants to 5000 or to any other number, they could easily have done so at the gate itself. However, they made no attempt to either curtail the entry of persons or to prevent the fast from proceeding.”

160. Though an affidavit subsequent to this date has been filed on behalf of the police, there is no specific denial or any counter-version stated therein in this regard. This averment made in the affidavit of Respondent 4 appears to be correct inasmuch as vide its letter dated 2-6-2011, while granting the permission for holding the rally at the Ramlila Maidan, a condition had been imposed that all persons entering the Ramlila Maidan should be subjected to frisking and personal search. Furthermore, the map of the layout of the Ramlila Maidan filed by the learned amicus clearly shows that there was one public entry gate/public check-in, in addition to the two gates for the VIP check-in, which were towards the stage. The public entry was towards Sharbia Road. From this, it is clear and goes in line with the situation at the site, exhibited by the photographs or the CCTV cameras at least partially, that there was only one main entry for the public which was being managed by the police. Even according to the police, it was a huge enclosure of nearly 2.5 lakh sq ft and it had various exits which, of course, were kept closed and there was a ceiling all over. A tent of this size with the ceiling thereon, was an enclosure, where such a large number of persons had gathered to participate in the yoga camp and thereafter, in the anshan.

161. It is the version of the police that they had issued prior warning, then used water cannons and only thereafter, used the tear gas shells in response to the brickbattling by the members of the gathering present behind the stage. This stand of the police does not inspire confidence. Firstly, it has nowhere been recorded in the CCTV camera footages that they made any public announcement of the revocation of the permissions and the passing of order under Section 144 CrPC and requested the people present to leave the Ramlila Maidan. Of course, it is clear from the record before this Court that effort was made by the police officers, who had a talk with the representatives of Respondent 4 as well, for service of order on Baba Ramdev, who did not accept the order and jumped into the crowd in order to avoid the service of order as well as his exit from the Ramlila Maidan. The stand taken by the police in Para 24 of its affidavit is that they apprehended a backlash if they made the announcements themselves and, therefore, they approached the organisers to inform the public over the public address (PA) system. This itself is not in accordance with the guidelines framed by the police for execution of such orders.

162. Standing Order 309 contemplates that there should be display of banner indicating promulgation of Section 144 CrPC, repeated use of public address system by a responsible officer appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum, their deputation, etc. or court arrest peacefully and requires such announcement to



Page: 78

be videographed. It further contemplates that if the crowd does not follow the appeal and turns violent, then the assembly should be declared as unlawful on the PA system and the same should be videographed. Warning on PA system prior to the use of any kind of force is to be ensured and also videographed. I find that there is hardly any compliance with these terms of this standing order.


163. Use of water cannons by the police is again a myth. As I have already noticed from the police logbook there was only one water cannon available which was positioned at the VIP entrance. Furthermore, even the CCTV camera footages or the photographs do not show any use of water cannons. I see no reason for the police not making preferential use of water cannons to disperse the crowd even if they had come to the conclusion that it was an unlawful assembly and it was not possible to disperse the crowd without use of permissible force in the prescribed manner.

164. There is a serious dispute as to whether the tear gas shells were fired in response to the brickbattering by the members of the assembly from behind the stage or was it in the reverse order. The photographs show that there was a temporary structure behind the stage where bricks were lying and the same were collected and thrown from there. CCTV Camera 5 clearly shows that some members of the assembly (followers of Baba Ramdev) collected the bricks and then threw the bricks at the police towards the stage. The first tear gas shell was fired at about 2.20 a.m. The first brick probably was thrown from behind the stage by Baba Ramdev's followers approximately at 2.12 a.m. The tear gas shells were also fired during this time. Before that, some members of the police force had used sticks or lathi-charged on the people to move them out of the Ramlila Maidan. Some photographs clearly show the police personnel hitting the members of the assembly with sticks. The exact time of these incidents is not available on the photographs. The firing of tear gas shells created greater commotion and fear in the minds of the members of the gathering. The violence on the part of the police increased with the passage of time and the police retaliated to the bricks hurled at them by the members of the assembly with greater anger and force. This resulted in injuries to both sides and serious injuries to some of the people and resultant death of one of the members of the public.

165. The persons at the helm of affairs of the police force have to take a decision backed by their wisdom and experience whether to use force or exercise greater control and restraint while dispersing an assembly. They are expected and should have some freedom of objectively assessing the situation at the site. But in all events, this would be a crucial decision by the authorities concerned. In the present case, the temptation to use force has prevailed over the decision to exercise restraint.

166. Rule 14.56(1)(a) of the Punjab Police Rules (which are applicable to Delhi)

provides that the main principle to be observed is that the degree of force employed shall be regulated according to the circumstances of each case. The object of the use of force should be to quell the disturbance of

 Page: 79

peace or to disperse the assembly which threatens such disturbance and has either refused to disperse or shows a determination not to disperse.

167. Standing Order 152 deals particularly with the use of tear smoke in dispersal of unlawful assemblies and processions. This standing order concerns itself with various aspects prior to as well as steps which are required to be taken at the time of use of tear smoke. It requires that before tear smoke action is commenced, a suitable position should be selected for the squad, if circumstances permit, forty yards away from the crowd. A regular warning by the officer should be issued while firing the tear smoke shells, the speed of wind, area occupied by the crowd and the temper of the crowd, amongst others, should be taken into consideration. It states that apparently the object of the use of force should be to prevent disturbance of peace or to disperse an unlawful assembly which threatens such disturbance.

168. Normally, it is not advisable to use tear smoke shells in an enclosure. They should be fired away from the crowd rather than into the crowd. Unfortunately, the guidelines and even matters of common prudence have not been taken into consideration while firing the tear gas shells. The police force and, at least, some members of the police force, have failed to execute the orders in accordance with the standing orders and have failed to take various steps that were required to be taken including use of minimum force, videography of the event, display of banner, announcement into the PA system, etc. Similarly, some members of the force when incited by provocation or injury, used excessive force, including use of tear gas. It is also clear from the photographs and the CCTV cameras that some members of the force inflicted injuries by indulging in uncalled for lathi-charge and by throwing stones on the public. It is evident that lathi-charge against those persons was not called for. For example, in one of the CCTV cameras, one individual is surrounded by four-five members of the force and then a police personnel used caning against that individual.

169. I will proceed on the basis that tear gas shells were fired in retaliation to the brickbattling by the crowd. Even in that event, the police should have made proper announcements. The police had sufficient preparedness to protect itself against such attack and they should have fired the tear gas shells to the site from where the bricks were coming rather than in front and on the stage. Once the tear gas shells were fired into the tent where a large number of people were present, it was bound to result in injuries and harm to the public at large. If the authorities had taken the decision to disperse the crowd by the use of tear gas, then they should have implemented that decision with due care and precautions that they are required to take under the relevant guidelines and the Rules. It was primarily the firing of the tear gas shells and use of cane sticks against the crowd that resulted in stampede and injuries to a large number of people.

170. Admittedly, when the police had entered the tent, the entire assembly was

.....
sleeping. It is not reflected in the affidavit of the police as to what conditions existed at that time compelling the authorities to use force.
.....

 Page: 80

This, in the opinion of the Court, was a crucial juncture and the possibility of requiring the members of the assembly to disperse peacefully in the morning hours was available with the authorities.

171. This certainly does not mean that throwing of bricks upon the police by the members of the assembly can be justified on any ground. The few persons who were behind the stage and threw the bricks, either from the corner of the stage or from behind the stage, are guilty of the offence that they have committed. Nothing absolves them of the criminal liability that entails their actions. Even if tear smoke shells were fired by the police first, still the crowd had no justification to throw bricks at the police and cause hurt to some of the policemen.

172. The police had a duty to keep a watch on the people from the point of view of maintaining law and order. It appears that firing of tear gas shells in the direction of the crowd was contrary to the guidelines and it led to some people getting breathless and two of them falling unconscious. This also prevented the people present there from reaching the exit gates. Similarly, some of the followers of Respondent 4 became unruly and used smoke to create a curtain in front of themselves, before they started throwing bricks at the police. In the process, they injured their fellow participants as well as the police personnel. The tear gas shells also caused fire on the stage, as is demonstrated in CCTV Camera 31 at about 2.22 a.m., and confirmed by various news report footages. It shows that there was lack of fire extinguishing systems. The tear gas shells also caused fire in an enclosure with cloth material which could have caught fire that might have spread widely causing serious bodily injuries to the people present. Undoubtedly, large police force was present on the site and even if it had become necessary, it could have dispersed the crowd with exercise of greater restraint and patience.

173. The police force has failed to act in accordance with the Rules and standing orders. Primarily, negligence is attributable to some members of the force. The police, in breach of their duty, acted with uncontrolled force. The orders were passed arbitrarily by the authorities concerned and, thus, they are to be held responsible for the consequences in law. As discussed in this judgment, Respondent 4, its members and Baba Ramdev committed breach of their legal and moral duty and acted with negligence contributing to the unfortunate incident rendering themselves liable for legal consequences resulting therefrom.

174. I may further notice that the conduct of the representatives of Respondent 4, as well as of Baba Ramdev in jumping from the stage into the crowd, while declining to accept the orders and implement them, is contrary to the basic rule of law as well as the legal and moral duty that they were expected to adhere to. Thus, they have to be held guilty of breach of these legal and moral duties as *injuria non excusat injuriam*.

175. Now, I may have a look at the genuineness/validity of the "threat perception" which formed the basis for passing of the said orders by the

State/police. I have referred to this aspect in some detail above and suffice it to note here that till 3-6-2011, none of the authorities had considered it appropriate to revoke the permission and pass an order under Section 144 CrPC. On the contrary, the authorities had required the organisers to take more stringent measures for proper security. They had also drawn a proper deployment plan. It appears that failure of negotiations between the Government and Baba Ramdev at Hotel Claridges on 3-6-2011, left its shadow on the decision-making power of the police. This proved to be the turning point of the entire episode. If the police had apprehended that a large number of persons may assemble at the Ramlila Maidan, this could have been foreseen as a security threat. Therefore, the proper method for the authorities would have been to withdraw the permissions well in time and enforce them peacefully. It has been left to the imagination of the Court as to what were the circumstances that led to passing of orders revoking permission and particularly when even MCD had not cancelled or revoked its permission in favour of Respondent 4 to continue with its activity till 20-6-2011.

176. Great emphasis was placed, on behalf of the police, upon the fact that the representatives of Respondent 4 had not given the correct information to the police. This again does not describe the correct state of affairs. The Intelligence Agencies had given all requisite information to Delhi Police and after taking the same into consideration, Delhi Police had passed orders on 2-6-2011 and 3-6-2011 requiring the organisers to take certain precautionary steps. Another interesting fact, that I must notice, is that as early as on 20-5-2011, representatives of Respondent 4 had written to the Additional Commissioner of Police vide Annexure R-3 informing them that Baba Ramdev is going on a hunger strike till death from 4-6-2011 against the issue of corruption and other related serious issues. Hundreds of satyagrahis were providing their support to him in this hunger strike and consent for that was asked. The letter written by Baba Ramdev to the Prime Minister of the country had also been attached along with this letter. The police was aware of the number of persons who might assemble and the activity that was likely to be carried on at the Ramlila Maidan as well as Jantar Mantar. Still, after the receipt of the letter, the police took no steps to cancel the permission specifically and the permissions granted continued to be in force.

177. It was for the police authorities or the administration to place on record the material to show that there was a genuine threat or reasonable bias of communal disharmony, social disorder and public tranquillity or harmony on the night of 4-6-2011. However, no such material has been placed before this Court. Right from *Babulal Parate*², this Court has taken a consistent view that the provisions of Section 144 CrPC cannot be resorted to merely on imaginary or likely possibility or likelihood or tendency of a threat. It has not to be a mere tentative perception of threat but a definite and substantiated

one. I have already recorded that none of the authorities concerned, in their wisdom, had stated that they anticipated such disturbance to public tranquillity and social order that there was any need for cancellation of the permissions or imposition of a restriction under Section 144 CrPC as late as till 10.40 p.m. on 4-6-2011, which then was sought to be executed forthwith.

178. There is a direct as well as implied responsibility upon the Government to function openly and in public interest. Each citizen of India is entitled to enforce his fundamental rights against the Government, of course, subject to any reasonable restrictions as may be imposed under law. The Government can, in larger public interest, take a decision to restrict the enforcement of freedom, however, only for a valid, proper and justifiable reason. Such a decision cannot be arbitrary or capricious.

179. Another important facet of exercise of such power is that such restriction has to be enforced with least invasion. I am unable to understand and, in fact, there is nothing on record which explains the extraordinary emergency that existed on the midnight of 4-6-2011/5-6-2011 which led the police to resort to waking up sleeping persons, throwing them out of the tents and forcing them to disperse using force, cane sticks, tear gas shells and brickbatting. I am also unable to understand as to why this enforcement could not even wait till early next morning i.e. 5-6-2011. This is a very crucial factor and the onus to justify this was upon the State and the police and I have no hesitation in noticing that they have failed to discharge this onus. This decision, whether taken by the police itself or, as suggested by the learned amicus, taken at the behest of the people in power and the Ministry of Home Affairs, was certainly amiss and a decision which is arbitrary and unsustainable, would remain so, irrespective of the number of persons or the hierarchy of the persons in the Government who have passed the said decision. I find no error with the police, to working in tandem or cooperation with the Ministry of Home Affairs, which itself is responsible for maintaining law and order in the country.

180. I also have to notice that as per the stand taken by all the parties before this Court, it remains a fact that no announcement was made on the midnight of 4-6-2011/5-6-2011 to the huge gathering sleeping to disperse peacefully from the Ramlila Maidan. It was an obligation of the police to make repeated announcements and help the people to disperse. The police, admittedly, did not make any such announcements because it anticipated a backlash. Baba Ramdev and other representatives of Respondent 4 also did not make such an announcement, but Baba Ramdev asserted that he would leave only if the people and the followers wanted him to leave. I am unable to appreciate this kind of attitude from both sides. It was primarily an error of performance of duty by both sides and the ultimate sufferer was the public at large.

