INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

Office: 9/15, Bansilal Building, 3rdFloor, HomiModi Street, Fort, Mumbai – 23

Tel: +91-22-62371750, Cell: +91-7045408191,

Email:indianbarassociation.mah@gmail.com

August 21, 2019

CASE NO BEFORE HON'BLE PRESIDENT OF INDIA :-PRSEC/E/2019/16185

To,

The Hon'ble Chief Justice of India.

Supreme Court, New Delhi-110201

Subject: **1. Action for serious violation of Article 14 of the Constitution and discrimination of common, poor citizen and majority of advocates by Justice Ranjit More by not granting circulation and not hearing their serious cases related with 'their life and liberty' and 'bread and butter', matters of senior citizens saying there is no urgency and the same Judge More granting urgent hearing, 'High on Board' hearing to Rich people in frivolous and non urgent cases like issue process against Ratan Tata, E-Cigarettes etc and granting final reliefs to them.**

2. Taking immediate measure to protect dignity of Hon'ble High Court from arbitrary exercise and misuse of discretion by some Judges like Ranjit More, and Ors and taking action against them for serious violation of Article 14 of the Constitution and breach of the oath taken as a High Court Judge.

3. Taking suo-motu action under contempt of Courts Act as ruled in Re: C.S. Karnan (2017) 2 SCC 756 against Justice Ranjit More and Ors. for wilful disregard and defiance of Supreme Court judgment in Manhari bai's case 2013 Cr. L. J.

144 for granting undeserving relief to his close Advocate Amit Desai in Charu Sharma's case in Criminal Writ Petition No. 671 of 2015 vide order dated 15th July 2019.

4. Direction to C. B. I. to investigate the misuse of power by Justice Ranjit More as per law laid down in Noida Entrepreneurs Association (2011) 6 SCC 508.

Hon'ble Sir,

1. Dr. Babasaheb Ambedkar in our Constitution of India made specific provision of Article 14 which mandates of 'Equality Before Law and Equal Protection of Law'

The equal protection of law means substantive and procedural law.

Hon'ble Bombay High Court in the case of **Arunachalam Swami Vs. State (AIR 1956 Bombay 695)** held that;

> ***"Article 14 of the constitution of India makes it mandatory to give equal treatment to all citizens.***
>
> ***"Article 14 assures to the citizen equality not only in respect of a substantive law but also procedural law, and if any procedure is set up which deprives a citizen of substantive rights of relief and defence the citizen is entitled to complain of this procedure if two persons equally situated the older procedure is still available where these substantive rights of relief and defence were secured."***

2. Article 14 of the Constitution ensures equality before law and strikes at arbitrary and discriminatory State action, Where State Government exercises any power, statutory or otherwise, it must not discriminate unfairly between one person and another. Every State action must be guided by certain norms and standards which are in themselves not objectionable as being discriminatory in character. if power conferred by statute on any authority of the State is vagrant and unconfined and no standards or principles are laid down by the statute to guide and control the exercise of such power, the statute would be violative of the equality clause, because it would permit

arbitrary and capricious exercise of power, which is the anti-thesis of equality before law. Such a case would fall within the second proposition laid down by this Court in Jyoti Pershad v. Administrator for the Union Territory of Delhi.

"The enactment of the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasijudicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose thus clothing the authority with unguided and arbitrary powers enabling it to discriminate.'

3. In our Constitution of India the oath to be taken by a High Court and Supreme Court Judge mandates them to act without fear or favour.

In **Indirect Tax Association Vs. R. K. Jain (2010) 8 SCC 281**, it is ruled by Hon'ble Supreme Court that;

> *"Judge have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is to defend and uphold the Constitution and the laws without fear and favor with malice towards none, with charity for all, we strive to do the right."*

4. It is seen that, despite taking oath, some Judges are not performing their duty as a impartial Judge, rather they themself are acting against the Constitution.

Hon'ble Supreme Court in **Davinder Pal Singh Bhullar's Case (2011) 14 SCC 770** had observed as under;

> *"It is a myth that the Judges, taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine."*

5. In **"Madhav Hayawadanrao Hoskot vs. State of Maharashtra; (1978) 3 SCC 544"** Justice Shri V.R. Krishna Iyer reproduced the well-known words of Mr. Justice William J. Brennan, Jr. and held as under:

> **"16.** ***Nothing rankles more in the human heart than a brooding sense of injustice.***

…Democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.

The social service which the Judges render to the community is the removal of a sense / fear of injustice from the hearts of people, which unfortunately is not being done, and the people (victims & dejected litigants) have been left abandoned to suffer and bear their existing painful conditions, and absolutely on the mercy of GOD."

6. That, in Bombay High Court the rules for circulation and listing of the case are not framed properly and this grey area is being used by some unethical Judges like Justice Ranjit More to hear the cases of Rich and mighty people with utmost urgency and all other cases of Senior Citizens, victims, Woman, Common Lawyers (excluding his close association) are not being heard and circulation preceipe are being rejected without any valid reason but by arbitrary exercise of the power.

The glaring examples are cited below.

7. In the case of **Shri. Chandrakant Sambhaji Kurle Vs. State Cri. W. P. No. 2993 of 2019** the Petitioners are seeking stay of investigation in the FIR filed on the instance of false complaint under section 498A by falsely claimed legal wife of the Petitioner No. 1, the case was filed against Father and Mother of petitioner who are senior citizen. The falsity of case proved from 'audio-video recording', 'WhatsApp Chatting' etc. The case was filed on **13.06.2019**. The matter was mentioned stating the urgency that, Notice given by Police for attending P. S. is without following due process of law, against the statutory provision and against the settled position of law by the Hon'ble High Court and the Supreme Court. In spite of being serious threat to the personal liberty of the Petitioners, especially to the innocent senior citizen who are Parents of the Petitioner, but Justice Ranjit More finds no urgency in this case and matter is posted for next hearing on date **28.11.2020.**

On the contrary in the case of **Ratan Tata**, in Criminal Writ Petition No.