181. It is true and, without hesitation, I notice that the CCTV cameras and other documents do show that some of the police personnel had behaved with courtesy and kindness with the members of the gathering and had even

helped them to disperse and leave the Ramlila Maidan. At the same time, some others

had misbehaved, beaten the people with brutality and caused injuries to the public present at the Ramlila Maidan. Thus, I cannot blame the entire police force in this regard.

182. The learned amicus raised another issue that the Home Secretary, Union of India and the Chief Secretary, Delhi had not filed proper affidavits in relation to the incident. In fact, the Home Secretary did not file any affidavit till this was raised as an issue by the learned counsel appearing for Respondent 4.

183. Factually, it is correct. The affidavits filed by the Chief Secretary, Delhi as well as the Home Secretary are not proper in their form and content. The Home Secretary, on the one hand stated that he had taken charge of the post with effect from 21-7-2011, while, on the other, admitted that he had received the report from the Special Commissioner of Police. He further stated that it is not the practice of the Ministry to confirm the grant of such permission. His affidavit is at variance with the affidavit of the Police Commissioner. According to him, the entry of a large number of persons posed a threat to the gathering, such as, likely stampede and entry of unruly elements into the crowd. Both these circumstances, as noticed above, do not stand even remotely to reason.

184. Further, I am somewhat surprised at the insensitivity reflected in the following lines stated in the affidavit of the Home Secretary, "I state and submit that the facts suggest that the injuries to a few (out of thousands gathered as per report) are said to have been caused due to minor stampede and that there was no manhandling of women, elderly persons or children. There were three women police officers of the rank of Deputy Commissioner of Police on duty." I have no hesitation in observing that it is the duty of the State to ensure that each and every citizen of the country is protected. Safety of his person and property is the obligation of the State and his right.

185. In view of the affidavit filed by the Police Commissioner, where he has owned the entire responsibility for the entire police hierarchy, I do not propose to attach much significance to this contention. According to the Commissioner, he informed the Additional Secretary in the Ministry of Home Affairs of the developments and the latter might have informed the higher authorities in the said Ministry. I also find no need to enter into this controversy because there is no legal impediment or infirmity in Delhi Police working in coordination and consultation with the Ministry of Home Affairs as none of them can absolve themselves of the liability of maintaining social order, public tranquillity and harmony.

186. Mr P.H. Parekh, learned Senior Advocate appearing for the Government of NCT of Delhi, submitted that the power to issue an order under Section 144 CrPC is vested in the Assistant Commissioner of Police in terms of the Notification dated 9-9-2010 issued by the Ministry of Home Affairs, Government of India under sub-section (1)(a) of Section 17 of the DP Act. It is further submitted that in terms of Article 239-AA(3) (a), the

Legislative Assembly of the NCT of Delhi has legislative competence to enact laws on any matter as applicable to the Union Territory except in relation to the fields stated at

Schedule VII List II Entries 1, 2 and 18 of the Constitution of India. Thus, the matters relating to police, land and public order do not fall within the legislative and administrative power of the Government of NCT of Delhi. The Home Secretary, in his affidavit, on the other hand, has stated that the Ministry of Home Affairs neither directed nor is consulted by Delhi Police in such police measures which are to be taken with a view to keep the law and order situation under control. He also stated that it is not the practice of the Ministry to confirm the matters of grant of such permissions.

187. I am unable to see any merit in these submissions or for that matter even the purpose of such submissions. The Ministry of Home Affairs, the Delhi Government and the police are not at cross purposes in relation to the questions of social order and law and order. It is their cumulative responsibility. The lists in the Seventh Schedule to the Constitution are fields of legislation. They are unconnected with the executive action of the present kind. The Ministry of Home Affairs, Union of India is not only responsible for maintaining the law and order but is also the supervisory and controlling authority of the entire Indian Police Services. It is the duty of the Union to keep its citizens secure and protected. Thus, I consider it unnecessary to express any view on this argument advanced by Mr P.H. Parekh.

The scope of an order made under Section 144 CrPC, its implications and infirmities with reference to the facts of the case in hand

188. By reference to various judgments of this Court at the very outset of this judgment, I have noticed that an order passed in anticipation by the Magistrate empowered under Section 144 CrPC is not an encroachment of the freedom granted under Articles 19(1)(a) and 19(1)(b) of the Constitution and it is not regarded as an unreasonable restriction. It is an executive order, open to judicial review. In exercise of its executive power the executive authority, by a written order and upon giving material facts, may pass an order issuing a direction requiring a person to abstain from doing certain acts or take certain actions/orders with respect to certain properties in his possession, if the officer considers that such an order is likely to prevent or tends to prevent obstruction, annoyance or injury to any other person.

189. On the bare reading of the language of Section 144 CrPC, it is clear that the entire basis of an action under this section is the "urgency of the situation" and the power therein is intended to be availed for preventing "disorder, obstruction and annoyance", with a view to secure the public weal by maintaining public peace and tranquillity. In *Gulam Abbas v. State of U.P.*²⁵ the Court clearly stated that preservation of public peace and tranquillity is the primary function of the Government and the aforesaid power is conferred on the executive. In a given situation, a private right must give in to public interest.



190. The Constitution mandates and every Government is constitutionally committed to the idea of socialism, secularism and public tranquillity. The regulatory mechanism contemplated under different laws is intended to further the cause of this

constitutional obligation. An order under Section 144 CrPC, though primarily empowers the executive authorities to pass prohibitory orders vis-à-vis a particular facet, but is intended to serve larger public interest. Restricted dimensions of the provisions are to serve the larger interest, which at the relevant time, has an imminent threat of being disturbed. The order can be passed when immediate prevention or speedy remedy is desirable. The legislative intention to preserve public peace and tranquillity without lapse of time, acting urgently, if warranted, giving thereby paramount importance to the social needs by even overriding temporarily, private rights, keeping in view the public interest, is patently inbuilt in the provisions under Section 144 CrPC.

191. Primarily, MCD owns the Ramlila Maidan and, therefore, is holding this property as a public trustee. MCD had given permission to use the Ramlila Maidan for holding yoga shivir and allied activities with effect from 1-6-2011 to 20-6-2011. The police had also granted permission to organise the yoga training session at the Ramlila Maidan for the same period vide its letter dated 25-4-2011. The permission was granted subject to the conditions that there should not be any obstruction to the normal flow of traffic, sufficient number of volunteers should be deployed at the venue of the training camp, permission should be sought from the land owning agency and all other instructions that may be given by the police from time to time should be implemented. Lastly, that such permission could be revoked at any time.

192. Vide letter dated 27-5-2011, the Deputy Commissioner of Police, Central District, had sought clarification from the President of Respondent 4 that the permission had been granted only for holding a yoga training camp for 4000 to 5000 persons, but the posters and pamphlets circulated by the said respondent indicated that they intended to mobilise 25,000 persons to support Baba Ram Dev's indefinite fast at Ramlila Maidan, which was contrary to the permission sought for. Respondent 4, vide letter dated 28-5-2011, reiterated and reaffirmed its earlier letter dated 20-4-2011 and stated that there would be no programme at all, except the residential yoga camp.

193. Keeping in view the facts and the attendant circumstances, the Deputy Commissioner of Police (Central District) vide his letter dated 1-6-2011, informed the office-bearers of Respondent 4 that in view of the current scenario and the law and order situation prevailing, they were required to make adequate arrangements for screening of people visiting the Ramlila Maidan for yoga shivir and directed further arrangements to be made as per the instructions contained in that letter. It was noticed in the letter of the DCP that a specialised tent of an area of 2,50,000 sq ft was to be erected,

a dais was to be constructed and structures erected were to be duly certified from the authorised agency. It was also, inter alia, stated that no provocative speech or shouting of slogan should be allowed and no firearms, lathis or swords should be allowed in the function and the CCTV cameras should also be installed. It was further stated that the Trust was to abide by all the directions issued by the SHO.

194. Again, on 2-6-2011, a letter was written by the Deputy Commissioner of Police

noticing certain drawbacks in the arrangements made by the Trust and reiterating the directions passed vide letter dated 1-6-2011. It was required that the Trust should keep the gathering within the permissible limits and make necessary arrangements for checking/frisking of participants and placing of volunteers in requisite areas. It was also indicated that if the compliance is not made, permission shall be subject to review.

195. Certain inputs given by the Special Branch of Delhi Police on 30-5-2011 stated that Baba Ramdev planned to hold indefinite hunger strike along with 30,000 to 35,000 supporters with effect from 4-6-2011, the birth anniversary of Maharana Pratap, at the Ramlila Maidan. As per that report, the protest was on the following issues:

“1. To bring the black money worth Rs 400 lakh crores, which is national property.

2. To demand the legislation of strong Lokpal Bill to remove corruption completely.

3. Removal of foreign governing system in independent India so that everyone can get social and economic justice.”

196. It was further stated that the gathering may exceed 1 lakh. The letter also indicated that some of the workers would straightaway reach Jantar Mantar on 4-6-2011 and would submit memorandum to the President and the Prime Minister of India. Expressing the apprehensions on these outputs, it was indicated in the report as under:

“The volunteers of the said organisations are well dedicated, tech savvy and using laptops in their routine working, with sound financial status of the organisation, the possibility of the gathering of about 1 lakh, as claimed by the organisers, cannot be ruled out.

Any minor incident at the venue not only may affect law and order situation but also may affect peace in the city creating serious law and order problems. Local police, therefore, will have to be extra vigilant. The possibility of some agent provocation or subversive elements attempting to cause disturbance/sabotage by merging with the crowds would also need to be kept in mind. It should also be noted that as per reliable inputs, large congregations continue to remain the top targets of terrorists.”

197. The Special Branch, thus, suggested taking of some precautions like making of adequate security arrangements by the local police, deployment of quick response teams, ambulances, fire tenders, etc. and to deploy sufficient

number of traffic police personnel to ensure smooth flow of traffic around Raj Ghat, Red Light, Ramlila Maidan, etc. and concluded as under:

“Therefore, a sharp vigil, adequate arrangements by local police, PCR, traffic police are suggested at and near Ramlila Ground, RS Flyover, enroute, Jantar Mantar to avoid any untoward incident. Further, Delhi-UP/Haryana Borders need to be sensitised.”

198. As is obvious from the above letters and the reports, nobody had suggested cancellation of the permission granted by the land owning authority or the police for continuation of the activity by Respondent 4, though they were aware of all the facts. The Central District of Delhi Police, on 2-6-2011 itself, noticed all the factors and made a report with regard to the police arrangements at the Ramlila Maidan. Amongst others, it stated the following objectives:

“1. All the persons will gain entry through DFMDs.

2. Every person will be searched/frisked thoroughly to ensure the security of VIPs/high dignitaries, government property and general public, etc.

3. To ensure clear passage to VIPs and their vehicles with the assistance of traffic police.

4. To ensure that the function is held without interruption.

5. To keep an eye on persons moving in suspicious circumstances.

6. Briefcases, lighters, matches, bags, umbrellas, tiffin boxes, etc. be prohibited to be taken by the audience inside the ground. Special attention will be paid on minor crackers, inside the ground.

7. The area of responsibility will be thoroughly checked by the zonal/sector officers.

8. To maintain law and order during the function.”

199. In this report itself, it had worked out the details of deployment, patrolling, timing of duties, supervision and assembly points, etc. In other words, on 2-6-2011, the police, after assessing the entire situation, had neither considered it appropriate to cancel the permissions nor to pass an order under Section 144 CrPC. On the basis of the input reports, the Joint Deputy Director, Criminare, had asked for proper security arrangements to be made for Baba Ramdev in furtherance to which the security of Baba Ramdev was upgraded.

200. In furtherance to the permission granted, the yoga shivir was held and a large number of persons participated therein. All went well till 3-6-2011 and it is nobody's case before the Court that any conditions were violated or there was any threat, much less imminent threat, to public peace and tranquillity. The yoga camp carried its activities for those days.

201. As already noticed, Baba Ramdev had also been granted permission to hold a hunger strike/satyagraha at Jantar Mantar on 4-6-2011. The restriction placed was that it should be with a very limited gathering. Further, vide letter dated 26-5-2011, the police had reiterated that the number of



persons accompanying Baba Ramdev should not exceed 200. However, vide letter dated 4-6-2011, the permission granted in relation to holding of dharna at Jantar Mantar was revoked, in view of the security, law and order reasons and due to the large gathering exceeding the number mentioned in the permission given.

202. Later, on 4-6-2011, the permission to organise yoga training camp at the Ramlila Maidan was also cancelled. It was stated that the activity being in variation to

the permission granted and in view of the security scenario of the capital city, it may be difficult for the police to maintain public order and safety. The organisers were further directed that no follower/participant should assemble at the venue or should hold hoardings, etc., on that very date, an order under Section 144 CrPC was passed. The order recited that an information had been received that some people, groups of people may indulge in unlawful activities to disturb the peace and tranquillity in the area of Sub-Division Kamla Market, Delhi and it was necessary to take speedy measures in this regard to save human life, public order, safety and tranquillity. This order was to remain in force for a period of 60 days from the date of its passing.

203. During the course of hearing, it was pointed out before this Court that the order withdrawing the permission was passed at 9.30 p.m. At 10.30 p.m., the police went to inform the representatives of Respondent 4 about the withdrawal of permission and subsequently an order under Section 144 CrPC was passed at about 11.30 p.m. The police force arrived at the site at about 1.00 a.m. and the operation to disperse the crowd started at 1.10 a.m. on the midnight of 4-6-2011/5-6-2011.

204. It was contended by Mr Harish Salve, learned Senior Counsel, that the decision to withdraw permission is an administrative decision taken with political influence. The police is to work in coordination with the Government, including the Ministry concerned and the Union. The order, being an executive order, has been passed bona fide and keeping in view the larger public interest and it is open to Respondent 4 or the affected parties to challenge the said order in accordance with law. It was also urged that this Court may not deal with the merits of the said order, as there is no challenge to these orders. There is no specific challenge raised by Respondent 4 and for that matter by any affected party to the orders of withdrawal of permission and imposition of restrictions under Section 144 CrPC.

205. In this view of the matter, it may not be necessary for this Court to examine these orders from that point of view. But the circumstances leading to passing of these orders and the necessity of passing such orders with reference to the facts of the present case is a matter which has to be examined in order to arrive at a final conclusion, as it is the imposition of these orders that has led to the unfortunate occurrence of 4-6-2011. Therefore, while leaving the parties to challenge these orders in accordance with law, if they so desire, I would primarily concentrate on the facts leading to these orders and their relevancy for the purposes of passing necessary orders and directions.



206. Though MCD is the owner of the property in question, but still it has no role to play as far as maintenance of law and order is concerned. The constitutional protection available to the citizens of India for exercising their fundamental rights has a great significance in our Constitution. Article 13 is indicative of the significance that the Framers of the Constitution intended to attach to the fundamental rights of the citizens. Even a law in derogation of the fundamental rights, to that extent, has been declared to be void, subject to the provisions of the Constitution. Thus, wherever the

State proposes to impose a restriction on the exercise of the fundamental rights, such restriction has to be reasonable and free from arbitrariness. It is for the Court to examine whether the circumstances which existed at the relevant time were of such imminent and urgent nature that it required passing of a preventive order within the scope of Section 144 CrPC, on the one hand, and on the other, of imposing a restriction on exercise of a fundamental right by Respondent 4 and persons present therein by withdrawing the permissions granted and enforcing dispersal of the gathering at the Ramlila Maidan at such odd hour.

207. At this stage, it will be useful for me to notice another aspect of this case. Baba Ramdev is stated to have arrived in Delhi on 1-6-2011 and four senior Ministers of the UPA Government met him at the airport and attempted to persuade him to give up his anshan in view of the Government's initiative on the issue that he had raised. Efforts were made to dissuade him from going ahead with his hunger strike on the ground that the Government was trying to find pragmatic and practical solution to tackle the agitated issue. Thereafter, as already noticed, a meeting of the Ministers and Baba Ramdev was held at Hotel Claridges. However, this meeting was not successful and certain differences remained unresolved between the representatives of the Government and Baba Ramdev. Consequently, Baba Ramdev decided to continue with his public meeting and hunger strike. Emphasis has been laid on a press release from the Ministry of Home Affairs stating that a decision was taken that Baba Ramdev should not be allowed to organise any protest and, if persisted, he should be directed to be removed from Delhi.

208. These circumstances have to be examined in conjunction with the stages of passing of the orders under Section 144 CrPC in relation to the withdrawal of permission. Without commenting upon the intelligence reports relied upon by the police, the Court cannot lose sight of the fact that even the intelligence agency, the appropriate quarters in the Government, as well as the police itself, had neither recommended nor taken any decision to withdraw the permission granted or to pass an order under Section 144 CrPC, even till 3-6-2011. On the contrary, after taking into consideration various factors, it had upgraded the security of Baba Ramdev and had required the organisers, Respondent 4, to take various other measures to ensure proper security and public order at the Ramlila Maidan.

209. It is nobody's case that the directions issued by the appropriate authority as well as the police had not been carried out by the organisers. It is also nobody's case that the conditions imposed in the letters granting

permission were breached by the organisers at any relevant point of time. Even on 3-6-2011, the Deputy Commissioner of Police, Central District, who was the officer directly concerned with the area in question, had issued a restricted circular containing details of the arrangements, the objectives and the requirements which the deployed forces should take for smooth organisation of the camp at the Ramlila Maidan. The threat of going on a hunger strike extended by Baba Ramdev to personify his stand on the issues raised, cannot be termed as unconstitutional or barred under any law. It is a form of protest which has been accepted, both historically and legally in our

constitutional jurisprudence.

210. The order passed under Section 144 CrPC does not give any material facts or such compelling circumstances that would justify the passing of such an order at 11.30 p.m. on 4-6-2011. There should have existed some exceptional circumstances which reflected a clear and prominent threat to public order and public tranquillity for the authorities to pass orders of withdrawal of permission at 9.30 p.m. on 4-6-2011. What weighed so heavily with the authorities so as to compel them to exercise such drastic powers in the late hours of the night and disperse the sleeping persons with the use of force, remains a matter of guess. Whatever circumstances have been detailed in the affidavit are, what had already been considered by the authorities concerned right from 25-5-2011 to 3-6-2011 and directions in that behalf had been issued. Exercise of such power, declining the permission has to be in rare and exceptional circumstances, as in the normal course, the State would aid the exercise of fundamental rights rather than frustrating them.

211. Another argument advanced on behalf of Respondent 4 by Mr Ram Jethmalani is that the order under Section 144 CrPC is a fraud upon law as it is nothing but abdication of its authority by police at the command of the Home Minister, Mr P. Chidambaram, as is evident from his abovereferred statements. According to him, the order under Section 144 CrPC, on the one hand, does not contain material facts while on the other, issues no directions as contemplated under that provision. Further it is contended that the Intelligence inputs as communicated to the police authorities vide letter dated 3-6-2011 had not even been received by the ACP.

212. There is some substance in this submission of Mr Ram Jethmalani. It is clear from Annexure 'J' annexed to the affidavit of the Police Commissioner that the letter of the Joint Deputy Director dated 3-6-2011 referring to threat on Baba Ramdev and asking the police to review and strengthen the security arrangements, was actually received on 6-6-2011 in the office of the Commissioner of Police and on 7-6-2011 in the office of the Joint Commissioner of Police. Thus, it could be reasonably inferred that this input was not within the knowledge of the officer concerned. I do not rule out the possibility of the Intelligence sources having communicated this input to the police authorities otherwise than in writing as well. But that would not make much of a difference for the reason that as already held, the order under Section 144 CrPC does not contain material facts and it is also evident from



the bare reading of the order that it did not direct Baba Ramdev or Respondent 4 to take certain actions or not take certain actions which is not only the purpose but is also the object of passing an order under Section 144 CrPC.

213. Mr Harish Salve, learned Senior Counsel, also contended that the police had neither abdicated its functions nor acted mala fide. The police had taken its decisions on proper assessment of the situation and bona fide. Two further affidavits dated 9-1-2012 and 10-1-2012 were filed on behalf of the police. They were filed by the Additional Deputy Commissioner of Police, Central District and Special Commissioner of

Police, Law and Order, Delhi. These affidavits were filed primarily with an effort to clarify the details of the logbook, the position of water cannons, entries and exit of the tent and number of PCR vans, ambulances arranged for evacuation of the gathering. For example, in the logbook dated 5-6-2011 at 2.14 a.m., details have been mentioned, "Police is arresting Baba Ramdev in which death can be caused". It is stated that this was not the conversation between two police officers as such but one Vipen Batra, who possessed the telephone number 8130868526 and had rung up. The PCR of the police informed them of the above fact. This, in turn, was communicated by Constable No. 8276 of the PCR to the police station. Similarly, on 5-6-2011 at 3 : 22 : 53, another call was received by Constable Sheetal No. 8174 PCR from the phone of one Shri Chander Mohan stating that policemen were beating people in the Ramlila Ground. These explanations may show that it were the messages received by the PCR vans from private people who had left the Ramlila Ground but there is nothing on record to show that these messages or reports to the PCRs were false. In fact, such calls go to substantiate what has been urged by the learned amicus. The affidavits do not improve the case of the police any further. As far as the question of mala fides is concerned, I have held that this action or order was not mala fide.

214. Another important aspect which had been pointed out during the course of hearing is that even the map annexed to this affidavit of the police supports what has been stated on behalf of Respondent 4 that there was only one main entry and exit for the public. The VIP entrance and VVIP entrance cannot be construed as entrance for the common man. The other exits were not operational owing to commotion, goods lying, fire of tear gas shells and standing of vehicles outside which were not permitted to move. This itself is a factor that goes to show that preparedness on the part of the police was not complete in all respects and also that it was not the appropriate time to evict people from the Ramlila Ground.

215. In the affidavit filed by the police, it has been stated that as a large number of persons were expected to gather on the morning of 5-6-2011, it was inevitable for the authorities of the State to enforce the execution of the order under Section 144 CrPC and the withdrawal of permission at the midnight itself. It is also averred that Respondent 4 had made certain misrepresentations to the authorities. Despite query from the authority, they had incorrectly informed that only a yoga camp will be held at the premises

of the Ramlila Maidan, though Baba Ramdev had planned to commence his hunger strike from 4-6-2011 at that place in the presence of a large gathering.

216. This argument, in my view, does not advance the case of the police any further as Baba Ramdev had already started his fast and he, as well as all his followers, were peacefully sleeping when these orders were passed and were sought to be enforced against them. The Trust might not have given the exact and correct information to the police but the police already had inputs from the Intelligence Agencies as well as knowledge on its own that a hunger strike, in presence of large number of people, was to start from 4-6-2011, which, in fact, did start.

217. From the record before this Court, it is not clear as to why the State did not expect obedience and cooperation from Baba Ramdev in regard to execution of its lawful orders, particularly when after withdrawal of the permission for holding dharna at Jantar Mantar, Baba Ramdev had accepted the request of the police not to go to Jantar Mantar with his followers. The attendant circumstances appearing on record as on 3-6-2011 did not show any intention on their part to flout the orders of the authorities or to cause any social disorder or show threat to public tranquillity by their action. The doubts reflected in the affidavits were matters which could have been resolved or clarified by mutual deliberations, as it was done in the past. The directions issued to Respondent 4 on 1-6-2011 were to ensure proper security of all concerned.

218. Material facts, imminent threat and requirement for immediate preventive steps should exist simultaneously for passing any order under Section 144 CrPC. The mere change in the purpose or in the number of persons to be gathered at the Ramlila Maidan simpliciter could hardly be the cause of such a grave concern for the authorities to pass the orders late in the night. In the standing order issued by the police itself, it has been clarified that wherever the gathering is more than 50,000, the same may not be permitted at the Ramlila Maidan, but they should be offered Burari Ground as an alternative. This itself shows that the attempt on the part of the authorities concerned should be to permit such public gathering by allotting them alternative site and not to cancel such meetings. This, however, does not seem to further the case of the State at all inasmuch as, admittedly, when the order was passed and the police came to the Ramlila Maidan to serve the said order, not even 15,000 to 20,000 people were stated to be present in the shamiana/tent. In these circumstances, it appears to me that it was not necessary for the executive authorities and the police to pass orders under Section 144 CrPC and withdraw the permissions. The matter could be resolved by mutual deliberation and intervention by the appropriate authorities.

219. In view of the affidavits having been filed on behalf of Respondent 3, a person of the rank of the Commissioner of Police, Delhi, wherein he has owned the responsibility for the events that have occurred from 1-6-2011 to 4-6-2011/5-6-2011, there is no reason for this Court to attribute any motive to

the said officer that he had worked and carried out the will of the people in power.

220. At the very commencement of hearing of the case, I had made it clear to the learned counsel appearing for the parties that the scope of the present petition is a very limited one. This Court would only examine the circumstances that led to the unfortunate incident on 4-6-2011, its consequences as well as the directions that this Court is called upon to pass in the peculiar facts and circumstances of the case. Therefore, it is not necessary for this Court to examine certain contentions raised or sought to be raised by the parties as the same may more appropriately be raised in an independent challenge to such orders or claim such other reliefs as they may like to claim by initiating appropriate legal proceedings.

221. This takes me to an ancillary but pertinent question in context of the said "discretion", that is exercisable with regard to the "threat perception", for the purposes

of passing an order under Section 144 CrPC. The activities which, though unintended have a tendency to create disorder or disturbance of public peace by resorting to violence, should invite the appropriate authority to pass orders taking preventive measures. The intent or the expected threat should be imminent. Some element of certainty, therefore, should be traceable in the material facts recorded and the necessity for taking such preventive measures. There has to be an objective application of mind to ensure that the constitutional rights are not defeated by subjective and arbitrary exercise of power.

222. Threat perception is one of the most relevant considerations and may differ as per the perspective of different parties. In the facts of the present case, the police have its own threat perception while the Trust has its own point of view in that behalf. As already noticed, according to the police, Baba Ramdev wanted to do anshan, after the negotiations with the Government had failed, which was not the purpose for which the permission had been granted. There was a possibility of the number of persons swelling up to 50,000 or more. There could also be possibility of communal tension as well as a threat to Baba Ramdev's life. These apprehensions are sought to be dispelled by the learned amicus curiae stating that this protest/dharna/anshan is a right covered under the freedom of speech. The Ramlila Maidan has the capacity of 50,000, which number, admittedly, was never reached and the doubts in the minds of the authority were merely speculative. The security measures had been beefed up. Baba Ramdev had been given Z+ security and, therefore, all the apprehensions of the authorities were misplaced, much less that they were real threats to an individual or to the public at large.

223. The perception of the Trust was that they were carrying on their anshan and yoga shivir peacefully, as law-abiding citizens of the country. No complaint had ever been received of any disturbance or breach of public trust. The events, right from January 2011, showed that all the camps and protests organised by the Trust, under the leadership of Baba Ramdev had been completed peacefully, without any damage to person or property and without



any disturbance to anyone. The action of the police in revoking the permissions as well as that of the executive authorities in passing the order under Section 144 CrPC was a colourable exercise of power and was not called for in the facts and circumstances of the case.

224. It is also not understandable that if the general "threat perception" and likelihood of communal disharmony were the grounds for revoking the permission and passing the order under Section 144 CrPC, then why the order passed under Section 144 CrPC permitted all other rallies, processions which had obtained the police permission to go on in the area of the same police division. The decision, therefore, appears to be contradictory in terms.

225. There is some merit in the submissions of the learned amicus curiae. Existence of sufficient ground is the sine qua non for invoking the power vested in the executive under Section 144 CrPC. It is a very onerous duty that is cast upon the empowered

officer by the legislature. The perception of threat should be real and not imaginary or a mere likely possibility. The test laid down in this section is not that of "merely likelihood or tendency". The legislature, in its wisdom, has empowered an officer of the executive to discharge this duty with great caution, as the power extends to placing a restriction and in certain situations, even a prohibition, on the exercise of the fundamental right to freedom of speech and expression. Thus, in case of a mere apprehension, without any material facts to indicate that the apprehension is imminent and genuine, it may not be proper for the authorities to place such a restriction upon the rights of the citizen.

226. At the cost of repetition, I may notice that all the grounds stated were considered at various levels of the Government and the police and they had considered it appropriate not to withdraw the permissions or impose the restriction of Section 144 CrPC even till 3-6-2011. Thus, it was expected of the authorities to show before the Court that some very material information, fact or event had occurred between 3-6-2011 and 4-6-2011, which could be described as the determinative factor for the authorities to change their mind and pass these orders. I am unable to accept the contention of the police that a situation had arisen in which there was imminent need to intervene instantly having regard to the sensitivity and perniciously perilous consequences that may result, if not prevented forthwith.

227. The administration, upon taking into consideration the intelligence inputs, threat perception, likelihood of disturbance to public order and other relevant considerations, had not only prepared its planned course of action but also declared the same. In furtherance thereto, the police also issued directions for compliance to the organisers. The authorities, thus, had full opportunity to exercise their power to make a choice permitting continuation and/or cancellation of the programme and thereby prohibit the activity on the Ramlila Maidan. However, in their wisdom, they opted to permit the continuation of the agitation and holding of the yoga shivir, thereby impliedly permitting the same, even in the changed circumstances, as alleged. *Qui non prohibet quod prohibere potest, asentire videtur* (he who does not prohibit when he is able to prohibit assents to it).

228. The authorities are expected to seriously cogitate over the matter in its entirety keeping the common welfare in mind. In my view, the police have not placed on record any document or even affidavits to show such sudden change of circumstances, compelling the authorities to take the action that they took. Denial of a right to hold such meeting has to be under exceptional circumstances and strictly with the object of preventing public tranquillity and public order from being disturbed.

Reasonable notice is a requirement of Section 144 CrPC

229. The language of Section 144 CrPC does not contemplate grant of any time for implementation of the directions relating to the prevention or prohibition of certain acts for which the order is passed against the person(s). It is a settled rule of law that wherever provision of a statute does not provide for a specific time, the same has to be

done within a reasonable time. Again reasonable time cannot have a fixed connotation. It must depend upon the facts and circumstances of a given case. There may also be cases where the order passed by an Executive Magistrate under Section 144 CrPC requires to be executed forthwith, as delay in its execution may frustrate the very purpose of such an order and may cause disastrous results like rioting, disturbance of public order and public tranquillity, while there may be other cases where it is possible, on the principles of common prudence, that some time could be granted for enforcement and complete implementation of the order passed by the executive authority under Section 144 CrPC. If one reads the entire provision of Section 144 CrPC, then the legislature itself has drawn a distinction between cases of urgency, where the circumstances do not admit to serving of a notice in due time upon the person against whom such an order is directed and the cases where the order could be passed after giving a notice to the affected party. Thus, it is not possible to lay down any straitjacket formula or an absolute proposition of law with exactitude that shall be applicable uniformly to all the cases/situations. In fact, it may not be judicially proper to state such a proposition. It must be left to the discretion of the executive authority, vested with such powers to examine each case on its own merits.

230. Needless to repeat that an order under Section 144 CrPC affects the right vested in a person and it will not be unreasonable to expect the authorities to grant adequate time to implement such orders, wherever the circumstances so permit. Enforcement of the order in undue haste may sometimes cause a greater damage than the good that it expected to achieve.

231. If for the sake of arguments, I would accept the contention of the police that the order withdrawing the permission as well as the order under Section 144 CrPC are valid and had been passed for good reasons, still the question remains as to whether the authorities could have given some reasonable time for implementation/enforcement of the directions contained in the order dated 4-6-2011. It is indisputable and, in fact, is disputed by none that all the persons who had gathered in the tent at the Ramlila Maidan were sleeping when the police went there to serve the order passed under

Section 144 CrPC upon the representatives of the Trust; the order itself having been passed at 11.30 p.m. on 4-6-2011. There are serious disputes raised as to the manner in which the order was sought to be executed by the police. According to Respondent 4 and the learned amicus, it was not executed as per the legal framework provided under the Police Rules and the guidelines issued, whereas according to the police, it adhered to its prescribed procedure. This issue I shall discuss separately.

232. But at this stage, I may notice that nothing prevented the authorities from making proper announcements peacefully requiring the persons gathered at the Ramlila Maidan to leave for their respective homes early in the morning and before the yoga camp could resume. Simultaneously, they could also have prohibited entry into the Ramlila Maidan, as the same was being controlled by the police itself. No facts or circumstances have been stated which could explain as to why it was absolutely

necessary for the police to wake up the people from their sleep and force their eviction, in a manner in which it has been done at the late hours of night. In absence of any explanation and special circumstances placed on record, I have no hesitation in coming to the conclusion that, in the facts of the present case, it was quite possible and even desirable for the authorities concerned to grant a reasonable time for eviction from the ground and enforcement of the orders passed under Section 144 CrPC. Except in cases of emergency or the situation unexceptionally demanding so, reasonable notice/time for execution of the order or compliance with the directions issued in the order itself or in furtherance thereto is the prerequisite.

233. Non-grant of reasonable time and undue haste on the part of the police authorities to enforce the orders under Section 144 CrPC instantaneously had resulted in the unfortunate incident of human irony which could have been avoided with little more patience and control. It was expected of the police authorities to bastion the rights of the citizens of the country. However, undue haste on the part of the police created angst and disarray amongst the gathering at the Ramlila Maidan, which finally resulted in this sad cataclysm.

Requirement of police permission and its effect on the right conferred in terms of Articles 19(1)(a) and 19(1)(b) respectively with reference to the facts of the present case

234. The contention on behalf of Respondent 4 is that no law requires permission of the police to go on fast and/or for the purposes of holding an agitation or yoga camp. The police, therefore, had no power to cancel such permission. The law is clear that it is the fundamental right of the people to hold such agitation or morchas in the streets and on public land and the police have been vested with no power to place any restriction, much less an unreasonable restriction, upon the exercise of such right. There is no statutory form provided for seeking permission of the police before holding any such public meeting.


235. While relying on the Constitution Bench judgment of this Court in *Himat Lal*¹⁷, the contention is that the police cannot be vested with unrestricted and unlimited power for grant or refusal of permission for holding such public functions. In fact, it is stated to be no requirement of law. In the alternative, the contention is that there was no condition imposed by the police for grant of permission, which had been violated. Thus, there was no occasion or justification, not even a reasonable apprehension, for revoking that permission. The imposition of restriction must be preceded by some act or threatening behaviour which would disturb the public order or public tranquillity.

236. The Ramlila Maidan belongs to MCD and they granted the permission/licence to use the said property from 1-6-2011 to 20-6-2011. They having granted the permission/licence to use the said property, never revoked the same. Thus, the police had no jurisdiction to indirectly revoke the permission which they could not directly revoke and evict the persons from the Ramlila Maidan forcibly, by brutal assaults and causing damage to the person and property of the individuals. The permission had

been revoked in violation of the principles of natural justice. The submission was sought to be buttressed by referring to Rule 10 of the MCD Rules which requires grant of personal hearing before revocation of a permission granted by MCD.

237. To contra, the contention raised on behalf of Respondent 3, the Commissioner of Police, Delhi, is that there are specific powers vested in the police in terms of the DP Act, the Punjab Police Rules, as applicable to Delhi and the standing orders, according to which the police is obliged to maintain public order and public tranquillity. They are expected to keep a watch on public meetings. There is no act attributable to the police which has impinged upon any democratic rights of the said respondents or the public. The orders passed and the action taken by the police, including withdrawal of permission, was in public interest as weighed against private interest. Since the police, as an important organ of the State administration, is responsible to maintain public order and peace, it will be obligatory upon the persons desirous of holding such public meetings as well as the authorities concerned to associate police and seek their permission for holding such public satyagraha, camp, etc. as safety of a large number of people may be at stake. According to the learned amicus curiae, the withdrawal of permission was for political and mala fide reasons. There existed no circumstances which could justify the withdrawal of permission. In fact, the contention is that possibility of the Government and police working in liaison to prevent Baba Ramdev from holding satyagraha/anshan cannot be ruled out particularly, when there was no threat, much less an imminent threat, to disturb public order or tranquillity justifying the withdrawal of permission.

238. I have already discussed that the term "social order" has a very wide ambit which includes "law and order", "public order" as well as "security of the State". In other words, "social order" is an expression of wide amplitude.

 Page: 98

It has a direct nexus to the Preamble of the Constitution which secures justice—social, economic and political—to the people of India. An activity which could affect "law and order" may not necessarily affect public order and an activity which might be prejudicial to public order, may not necessarily affect the security of the State. Absence of public order is an aggravated form of disturbance of public peace which affects the general course of public life, as any act which merely affects the security of others may not constitute a breach of public order.

239. "Security of the State", "law and order" and "public order" are not expressions of common meaning and connotation. To maintain and preserve public peace, public safety and public order is unequivocal duty of the State and its organs. To ensure social security to the citizens of India is not merely a legal duty of the State but a constitutional mandate also. There can be no social order or proper State governance without the State performing this function and duty in all its spheres.

240. Even for ensuring the exercise of the right to freedom of speech and assembly, the State would be duty-bound to ensure exercise of such rights by the persons desirous of exercising such rights as well as to ensure the protection and security of the people i.e. members of the assembly as well as that of the public at large. This tri-

duty has to be discharged by the State as a requirement of law for which it has to be allowed to apply the principle of reasonable restriction, which is constitutionally permissible.

241. Articles 19(1)(a) and 19(1)(b) are subject to the reasonable restrictions which may be imposed on exercise of such right and which are in the interest of sovereignty and integrity of India, security of the State, public order, decency or morality and friendly relations with foreign States. Besides this, such restriction could also relate to contempt of court, defamation or incitement to an offence. Thus, sphere of such restrictions is very wide. While some may be exercising their fundamental rights under Articles 19(1)(a) and 19(1)(b) of the Constitution, others may be entitled to the protection of social safety and security in terms of Article 21 of the Constitution and the State may be called upon to perform these functions in the discharge of its duties under the constitutional mandate and the requirements of the directive principles of State policy.

242. I have also noticed that in terms of Article 51-A of the Constitution, it is the constitutional duty of every citizen to perform the duties as stated under that article.

243. The security of India is the prime concern of the Union of India. "Public order" or "law and order" falls in the domain of the State. The Union also has the power to enact laws of preventive detention for reasons connected with the security of the State, maintenance of the public order, etc. I am not entering upon the field of legislative competence but am only indicating entries in the respective lists to show that these aspects are the primary concern, either of the Union or the State Governments, as the case may be and they hold jurisdiction to enact laws in that regard. The Union or



the State is expected to exercise its legislative power in aid of civil power, with regard to the security of the State and/or public order, as the case may be, with reference to Schedule VII List I Entry 9, List II Entry 1 and List III Entries 3 and 4 of the Constitution of India.

244. These are primarily the fields of legislation, but once they are read with the constitutional duties of the State under the directive principles with reference to Article 38 where the State is to secure a social order for promotion of welfare of the people, the clear result is that the State is not only expected but is mandatorily required to maintain social order and due protection of fundamental rights in the State.

245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be

.....
founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.

246. The “law and order” or “public order” are primarily and certainly the concerns of the State. Police, being one of the most important organs of the State, is largely responsible for ensuring maintenance of public security and social order. To urge that the police have no concern with the holding of public meetings would be a misnomer and misunderstanding of law. To discharge its duty, the police organisation of a State is a significant player within the framework of law. In this view of the matter, I may now refer to certain statutory provisions under the relevant Acts or the Rules.

247. Chapter V of the DP Act requires special measures for maintenance of public order and security of State, to be taken by the police. Sections 28 and 29 of the DP Act give power to the police to make regulations for regulating traffic and for preservation of order in public places and to give directions to the public, respectively. Under Section 31 of the DP Act, the police is under a duty to prevent disorder at places of public amusement or public assembly or meetings. Section 36 contemplates that the police is to ensure and reserve streets or other public places for public purposes and empowers it to authorise erecting of barriers in streets. It also is vested with the power to make regulations regulating the conduct or behaviour of persons constituting assemblies or processions on or along with the streets and specifying, in the case of processions, the rules by which and the time and order in which the same may pass.

248. The power to make regulations relates to regulating various activities including holding of melas and public amusements, in the interest of public order, the general public or morality. Delhi Police has also issued Standing Order 309 in relation to “regulation of processions and rallies” laying down the procedure for making application for grant of permission, its acceptance or rejection and the consequences thereof. This standing order also provides as to how the proceedings in furtherance to an order passed under Section 144 CrPC should be carried out. It further indicates that the entire tilt of the regulation is to grant permission for holding processions or rallies and they need to be accommodated at the appropriate places depending upon the number of persons proposing to attend the said rally or meeting and the nature of the activity that they are expected to carry on. For instance, under clause (h), as Parliament Street and Jantar Mantar cannot accommodate more than 5000 persons, if there is a larger crowd, they should be shifted to the Ramlila Ground and if the crowd is expected to be more than 50,000 and the number of vehicles would accordingly swell up, then it should be shifted to a park or another premises, which can safely accommodate the gathering.

249. The learned Solicitor General appearing for the Union of India argued that the Ministry of Home Affairs had never told the police to take any action. The police only kept the senior officers in the Ministry of Home Affairs informed. What transpired at the

site is correctly stated by the police in its affidavit and the extent of judicial review of such action/order is a very narrow one. According to him, the scope of the suo motu petition itself is a very limited one, as is evident from the order of the Court dated 6-6-2011. The statement of the Home Minister relied upon by Respondent 2 as well as referred to by the learned amicus in his submissions has to be read in conjunction with the explanation given by the Minister of Home Affairs soon after the incident. Thus, no fault or error is attributable to the Ministry of Home Affairs, Government of India in relying upon the judgment of this Court in *Babulal Parate*², *Madhu Limaye*¹⁴, *Amitabh Bachchan Corpn. Ltd. v. Mahila Jagran Manch*²⁶, *R.K. Garg v. Supt., District Jail*²⁷ and *Praveen Bhai Thogadia*¹⁹ to contend that the authorities have to be given some leverage to take decisions in such situations. There are sufficient inbuilt safeguards and that the judicial intervention in such executive orders has to be very limited. It is his contention that the present case does not fall in that category.

250. There cannot be any dispute that the executive authorities have to be given some leverage while taking such decisions and the scope of judicial review of such orders is very limited. These propositions of law are to be

 Page: 101

understood and applied with reference to the facts of a given case. It is not necessary for me to reiterate those facts. Suffice it to note that the action of the police was arbitrary. The seven-Judge Bench of this Court in *Madhu Limaye*¹⁴ reiterated with approval the law enunciated in *Babulal Parate*² and further held that : (*Madhu Limaye case*¹⁴, SCC p. 757, para 24)

“24. ... These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented.”

The fundamental emphasis is on prevention of situation which would lead to disturbance of public tranquillity, however, action proposed to be taken should be one which itself is not likely to generate public disorder and disturb public tranquillity. It should be preventive and not provocative. The police action in the present case led to a terror in the minds of members of the assembly and finally the untoward incident.

251. It is also true that a man on the spot and responsible for maintenance of public peace is the appropriate person to form an opinion as contemplated in law. But, here the onus was on the police authorities to show the existence of such circumstances at the spot when, admittedly, all persons were sleeping peacefully. The courts have to realise that the rights of the organisers and other members of the society had to be protected if a law and order situation was created as a result of a given situation.

252. The learned Solicitor General is correct in his submissions that the scope of the present suo motu petition is a limited one. But certainly it is not so limited that the

Court would neither examine facts nor the law applicable but would accept the government affidavits as a gospel truth. The order dated 6-6-2011 has two distinct requirements. Firstly, relating to the take of the police authorities. Secondly, circumstances in which such power with brutality and atrocities was asserted against large people who had gathered at the Ramlila Ground.

253. While keeping the principles of law in mind, the Court essentially has to deliberate upon these two aspects. I am examining the circumstances which generated or resulted into the unfortunate situation at the Ramlila Ground on the midnight of 4-6-2011/5-6-2011. The statement made by the Home Minister on 8-6-2011 has already been referred by me above. This statement clearly demonstrated the stand of the Government that in the event Baba Ramdev persisted in his efforts to go on with the fast, he would be removed. The police had been issued appropriate directions under Section 65 of the DP Act to enforce the same. The decision so had also been taken by Delhi Police. The Minister had requested the general public to appreciate the constraints and difficult circumstances under which Delhi Police had to



discharge its functions. This statement was even clarified with more reasons and elaborately in the exclusive interview of the Minister with DD News on the same date on the television. He is stated to have said that ultimately when the talks failed or Baba Ramdev went back on his words, the police was told to enforce the decision.

254. There are circumstances and reasons given by the Home Minister in his statement for making the statement that he made. The decision of Delhi Police in the normal course of events would have a connection with the declaration made by the Ministry. Police might have acted independently or in consultation with the Ministry. Either way, there is no material before me to hold that the decision of the Ministry or the police was mala fide in law or in fact. Upon taking into consideration the cumulative effect of the affidavits filed on record and other documentary evidence, I am unable to dispel the argument that the decision of the Ministry of Home Affairs, Union of India reflected its shadow on the decision-making process and decision of the police authorities.

255. I shall make it clear even at the cost of repetition that neither am I adjudicating upon the validity of the order passed by the Government qua Respondent 4, nor adjudicating any disputes between Baba Ramdev, on the one hand, and the Government, on the other. Within the scope of this Court's order dated 6-6-2011, I would examine all the relevant facts and the principles of law applicable for returning the findings in relation to the interest of the large public present at the Ramlila Maidan in the midnight of 4-6-2011/5-6-2011.

256. The learned amicus also contended that the doctrine of limited judicial review would not stricto sensu apply to the present case. The case is not limited to the passing of an order under Section 144 CrPC, but involves the larger issue of fundamental freedom and restrictions in terms of Article 19(1)(a) of the Constitution, as well as the interest of a number of injured persons and Rajbala, the deceased. It is also his contention that there is a clear abdication of powers by the police to the

Ministry of Home Affairs. The order and action of the police are patently unjustifiable. If the trajectories of two views, one of the Ministry and other of the police point out towards the action being mala fide, be it so, the court then should decide the action to be mala fide. Mala fides is a finding which the court can return only upon proper allegations supported by documentary or other evidence. It is true that if the factual matrix of the case makes the two trajectories (case of both the respondents) point towards an incorrect decision, the court would be reluctant to return a finding of mala fides or abdication of power. The decision was taken by the competent authority and on the basis of inputs and the situation existing at the site. It may be an incorrect decision taken in somewhat arbitrary manner and its enforcement may be totally contrary to the rule of law and common sense. In such an event, the action may be liable to be interfered with but cannot be termed as mala fide.



257. Furthermore, the constitutional mandate, the statutory provisions and the regulations made thereunder, in exercise of power of delegated legislation, cast a dual duty upon the State. It must ensure public order and public tranquillity with due regard to social order, on the one hand, while on the other, it must exercise the authority vested in it to facilitate the exercise of fundamental freedoms available to the citizens of India. A right can be regulated for the purposes stated in that article itself.

258. In *Himat Lal K. Shah*¹⁷ this Court observed that even in pre-Independence days the public meetings have been held in open spaces and public streets and the people have come to regard it as a part of their privileges and amenities. The streets and public parks existed primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public streets must yield to the social interest which the prohibition and regulation of speech are designed to protect. There is a constitutional difference between reasonable regulation and arbitrary exclusion. The power of the appropriate authority to impose reasonable regulation, in order to ensure the safety and convenience of the people in the use of public highways, has never been regarded as inconsistent with the fundamental right to assembly. A system of licensing as regards the time and manner of holding public meeting on public streets has not been regarded as an infringement of a fundamental right of public assembly or free speech. This Court, while declaring Rule 7 of the Bombay Police Rules ultra vires, stated the principle that it gave an unguided discretion, practically dependent upon the subjective whims of the authority, to grant or refuse permission to hold public meeting on a public street. Unguided and unfettered power is alien to proper legislation and even good governance. The principles of healthy democracy will not permit such restriction on the exercise of a fundamental right.

259. The contention made by Mr Ram Jethmalani, learned Senior Advocate, is that this judgment should be construed to mean that it is not obligatory or even a directory requirement to take permission of the police authorities for holding such public meetings at public places. According to him the police have no such power in law.

260. I am not quite impressed by this submission. This argument, if accepted, can lead to drastic and impracticable consequences. If the Department of Police will have no say in such matters, then it will not only be difficult but may also be improbable for the police to maintain law and order and public tranquillity, safeguarding the interest of the organisers, the persons participating in such public meetings as well as that of the public at large.

261. I am bound and, in fact, I would follow the view expressed by a Constitution Bench of this Court in *Himat Lal*¹⁷ in para 31 of the judgment : (SCC p. 239)

“31. It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meetings on

 Page: 104

public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned Rules are ultra vires Section 33(1) of the Bombay Police Act insofar as they require prior permission for holding meetings.”

262. The provisions of the DP Act read in conjunction with the regulations framed and the standing orders issued, do provide sufficient guidelines for exercise of power by the appropriate authority in granting and/or refusing the permission sought for. I hasten to add here itself that an application to the police has to be examined with greatest regard and objectivity in order to ensure exercise of a fundamental right rather than it being throttled or frustrated by non-granting of such permission.

263. A three-Judge Bench of this Court in *Destruction of Public and Private Properties, In re*²² primarily laid down the guidelines to effectuate the modalities for preventive action and adding teeth to the enquiry/investigation in cases of damage to public and private properties resulting from public rioting. The Court indicated the need for participation and for taking the police into the organisational activity for such purposes. The Court, while following the principles stated in *Union of India v. Assn. for Democratic Reforms*²⁸, gave directions and guidelines, wherever the Act or the Rules were silent on a particular subject, for the proper enforcement of the provisions. In para 12 of the judgment, the Court clearly stated that as soon as there is a demonstration organised, the organisers shall meet the police to review and revise the route to be taken and lay down the conditions for peaceful march and protest.

264. Admittedly, the Court in that case was not determining an issue whether police permission is a prerequisite for holding such public meetings or not, but still, the Court mandated that the view of the police is a requirement for organisation of such meetings or for taking out public processions. Seeking of such permission can be justified on the basis that the said right is subject to reasonable restrictions.

265. Further, exercise of such rights cannot be claimed at the cost of impinging upon the rights of others. This is how the restriction imposed is to be regulated. Restriction to a right has to come by enactment of law and enforcement of such restriction has to come by a regulatory mechanism, which obviously would take within its ambit the role of police. The police have to perform their functions in the

administration of criminal justice system in accordance with the provisions of CrPC and other penal statutes. It has also to ensure that it takes appropriate preventive steps as well as maintains public order or law and order, as the case may be.

266. In the event of any untoward incident resulting into injury to a person or property of an individual or violation of his rights, it is the police alone that shall be held answerable and responsible for the consequences as

 Page: 105

may follow in law. The police is to maintain and give precedence to the safety of the people as *salus populi suprema lex* (the safety of the people is the supreme law) and *salus reipublicae suprema lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. Besides, one fact that cannot be ignored is that Respondent 4, in furtherance to the understanding of law, had itself applied to the Deputy Commissioner of Police, Central District, Darya Ganj, seeking sanction for holding of yoga shivir at the Ramlila Maidan.

267. It is difficult for the Court to even imagine a situation where the police would be called upon to discharge such heavy responsibility without having any say in the matter. The persons who are organising the public meeting would obviously have their purpose and agenda in mind but the police also have to ensure that they are able to exercise their right to freedom of speech and assembly and, at the same time, there is no obstruction, injury or danger to the public at large.

268. Thus, in my considered opinion, associating police as a prerequisite to hold such meetings, dharnas and protests, on such large scale, would not infringe the fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution as this would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of the others, as contemplated under Article 21 of the Constitution of India. That would be the correct approach of law, as is supported by various judgments and reasoning, that I have detailed in the initial part of this judgment. A solution to such an issue has to be provided with reference to exercise of a right, imposition of reasonable restrictions, without disturbing the social order, respecting the rights of others with due recognition of the constitutional duties that all citizens are expected to discharge.

269. Coming to the facts of the present case, it is nobody's case that the permissions were declined. The permissions, whether for holding of the yoga shivir at the Ramlila Maidan or the protest at Jantar Mantar, were granted subject to certain terms and conditions. The argument that no permission of the police is called for in absolute terms, as a pre-requirement for holding of such meetings, needs no further deliberation.

Responsibility of the Trust, members of the assembly, their status and duty

270. Once an order under Section 144 CrPC is passed by the competent authority and such order directs certain acts to be done or abstains (*sic* abstention) from doing certain acts and such order is in force, any assembly, which initially might have been a

lawful assembly, would become an unlawful assembly and the people so assembled would be required to disperse in furtherance to such order. A person can not only be held responsible for his own act, but, in the light of Section 149 IPC, if the offence

 Page: 106

is committed by any member of the unlawful assembly in prosecution of a common object of that assembly, every member of such assembly would become member of the unlawful assembly.

271. Obedience of lawful orders is the duty of every citizen. Every action is to follow its prescribed course in law *actio quaelibet it sua via*. The course prescribed in law has to culminate to its final stage in accordance with law. In that process there might be either a clear disobedience or a contributory disobedience. In either way, it may tantamount to being negligent. Thus, the principle of contributory negligence can be applied against parties to an action or even a non-party. The rule of identification would be applied in cases where a situation of the present kind arises. Before this Court, it is the stand of the police authorities that Baba Ramdev, members of the Trust and their followers refused to obey the order and, in fact, they created a situation which resulted in inflictment of injuries not only to the members of the public, but even to police personnel. In fact, they placed the entire burden upon Respondent 4.

272. The members of the public as well as Respondent 4 claimed that there was damage to their person and property as a result of the action of the police. Thus, this Court will have to see the fault of the party and the effective cause of the ensuing injury. Also it has to be seen that in the "agony of the moment", would the situation have been different and safe, had the people concerned acted differently and as to who was majorly responsible for creation of such a dilemma. Under the English law, it has been accepted that once a statute has enjoined a pattern of behaviour as a duty, no individual can absolve another from having to obey it. Thus, as a matter of public policy, *volenti* cannot erase the duty or breach of it. (*Ref. Clerk and Lindsell on Torts*, 20th Edn., p. 246)

273. There is no statutory definition of contributory negligence. The concerns of contributory negligence are now too firmly established to be disregarded, but it has to be understood and applied properly. "Negligence" materially contributes to injury or is regarded as expressing something which is a direct cause of the accident. The difference in the meaning of "negligence", when applied to a claimant, on the one hand, and to a defendant on the other, was pointed out by Lord Simon in *Nance v. British Columbia Electric Railway Co. Ltd.*²⁹ (AC at p. 611):

"... when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove ... that the injured party did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the claimant's claim, the principle involved is that,

where a man is part author of his own injury, he cannot call on the other party to compensate him in full.”

274. The individual guilty of contributory negligence may be the employee or agent of the claimant, so as to render the claimant vicariously responsible for what he did. There could be cases of negligence between spectators and participants in sporting activities. However, in such matters, negligence itself has to be established. In cases of “contributory negligence”, it may not always be necessary to show that the claimant is in breach of some duty, but the duty to act carefully, usually arises and the liability in an action could arise. (*Charlesworth and Percy on Negligence*, 11th Edn., pp. 195 and 206) These are some of the principles relating to the award of compensation in cases of contributory negligence and in determining the liability and identifying the defaulter. Even if these principles are not applicable *stricto sensu* to the cases of the present kind, the applied principles of contributory negligence akin to these principles can be applied more effectively on the strength of the provisions of Section 149 IPC.

275. A negligence could be composite or contributory. “Negligence” does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. “Negligence” is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Normally, the crucial question on which such a liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Though, this is the principle stated by this Court in a case relating to the Motor Vehicles Act, 1939 in *Municipal Corpn. of Greater Bombay v. Laxman Iyer*³⁰, it is stated that the principle stated therein would be applicable to a large extent to the cases involving the principles of contributory negligence as well.

276. This Court in *MCD v. Uphaar Tragedy Victims Assn.*³¹ while considering awarding of compensation to the victims who died as a result of Uphaar cinema tragedy and the liability of the persons responsible, held that even on the principle of contributory negligence the Delhi Vidyut Board to whom negligence was attributable in relation to installing a transformer was liable to pay damages along with the licensee. Whenever an order is passed which remains unchallenged before the court of competent jurisdiction, then its execution is the obvious consequence in law. For its execution, all concerned are expected to permit implementation of such orders and, in fact, are under a legal obligation to fully cooperate in the enforcement of lawful orders.

277. Article 19(1)(a) gives the freedom of speech and expression and the right to assembly. Article 21 mandates that no person shall be deprived of his

life and personal liberty except according to the procedure established by law. However, Article 51-A imposes certain fundamental duties on the citizens of India.

Article 38(1) provides that:

“38. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”

278. Article 51-A requires the citizens of India to abide by the Constitution and to uphold the sovereignty and integrity of India. Article 51-A(i) requires a citizen to safeguard public property and to abjure violence. An order passed under Section 144 CrPC is a restriction on enjoyment of fundamental rights. It has been held to be a reasonable restriction. Once an order is passed under Section 144 CrPC within the framework and in accordance with the requirements of the said section, then it is a valid order which has to be respected by all concerned. Its enforcement is the natural consequence.

279. In the present case, the order was passed under Section 144 CrPC at about 11.30 p.m. whereafter the police had come to the Ramlila Maidan to serve the said order on the representatives of Respondent 4. The video and the footage of CCTV cameras played before this Court show that the officers of the police along with the limited force had come to inform Baba Ramdev and/or the representatives of Respondent 4 about the passing of the said order, but they did not receive the requisite cooperation from that end. On the contrary, it is clear from the various documents before this Court that Baba Ramdev did not receive the order though obviously he had come to know about the said order.

280. At the time of the incident, Baba Ramdev was sleeping in the rest room. Thereafter he came to the stage and when approached by the police officers, who were also present on the stage, he jumped into the crowd, got on to the shoulders of one of his followers and delivered speeches. Of course, there does not appear to be use of any language which was, in any way, provocative or was a command to his followers to get involved in clash with the police. On the contrary, in his speeches, he asked the people to chant the gayatri mantra, maintain shanti and not to take any confrontation with the police. He exhorted that he would not advise the path of hinsa, but at the same time, he also stated about failure of his talks with the Government and the attitude of the Government on the issues that he had raised and also stated that “Babaji will go only if people wanted and the God desires it.” After some time, Baba Ramdev climbed on to the stage and thereafter, disappeared. In the CCTV cameras, Baba Ramdev is not seen thereafter. He did not disclose to his followers that he was leaving and what path they should follow. This suspense and commotion on the stage added fuel to the fire. Thereafter, the scenes of violent protest and clash between the police and the followers occurred at the site.



281. The legality and correctness of the order passed under Section 144 CrPC was not challenged by Respondent 4 and, in fact, it remains unchallenged till date. Of

course, the attempt on the part of the authorities to enforce the order forthwith, practically frustrated the right available to Respondent 4 under law i.e. preferring of an appeal or a revision under the provisions of CrPC.

282. Be that as it may, the fact that when an order was passed by the authorities competent to pass such an order, it was expected of all concerned to respect the order lawfully passed and to ensure that the situation at the site was not converted into a tragedy. All were expected to cooperate in the larger interest of the public. The police was concerned with the problem of law and order while Respondent 4 and Baba Ramdev certainly should have been concerned about the welfare of their followers and the large gathering present at the Ramlila Maidan. Thus, to that extent, the police and Respondent 4 ought to have acted in tandem and ensured that no damage to the person or property should take place, which unfortunately did not happen.

283. Keeping in view the stature and respect that Baba Ramdev enjoyed with his followers, he ought to have exercised the moral authority of his office in the welfare of the people present. There exists a clear constitutional duty, legal liability and moral responsibility to ensure due implementation of lawful orders and to maintain the basic rule of law. It would have served the greater public purpose and even the purpose of the protests for which the rally was being held, if Baba Ramdev had requested his followers to instantaneously leave the Ramlila Maidan peacefully or had assured the authorities that the morning yoga programme or protest programme would be cancelled and the people would be requested to leave for their respective places. Absence of performance of this duty and the gesture of Baba Ramdev led to an avoidable lacerating episode.

284. Even if the Court takes the view that there was undue haste, adamancy and negligence on the part of the police authorities, then also it cannot escape to mention that to this negligence, there is a contribution by Respondent 4 as well. The role of Baba Ramdev at that crucial juncture could have turned the tide and probably brought a peaceful end rather than the heart-rending end of injuries and unfortunate death. Even if it is assumed that the action of the police was wrong in law, it gave no right to others to commit any offence *injuria non excusat injuriam*.

285. Every law-abiding citizen should respect the law and must stand in conformity with the rule, be as high an individual may be. Violation of orders has been made punitive under the provisions of Section 188 IPC, but still in other allied proceedings, it would result in fastening the liability on all contributory partners, may be vicariously, but the liability certainly would extend to all the defaulting parties. For these reasons, I have to take a view that in the circumstances of the case, Baba Ramdev and the office-bearers of Respondent 4 have contributed to the negligence leading to the occurrence in question and are vicariously liable for such action.

Findings and directions

286.1. In discharge of its judicial functions, the courts do not strike down the law or quash the State action with the aim of obstructing democracy in the name of

.....
preserving democratic process, but as a contribution to the governmental system, to make it fair, judicious and transparent. The courts take care of interests which are not sufficiently defended elsewhere and/or of the victims of State action, in exercise of its power of judicial review.

286.2. In my considered view, in the facts of the present case, the State and the police could have avoided this tragic incident by exercising greater restraint, patience and resilience. The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed. The decision to forcibly evict the innocent public sleeping at the Ramlila Ground in the midnight of 4-6-2011/5-6-2011, whether taken by the police independently or in consultation with the Ministry of Home Affairs is amiss and suffers from the element of arbitrariness and abuse of power to some extent. The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts. It was an invasion of the liberties and exercise of fundamental freedoms. The members of the assembly had legal protections available to them even under the provisions of CrPC. Thus, the restriction was unreasonable and unwarrantedly executed. The action demonstrated the might of the State and was an assault on the very basic democratic values enshrined in our Constitution. Except in cases of emergency or the situation unexceptionably demanding so, reasonable notice/time for execution of the order or compliance with the directions issued in the order itself or in furtherance thereto is the prerequisite. It was primarily an error of performance of duty both by the police and Respondent 4 but the ultimate sufferer was the public at large.

286.3. From the facts and circumstances that emerge from the record before this Court, it is evident that it was not a case of emergency. The police have failed to establish that a situation had arisen where there was imminent need to intervene, having regard to the sensitivity and perniciously perilous consequences that could have resulted, if such harsh measures had not been taken forthwith.

286.4. The State has a duty to ensure fulfilment of the freedom enshrined in our Constitution and so it has a duty to protect itself against certain unlawful actions. It may, therefore, enact laws which would ensure such protection. The rights and the liberties are not absolute in nature and uncontrolled in operation. While placing the two, the rule of justice and fair play requires that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness or arbitrariness, resultantly vitiating the law, the procedure and the action taken thereunder.

286.5. It is neither correct nor judicially permissible to say that taking of police permission for holding of dharnas, processions and rallies of the present kind is irrelevant or not required in law. Thus, in my considered

opinion, the requirement of associating police, which is an important organ of the State for ensuring implementation of the rule of law, while holding such large-scale meetings, dharnas and protests, would not infringe the fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution. This would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and

would also not impinge upon the rights of others, as contemplated under Article 21 of the Constitution of India. The police authorities, who are required to maintain the social order and public tranquillity, should have a say in the organisational matters relating to holding of dharnas, processions, agitations and rallies of the present kind. However, such consent should be considered in a very objective manner by the police authorities to ensure the exercise of the right to freedom of speech and expression as understood in its wider connotation, rather than use the power to frustrate or throttle the constitutional right. Refusal and/or withdrawal of permission should be for valid and exceptional reasons. The executive power, to cause a restriction on a constitutional right within the scope of Section 144 CrPC, has to be used sparingly and very cautiously. The authority of the police to issue such permission has an inbuilt element of caution and guided exercise of power and should be in the interest of the public. Such an exercise of power by the police should be aimed at attainment of fundamental freedom rather than improper suppression of the said right.

286.6. I have held that Respondent 4 is guilty of contributory negligence. The Trust and its representatives ought to have discharged their legal and moral duty and should have fully cooperated in the effective implementation of a lawful order passed by the competitive authority under Section 144 CrPC. Due to the stature that Baba Ramdev enjoyed with his followers, it was expected of him to request the gathering to disperse peacefully and leave the Ramlila Maidan. He ought not have insisted on continuing with his activity at the place of occurrence. Respondent 4 and all its representatives were bound by the constitutional and fundamental duty to safeguard public property and to abjure violence. Thus, there was legal and moral duty cast upon the members of the Trust to request and persuade people to leave the Ramlila Maidan which could have obviously avoided the confrontation between the police and the members of the gathering at the Ramlila Maidan.

286.7. As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine the existence of a right not coupled with a duty. The duty may be a direct or an indirect consequence of a fair assertion of the right. Part III of the Constitution, although confers rights, duties, regulations and restrictions are inherent thereunder. It can be stated with certainty that the freedom of speech is the bulwark of democratic Government. This freedom is essential for the appropriate functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty in the hierarchy of liberties granted under our constitutional mandate.



286.8. It is indisputable that the provisions of Section 144 CrPC are attracted in emergent situations. Emergent power has to be exercised for the purposes of maintaining public order. The material facts, therefore, should demonstrate that the action is being taken for maintenance of public order, public tranquillity and harmony.

286.9. Even if an order under Section 144 CrPC had to be given effect to, still

Respondent 4 had a right to stay at the Ramlila Maidan with permissible number of people as the land owning authority, MCD had not revoked its permission and the same was valid till 20-6-2011. The chain of events reveals that it was a case of police excesses and, to a limited extent, even abuse of power.

286.10. From the material placed before the Court, I am unable to hold that the order passed by the competent authority and execution thereof are mala fide in law or in fact or is an abdication of power and functions by the police. The action, of course, partially suffers from the vice of arbitrariness but every arbitrary action necessarily need not be mala fide. Similarly every incorrect decision in law or on facts of a given case may also not be mala fide but every mala fide decision would be an incorrect and impermissible decision and would be vitiated in law. Upon taking into consideration the cumulative effect of the affidavits filed on record and other documentary evidence, I am unable to dispel the argument that the decision of the Ministry of Home Affairs, Union of India reflected its shadow on the decision-making process and decision of the police authorities.

286.11. I also find that there would be no illegality if the police authorities had acted in consultation with the Union Ministry as it is the collective responsibility of various Departments of the State to ensure maintenance of law and order and public safety in the State.

286.12. Every person/body to whom such permission is granted, shall give an undertaking to the authorities concerned that he/it will cooperate in carrying out their duty and any lawful orders passed by any competent court/authority/forum at any stage of the commencement of an agitation/dharna/procession and/or period during which the permission granted is enforced. This, of course, shall be subject to such orders as may be passed by the court of competent jurisdiction.

286.13. Even on the touchstone of the principle of "in terrorem", I am of the view that the police have not acted with restraint or adhered to the principle of "least invasion" with the constitutional and legal rights available to Respondent 4 and the members of the gathering at the Ramlila Maidan.

286.14. The present case is a glaring example of trust deficit between the people governing and the people to be governed. Greater confidence needs to be built between the authorities in power and the public at large. Thus, I hold and direct that while considering the "threat perception" as a ground for revoking such permissions or passing an order under Section 144 CrPC, "care perception" has to be treated as an integral part thereof. "Care



perception" is an obligation of the State while performing its constitutional duty and maintaining social order.

286.15. It is unavoidable for this Court to direct that the police authorities should take such actions properly and strictly in accordance with the guidelines, standing orders and the rules applicable thereto. It is not only desirable but also a mandatory requirement of the present day that the State and the police authorities should have a complete and effective dispersement plan in place, before evicting the gathering by

use of force from a particular place, in furtherance to an order passed by an executive authority under Section 144 CrPC.

286.16. This is not a case where the court can come to the conclusion that the entire police force has acted in violation to the Rules, standing orders and has fallen astray in their uncontrolled zeal of forcibly evicting innocent public from the Ramlila Maidan. There has to be a clear distinction between the cases of responsibility of the force collectively and the responsibility of individual members of the forces. I find from the evidence on record that some of the police officers/personnel were very cooperative with the members of the assembly and helped them to vacate the Ramlila Maidan while others were violent, inflicted cane injuries, threw bricks and even used tear gas shells, causing fire on the stage and total commotion and confusion amongst the large gathering at the Ramlila Maidan. Therefore, these two classes of police force have to be treated differently.

286.17. Thus, while directing the State Government and the Commissioner of Police to register and investigate cases of criminal acts and offences, destruction of private and public property against the police officers/personnel along with those members of the assembly, who threw bricks at the police force causing injuries to the members of the force as well as damage to the property, I issue the following directions:

286.17(a) Take disciplinary action against all the erring police officers/personnel who have indulged in brickbatting, have resorted to lathi-charge and excessive use of tear gas shells upon the crowd, have exceeded their authority or have acted in a manner not permissible under the prescribed procedures, Rules or the standing orders and their actions have an element of criminality. This action shall be taken against the officer/personnel irrespective of what ranks they hold in the hierarchy of police.

286.17(b) The police personnel who were present in the pandal and still did not help the evacuation of the large gathering and in transportation of sick and injured people to the hospitals have, in my opinion, also rendered themselves liable for appropriate disciplinary action.

286.17(c) The police shall also register criminal cases against the police personnel and members of the gathering at the Ramlila Ground (whether they were followers of Baba Ramdev or otherwise) who indulged in damage to the property, brickbatting, etc. All these cases have already been reported to Police Station Kamla Market. The police shall complete the investigation and file a report under Section 173 CrPC within three months from today.



286.18. I also direct that the persons who died or were injured in this unfortunate incident should be awarded ad hoc compensation. Smt Rajbala, who got spinal injury in the incident and subsequently died, would be entitled to the ad hoc compensation of Rs 5 lakhs while persons who suffered grievous injuries and were admitted to the hospital would be entitled to compensation of Rs 50,000 each and persons who suffered simple injuries and were taken to the hospital but discharged after a short

while would be entitled to a compensation of Rs 25,000 each.

286.19. For breach of the legal and moral duty and for its contributory negligence, the consequences of financial liability would also pass, though to a limited extent, upon Respondent 4 Trust as well. Thus, I direct that in cases of death and grievous hurt, 25% of the awarded compensation shall be paid by the Trust. The said amount shall be paid to the Commissioner of Police, who in turn, shall issue a cheque for the entire amount in favour of the injured or the person claiming for the deceased.

287. The compensation awarded by this Court shall be treated as ad hoc compensation and in the event, the deceased or the injured persons or the persons claiming through them institute any legal proceedings for that purpose, the compensation awarded in this judgment shall be adjusted in those proceedings.

288. The view expressed by me in this judgment is prima facie and is without prejudice to the rights and contentions of the parties that may be available to them in accordance with law. The suo motu petition is disposed of with above directions while leaving the parties to bear their own costs.

289. This Court would be failing in its duty if appreciation is not placed on record for the proficient contribution made and adroit assistance rendered by Dr Rajeev Dhavan, learned amicus curiae, Mr R.F. Nariman, learned Solicitor General of India, Mr P.P. Malhotra, learned Additional Solicitor General, Mr Harish N. Salve, Mr P.H. Parekh, Mr Ram Jethmalani, learned Senior Advocates, other learned counsel assisting them and all other counsel appearing in their own right.

DR B.S. CHAUHAN, J.(concurring)— Having had the advantage of going through the lucid and elaborately discussed judgment of my esteemed Brother Justice Swatanter Kumar, I feel encouraged to contribute to this pronouncement in my own humble way on the precious issues of liberty and freedom, guaranteed to our citizens as fundamental rights under the Constitution and the possible lawful restrictions that can be imposed for curtailing such rights. The legality of the order passed under Section 144 CrPC by the Assistant Commissioner of Police, Kamla Market, Central District, Delhi is also subject to legal scrutiny by me in these proceedings to find out as to whether the said order is in conformity with the provisions of Section 144 CrPC read with Section 134 thereof and Delhi Police Standing Order 309.

291. I respectfully agree with all the observations and the findings recorded by my colleague and I also concur with the observation that the

findings recorded on the sufficiency of reasons in the order dated 4-6-2011 are tentative which could have been challenged if they so desired before the appropriate forum in proper proceedings. Nonetheless, the reservations that I have about State Police action vis-à-vis the incident in question and my opinion on the curtailment of the right of privacy of sleeping individuals has to be expressed as it directly involves the tampering of inviolate rights, that are protected under the Constitution. Proceedings under Section 144 CrPC, even if resorted to on sufficient grounds, the order could not be implemented in such an unruly manner. Such a power is invoked to prevent the breach of peace and not to breach the peace itself.

292. Baba Ramdev along with his large number of followers and supporters performed a shanti paath at about 10 p.m. on 4-6-2011, whereafter, all those who had assembled and stayed back, went to sleep under tents and canopies to again get up in the morning the next day at about 4 a.m. to attend the schedule of ashtang yoga training to be conducted by Baba Ramdev. Just after midnight, at about 12.30 a.m. on 5-6-2011, a huge contingent of about more than a thousand policemen surrounded the encampments while everybody was fast asleep inside. There was a sizeable crowd of about 20,000 persons who were sleeping. They were forcibly woken up by the police, assaulted physically and were virtually thrown out of their tents. This was done in the purported exercise of the police powers conferred under Section 144 CrPC on the strength of a prohibitory order dated 4-6-2011 passed by the Assistant Commissioner of Police as mentioned hereinabove.

293. The manner in which the said order came to be implemented, raised a deep concern about the tyrannical approach of the administration and this Court took cognizance of the incident calling upon the Delhi Police administration to answer this cause. The incident had ushered a huge uproar and an enormous tirade of criticism was flooded, bringing to our notice the said unwarranted police action, that too, even without following the procedure prescribed in law.

294. The question is as to whether such an order stands protected under the restriction clause of Article 19 of the Constitution of India or does it violate the rights of a peaceful sleeping crowd, invading and intruding their privacy during sleep hours. The incident also raises serious questions about the credibility of the police act, the procedure followed for implementation of a prohibitory order and the justification thereof in the given circumstances.

295. The right to peacefully and lawfully assemble together and to freely express oneself coupled with the right to know about such expression is guaranteed under Article 19 of the Constitution of India. Such a right is inherent and is also coupled with the right to freedom and liberty which have been conferred under Article 21 of the Constitution of India.

296. The background in which the said assembly has gathered has already been explained in the judgment delivered by my learned Brother and, therefore, it is not necessary to enter into any further details thereof. The fact



remains that implementation of the promulgated prohibitory orders was taken when the crowd was asleep. The said assembly per se, at that moment, did not prima facie reflect any apprehension of eminent threat or danger to public peace and tranquillity nor was any active demonstration being performed at that dead hour of night. The police, however, promulgated the order on the basis of an alleged information received that peace and tranquillity of that area would be disturbed and people might indulge in unlawful activities. The prohibitory order also recites that conditions exist that unrestricted holding of a public meeting in the area is likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquillity and in order to ensure speedy action for preventing any such danger to human life and safety, the


.....
order was being promulgated.

297. The order further recites that since the notice for the promulgation cannot be served individually as such it shall be published for information through the press and by affixing the copies on the noticeboard of the office of the police officials, administration and police stations, including the Municipal Corporation offices.

298. No doubt, the law of social control is preserved in the hands of the State, but at the same time, protection against unwarranted governmental invasion and intrusive action is also protected under the laws of the country. Liberty is definitely no licence and the right of such freedom is not absolute but can be regulated by appropriate laws. The freedom from official interference is, therefore, regulated by law but law cannot be enforced for crippling the freedom merely under the garb of such regulation. The police or the administration without any lawful cause cannot make a calculated interference in the enjoyment of the fundamental rights guaranteed to the citizens of this country. As to what was material to precipitate such a prohibitory action is one aspect of the matter, but what is more important is the implementation of such an order. This is what troubles me in the background that a prohibitory order was sought to be enforced on a sleeping crowd and not a violent one. My concern is about the enforcement of the order without any announcement as prescribed for being published or by its affixation in terms of Delhi Police Standing Order 309 read with Section 134 CrPC.

299. It is believed that a person who is sleeping, is half dead. His mental faculties are in an inactive state. Sleep is an unconscious state or condition regularly and naturally assumed by man and other living beings during which the activity of the nervous system is almost or entirely suspended. It is the state of slumber and repose. It is a necessity and not a luxury. It is essential for optimal health and happiness as it directly affects the quality of life of an individual when awake inducing his mental sharpness, emotional balance, creativity and vitality.

300. Sleep is, therefore, a biological and essential ingredient of the basic necessities of life. If this sleep is disturbed, the mind gets disoriented and it disrupts the health cycle. If this disruption is brought about in odd hours

.....
 Page: 117

preventing an individual from getting normal sleep, it also causes energy disbalance, indigestion and also affects cardiovascular health. These symptoms, therefore, make sleep so essential that its deprivation would result in mental and physical torture both. It has a wide range of negative effects. It also impairs the normal functioning and performance of an individual which is compulsory in day-to-day life of a human being. Sleep, therefore, is a self-rejuvenating element of our life cycle and is, therefore, part and parcel of human life. The disruption of sleep is to deprive a person of a basic priority, resulting in adverse metabolic effects. It is a medicine for weariness which if impeded would lead to disastrous results.

301. Deprivation of sleep has tumultuous adverse effects. It causes a stir and disturbs the quiet and peace of an individual's physical state. A natural process which is inherent in a human being if disturbed obviously affects basic life. It is for this

reason that if a person is deprived of sleep, the effect thereof, is treated to be torturous. To take away the right of natural rest is also therefore violation of a human right. It becomes a violation of a fundamental right when it is disturbed intentionally, unlawfully and for no justification.

302. To arouse a person suddenly, brings about a feeling of shock and benumbness. The pressure of a sudden awakening results in almost a void of sensation. Such an action, therefore, does affect the basic life of an individual. The state of sleeping is assumed by an individual when he is in a safe atmosphere. It is for this reason that this natural system has been inbuilt by our creator to provide relaxation to a human being. The muscles are relaxed and this cycle has a normal recurrence every night and lasts for several hours. This necessity is so essential that even all our transport systems provide for facilities of sleep while travelling. Sleep is therefore, both, life and inherent liberty which cannot be taken away by any unscrupulous action.

303. An Irish proverb goes on to say that the beginning of health is sleep. The state of sleep has been described by Homer in the famous epic *Iliad* as "sleep is the twin of death". A person, therefore, cannot be presumed to be engaged in a criminal activity or an activity to disturb peace of mind when asleep. Aristotle, the great Greek philosopher has said that all men are alike when asleep. To presume that a person was scheming to disrupt public peace while asleep would be unjust and would be entering into the dreams of that person.

304. I am bewildered to find out as to how such declaration of the intention to impose the prohibition was affected on a sleeping crowd. There may be a reason available to impose prohibitory orders calling upon an assembly to disperse, but to me, there does not appear to be any plausible reason for the police to resort to blows on a sleeping crowd and to throw them out of their encampments abruptly. The affidavits and explanation given do not disclose as to why the police could not wait till morning and provide a reasonable time to this crowd to disperse peacefully. The undue haste caused



a huge disarray and resulted in a catastrophe that was witnessed on media and television throughout the country.

305. I fail to find any explanation for the gravity or the urgent situation requiring such an emergent action at this dark hour of midnight. I, therefore, in the absence of any such justification have no option but to deprecate such action and it also casts a serious doubt about the existence of the sufficiency of reasons for such action. The incident in this litigation is an example of a weird expression of the desire of a tyrannical mind to threaten peaceful life suddenly for no justification. This coupled with what is understood of sleep hereinbefore, makes it clear that the precipitate action was nothing but a clear violation of human rights and a definite violation of procedure for achieving the end of dispersing a crowd.

306. Article 355^{±±} of the Constitution provides that the Government of every State would act in accordance with the provisions of the Constitution. The primary task of the State is to provide security to all citizens without violating human dignity. Powers

conferred upon the statutory authorities have to be, perforce, admitted. Nonetheless, the very essence of constitutionalism is also that no organ of the State may arrogate to itself powers beyond what is specified in the Constitution. (Vide *GVK Industries Ltd. v. ITO*³² and *Nandini Sundar v. State of Chhattisgarh*³³.)

307. In *Madhav Rao Jivaji Rao Scindia v. Union of India*³⁴ this Court held that : (SCC p. 131, para 44) even

“in civil commotion, or even in war or peace, the State cannot act ‘catastrophically’ outside the ordinary law and there is legal remedy for its wrongful acts against its own subjects or even a friendly alien within the State”^{††}

308. In *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*³⁵, this Court held that rule of law means, no one, howsoever high or low, is above the law. Everyone is subject to the law fully and completely as any other and the Government is no exception. Therefore, the State authorities are under a legal obligation to act in a manner that is fair and just. It has to act honestly and in good faith. The purpose of the Government is always to serve the country and ensure public good. (See also *D.K. Basu v. State of W.B.*³⁶)

309. Privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity tantamounts to deprivation pro tanto

 Page: 119

of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. (Vide *Francis Coralie Mullin v. UT of Delhi*³⁷.)

310. The Constitution does not merely speak of human rights protection. It is evident from the catena of judgments of this Court that it also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills and environment. Our Constitution professes for collective life and collective responsibility on the one hand and individual rights and responsibilities on the other hand. In *Kharak Singh v. State of U.P.*³⁸ and *Gobind v. State of M.P.*³⁹ this Court held that right to privacy is a part of life under Article 21 of the Constitution which has specifically been reiterated in *People's Union for Civil Liberties v. Union of India*⁴⁰, wherein this Court held : (*Kharak Singh case*³⁸, AIR p. 1302, para 17)


“17. ... We do not entertain any doubt that the word ‘life’ in Article 21 bears the same signification. Is then the word ‘personal liberty’ to be construed as excluding from its purview *an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep* which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the Preamble to the Constitution that it is designed to ‘assure the dignity of the individual’ and therefore

of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the Framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as 'personal liberty' having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories."

(emphasis added)

311. The citizens/persons have a right to leisure, to sleep, not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen. (See *Wolf v. Colorado*⁴¹.)

312. Right to privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India by this Court. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. Such a right has been extended even to woman of easy virtues as she has been held to be entitled to her right of privacy. However, right of

 Page: 120

privacy may not be absolute and in exceptional circumstance particularly surveillance in consonance with the statutory provisions may not violate such a right. [Vide *Malak Singh v. State of P&H*⁴², *State of Maharashtra v. Madhukar Narayan Mardikar*⁴³, *R. Rajagopal v. State of T.N.*⁴⁴, *People's Union for Civil Liberties v. Union of India*⁴⁰, *Mr 'X' v. Hospital 'Z'*⁴⁵, *Sharda v. Dharmpal*⁴⁶, *People's Union for Civil Liberties v. Union of India*⁴⁷, *District Registrar and Collector v. Canara Bank*⁴⁸, *Bhavesh Jayanti Lakhani v. State of Maharashtra*⁴⁹ and *Selvi v. State of Karnataka*⁵⁰.]


313. In *Ram Jethmalani v. Union of India*⁵¹, this Court dealt with the right of privacy elaborately and held as under : (SCC pp. 35-36, paras 83-84)

"83. Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner. ... The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values.

84. ... The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others."

314. The courts have always imposed the penalty on disturbing peace of others by using the amplifiers or beating the drums even in religious ceremonies. [Vide *Rabin Mukherjee v. State of W.B.*⁵², *Burrabazar Fire Works Dealers Assn. v. Commr. of*

Police⁵³, *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn.*⁵⁴ and *Noise Pollution (7), In re*⁵⁵.] In the later judgment, this Court issued several directions including banning of using the fireworks or fire crackers except between 6.00 a.m. and 10.00 p.m. There shall no use of fire crackers in silence zone i.e. within the

 Page: 121

area less than 100 metres around hospitals, educational institutions, courts, religious places.

315. It is in view of this fact that, in many countries there are complete night curfews (at the airport i.e. banning of landing and taking off between the night hours), for the reason that the concept of sound sleep has been associated with sound health which is an inseparable facet of Article 21 of the Constitution. It may also be pertinent to mention here that various statutory provisions prohibit the arrest of a judgment-debtor, a woman in the night and restrain to enter in the night into a constructed area suspected to have been raised in violation of the sanctioned plan, master plan or zonal plan for the purpose of survey or demolition. (See Section 55 of the Code of Civil Procedure, Section 46(4) CrPC, and Sections 25 and 42 of the U.P. Urban Planning and Development Act, 1973.)

316. While determining such matters the crucial issue in fact is not whether such rights exist, but whether the State has a compelling interest in the regulation of a subject which is within the police power of the State. Undoubtedly, reasonable regulation of time, place and manner of the act of sleeping would not violate any constitutional guarantee, for the reason that a person may not claim that sleeping is his fundamental right, and therefore, he has a right to sleep in the premises of the Supreme Court itself or within the precincts of Parliament. More so, I am definitely not dealing herein with the rights of homeless persons who may claim right to sleep on footpath or public premises but restrict the case only to the extent as under what circumstances a sleeping person may be disturbed and I am of the view that the State authorities cannot deprive a person of that right anywhere and at all times.

317. While dealing with the violation of human rights by police officials, this Court in *Jaspal Singh v. State of Punjab*⁵⁶, held as under : (SCC p. 22, para 26)

“26. The right to life has rightly been characterised as “supreme” and “basic”; it includes both so-called negative and positive obligations for the State’. The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that the State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction.”

318. Thus, it is evident that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink, etc.

319. Section 144 CrPC deals with immediate prevention and speedy remedy. Therefore, before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action. The sine qua non for an order under Section 144 CrPC is urgency requiring an immediate and speedy intervention by passing of an order. The order must set out the

material facts of the



Page: 122

situation. Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. Therefore, the emergency must be sudden and the consequences sufficiently grave.

320. The disobedience of the propitiatory (*sic* prohibitory) order becomes punishable under Section 188 IPC only “if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed” or “if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause riot or affray”. Disobedience of an order promulgated by a public servant lawfully empowered will not be an offence unless such disobedience leads to enumerated consequences stated under the provision of Section 188 IPC. More so, a violation of the propitiatory (*sic* prohibitory) order cannot be taken cognizance of by the Magistrate who passed it. He has to prefer a complaint about it as provided under Section 195(1)(a) CrPC. A complaint is not maintainable in the absence of allegation of danger to life, health or safety or of riot or affray.

321. Section 144 CrPC itself provides the mode of service of the order in the manner provided by Section 134 CrPC. Section 134 CrPC reads as under:

“**134. Service or notification of order.**—(1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such persons.”

322. Delhi Police Standing Order 309—Regulation of Processions and Rallies prescribe the mode of service of the order passed under Section 144 CrPC, inter alia:

“**309. (5)** Arrangement at the place of demonstration should include the following:

(a) Display of banner indicating promulgation of Section 144 CrPC.

(b) At least 2 videographers be available on either side of the demonstration to capture both demonstrators as well as police response/action.

(c) Location of ambulance/PCR vans for shifting injured persons.

(d) Loud hailers should be available.

(6) Repeated use of PA system, a responsible officer appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum/deputation, etc. or court arrest peacefully. Announcements should be videographed.

(7) If they do not follow appeal and turn violent declare the assembly unlawful on PA system and videograph.

(8) Warning on PA system prior to use of any kind of force must be ensured and also videographed.

*

*

*

 Page: 123

(13) Special attention be paid while dealing with women's demonstrations—only women police to tackle them.”

323. The order dated 4-6-2011 passed under Section 144 CrPC reads as under:

“(i) whereas information has been received that some people/groups of people indulge in unlawful activities to disturb the peace and tranquillity in the area of Sub-Division Kamla Market, Delhi;

(ii) and whereas reports have been received indicating that such conditions now exist that unrestricted holding of public meeting, processions/demonstration, etc. in the area is likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquillity;

(iii) and whereas it is necessary to take speedy measures in this regard to prevent danger to human life, safety and disturbance of public tranquillity;

(iv) now, therefore, in exercise of the powers conferred upon me by virtue of Section 144, Criminal Procedure Code, 1973 read with Government of India, Ministry of Home Affairs and New Delhi's Notification No. U.11036/1/2010, (i) UTI, dated 9-9-2010, I, Manohar Singh, Assistant Commissioner of Police, Sub-Division Kamla Market, Central District, Delhi do hereby make this written order prohibiting;

*

*

*

(vi) any person contravening this order shall be liable to be punished in accordance with the provisions of Section 188 of the Penal Code, 1860; and

(vii) as the notice cannot be served individually on all concerned, the order is hereby passed ex parte. It shall be published for the information of the public through the press and by affixing copies on the noticeboards of the office of all DCPs, Additional DCPs, ACPs, Tehsil officers, all police stations concerned and the offices of NDMC and MCD;

(viii) religious functions/public meeting, etc. can be held with prior permission, in writing, of the Deputy Commissioner of Police, Central District, Delhi and this order shall not apply to processions which have the requisite permission of the police.”

324. It is evident from the order passed under Section 144 CrPC itself that the people at large, sleeping in tents, had not been informed about such promulgation and were not asked to leave the place. There had been a dispute regarding the service of the orders on the organisers only. Therefore, there was utter confusion and the gathering could not even understand what the real dispute was and had reason to believe that police was trying to evict Baba Ramdev forcibly. At no point of time, was the assembly declared to be unlawful. In such a fact situation, the police administration is to be blamed for not implementing the order by strict adherence to the procedural requirements. People at large have a legitimate expectation that the

executive authority would ensure strict compliance with the procedural requirements



Page: 124

and would certainly not act in derogation of the applicable regulations. Thus, the present is a clear-cut case of human rights violation.

325. There was no gossip or discussion of something untrue that was going on. To the contrary, it was admittedly an assembly of followers, under a peaceful banner of yogic training, fast asleep. The assembly was at least, purportedly, a conglomeration of individuals gathered together, expressive of a determination to improve the material condition of the human race. The aim of the assembly was prima facie unobjectionable and was not to inflame passions. It was to ward off something harmful. What was suspicious or conspiratorial about the assembly, may require an investigation by the appropriate forum, but to my mind the implementation appears to have been done in an unlawful and derogatory manner that did violate the basic human rights of the crowd to have a sound sleep which is also a constitutional freedom, acknowledged under Article 21 of the Constitution of India.

326. Such an assembly is necessarily illegal cannot be presumed, and even if it was, the individuals were all asleep who were taken by surprise altogether for a simultaneous implementation and action under Section 144 CrPC without being preceded by an announcement or even otherwise, giving no time in a reasonable way to the assembly to disperse from the Ramlila Ground. To the contrary, the sleep of this huge crowd was immodestly and brutally outraged and it was dispersed by force making them flee hither and thither, which by such precipitate action, caused a mayhem that was reflected in the media.

327. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.

328. Can such an attempt be permitted or justified in the given circumstances of the present case? Judicially and on the strength of impartial logic, the answer has to be in the negative as a sleeping crowd cannot be included within the bracket of an unlawful category unless there is sufficient material to brand it as such. The facts as uncovered and the procedural mandate having been blatantly violated, is malice in law and also the part played by the police and the administration shows the outrageous behaviour which cannot be justified by law in any civilised society.

329. For the reasons aforesaid, I concur with the directions issued by my learned colleague with a forewarning to the respondents to prevent any



repetition of such hasty and unwarranted act affecting the safe living conditions of the citizens/persons in this country.

† Under Article 32 of the Constitution of India

†† Chauhan, J. delivered a concurring judgment.

* **Ed.** : The “clear and present danger” test was laid down by Holmes, J. in *Schenck v. United States*, 63 L Ed 470 : 249 US 47 (1919) for deciding whether a restriction on free speech was constitutionally valid.

** **Ed.** : See in this regard observations of Frankfurter, J. in *Niemotko v. Maryland*, 95 L Ed 267, at 276 : 340 US 268, at 282 (1951).

¹ 63 L Ed 470 : 249 US 47 (1919)

² AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423

³ (1953) 2 SCC 688 : AIR 1954 SC 92

⁴ (1978) 1 SCC 248 : AIR 1978 SC 597

⁵ (1978) 3 SCC 544 : 1978 SCC (Cri) 468

⁶ (1989) 2 SCC 574

⁷ (1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 Cri LJ 966

⁸ 1950 SCC 695 : AIR 1951 SC 118

⁹ (2005) 8 SCC 534

¹⁰ AIR 1950 SC 124 : (1950) 51 Cri LJ 1514

¹¹ AIR 1966 SC 740 : 1966 Cri LJ 608

¹² (1996) 5 SCC 216

¹³ (2004) 2 SCC 510

† **Ed.** : The Code of Criminal Procedure (Amendment) Act, 2005.

¹⁴ (1970) 3 SCC 746 : AIR 1971 SC 2486

¹⁵ (1969) 3 SCC 337

¹⁶ (1936) 37 Cri LJ 95 (Pat)

¹⁷ (1973) 1 SCC 227 : 1973 SCC (Cri) 280

¹⁸ (1969) 1 SCC 502 : (1969) 3 SCR 548

¹⁹ (2004) 4 SCC 684 : 2004 SCC (Cri) 1387

²⁰ 95 L Ed 295 : 340 US 315 (1951)

²¹ AIR 1964 SC 72 : (1964) 4 SCR 733

²² (2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : (2009) 2 SCC (Civ) 451

²³ *Ramlila Maidan Incident, In re*, (2012) 5 SCC 125

²⁴ *Ramlila Maidan Incident, In re*, (2012) 5 SCC 126

²⁵ (1982) 1 SCC 71 : 1982 SCC (Cri) 82 : AIR 1981 SC 2198

²⁶ (1997) 7 SCC 91

²⁷ (1970) 3 SCC 227 : 1971 SCC (Cri) 45

²⁸ (2002) 5 SCC 294

²⁹ 1951 AC 601 : (1951) 2 All ER 448 (PC)

³⁰ (2003) 8 SCC 731 : 2004 SCC (Cri) 252 : AIR 2003 SC 4182

³¹ (2011) 14 SCC 481 : AIR 2012 SC 100

^{††} **Ed.** : Article 355 imposes a duty on the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.

³² (2011) 4 SCC 36

³³ (2011) 7 SCC 547 : (2011) 2 SCC (L&S) 762 : AIR 2011 SC 2839

³⁴ (1971) 1 SCC 85 : AIR 1971 SC 530

^{††} **Ed.** : *State of Saurashtra v. Memon Haji Ismail Haji Valimohammed*, AIR 1959 SC 1383 at p. 1387, para 10.

³⁵ (1979) 2 SCC 409 : 1979 SCC (Tax) 144 : AIR 1979 SC 621

³⁶ (1997) 1 SCC 416 : 1997 SCC (Cri) 92 : AIR 1997 SC 610

³⁷ (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746

³⁸ AIR 1963 SC 1295 : (1963) 2 Cri LJ 329

³⁹ (1975) 2 SCC 148 : 1975 SCC (Cri) 468 : AIR 1975 SC 1378

⁴⁰ (1997) 1 SCC 301 : AIR 1997 SC 568

- ⁴¹ 93 L Ed 1782 : 338 US 25 (1949)
- ⁴² (1981) 1 SCC 420 : 1981 SCC (Cri) 169 : AIR 1981 SC 760
- ⁴³ (1991) 1 SCC 57 : 1991 SCC (Cri) 1 : AIR 1991 SC 207
- ⁴⁴ (1994) 6 SCC 632 : AIR 1995 SC 264
- ⁴⁵ (1998) 8 SCC 296
- ⁴⁶ (2003) 4 SCC 493
- ⁴⁷ (2003) 4 SCC 399 : AIR 2003 SC 2363
- ⁴⁸ (2005) 1 SCC 496
- ⁴⁹ (2009) 9 SCC 551 : (2010) 1 SCC (Cri) 47
- ⁵⁰ (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1 : AIR 2010 SC 1974
- ⁵¹ (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310
- ⁵² AIR 1985 Cal 222
- ⁵³ AIR 1998 Cal 121
- ⁵⁴ (2000) 7 SCC 282 : 2000 SCC (Cri) 1350 : AIR 2000 SC 2773
- ⁵⁵ (2005) 8 SCC 796 : AIR 2006 SC 348
- ⁵⁶ (2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.