1238 of 2019 the issue was only regarding order of Issue of Process and already the lower court proceeding was stayed by Justice Bhatkar vide order dated **18th March, 2019.** There was no such immediate threat to life and liberty of Ratan Tata. But the same Bench headed by Judge Ranjit More vide order dated **18th April, 2019** placed the matter on 'High on Board' and on date **11th June, 2019** heard the case and finally decided the case vide order dated **22nd July, 2019** for the so called urgency best known to the Justice Ranjit More.

8. The second glaring example of discrimination of common, poor citizens and giving luxury, favour to rich people by Justice Ranjit More is the case of 300 employees who have put their sincere efforts and passed written examination, physical test and even medical test as required for recruitment in the 'D' Group posts in Indian Railway. However, appointment of all these candidates is cancelled by the Railway and they have been deprived from the employment in the Indian Railway. They filed **W. P. No. 7830 of 2017** in the Bombay High Court on **05.05.2017**.

In same matter the cases of other employees in other High Court and in Supreme Court were decided within 3 months and the said employees joined the job. There is a serious question of bread and butter of their family.

But Justice Ranjit More since last many months had never kept the matter either on supplementary Board or High - On – Board. The preceipe for urgent circulation was rejected without any reason.

To the contrary, the same Judge in a case of **E - Cigarette W.P. No. 3690/2019** which was filed on **17th July, 2019** took the matter with urgency on **26th July, 2019** and then directed to place the matter **'High on Board'.** Then vide order dated **30th July, 2019** directed to place the matter in supplementary board on **2nd August, 2019**.

On **2nd August, 2019** after Full Fledge argument the matter was finally allowed in favour of E-cigarette company.

9. Needless to mention here that the petitioner in E-cigarette's case and Ratan Tata's case were represented by Senior Advocate Amit Desai who was also banned by Bar members social activists in the case of Salman Khan for 'out of turn' hearing of appeal against conviction. The glaring illegality is that Salman Khan was convicted on 6th May, 2015 Appeal

heard and finally decided on 10th December, 2015 means within 7 months when salman Khan was on bail. There was no urgency to hear the appeal. To the contrary, Shri Gopal Shetye who was convicted on year 2010 was behind bars and not allowed to attend death rituals of his father and his appeal was heard by Bombay High Court on 10th June, 2015 i.e. after 5 years. The shocking part is that said Gopal Shetye who was in jail for 5 years was found to be innocent by the Bombay High Court observing that he was different person. This shows that how the fundamentals rights guaranteed under Article 14 of the Constitution of poor and common citizens are being violated by the High Court and the 'Rich and Mighty' are enjoying the luxury of the Courts.

Rightly said by the great jurist that 'Law rules the poor And rich rules the Law'. Hence the very foundation of our constitutional mandate is being abused and damaged by some elements like Justice Ranjit More.

That, the inaction on the part of Chief Justice of Bombay High Court speaks a a lot. The act of commission, omission and insensitiveness and undue favour to Rich people and discrimination, unequal treatment to poor people, general advocates is lowering the majesty and dignity of Hon'ble Bombay High Court which needs to be checked urgently and with stern hands.

10. In **State Vs. Suo motu Contempt against Dr. Suman Lal 2009 SCC OnLine Pat 57** it is read as under;

> *The oath of office which I have taken reminds me not to deter from my duty and uphold the law. Our Dharma Shastras and Smritis with one voice laid down that dispensation of Justice is the highest Dharma of Judges. Manu Smriti cautions the Judge as follows:*
>
> "धर्मो विद्धस्त्वधर्मेण सभां यत्रोपति ठते।
> शल्यं चास्य न कृन्तन्ति विद्धास्तत्र सभासदः ।।
> यत्र धर्मो हाधर्मेण सत्यं यत्रानृतेन च।
> हन्यते प्रेक्षमाणानां हतास्तत्र सभासदः ।।"
>
> *"In a case where Dharma (Justice) has been injured or made to suffer at the hands of Adharma and still the Judges fail to remove the injustice, such Judges are sure to suffer for their act or omission which is Adharma."*

11. In **Zahira Habibullah Sheikh Vs. State (2006) 3 SCC 374** it is ruled as under;

"The case at hand immediately brings into mind two stanzas (14 and 18) of the eighth Chapter of Manu Samhita dealing with role of witnesses. They read as follows:

"Stanza 14"

"यत्र धर्मो ह्यधर्मेण सत्यं यत्रानृतेन च ।
हन्यते प्रेक्षमाणानां हतास्तत्र सभासदः"

"Jatro Dharmo hyadharmena Satyam Jatranrutenacha
Hanyate Prekshyamananam Hatastrata Sabhasadah"

(Where in the presence of Judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin.)

"Stanza 18"

"पादोधर्मस्य कर्तारं पादः साक्षिणमृच्छति।

पादः सभासदः सर्वान् पादो राजानमृच्छति."

"Padodharmasya Kartaram Padah sakshinomruchhati

Padah Sabhasadah Sarban Pado Rajanmruchhati"

(In the adharma flowing from wrong decision in a Court of law, one fourth each is attributed to the person committing the adharma, witness, the judges and the ruler".)"

12. In **Perumal Vs. Janaki (2014) 5 SCC 377** while passing strictures against High Court Judge it is observed as under;

"Our Constitution is designed on the theory of checks and balances. A theory which is the product of the belief that all power corrupts - such belief is based on experience."

13. Another glaring case of discrimination by Justice Ranjit More is the case of Senior citizen Shri. Satyanarayan Pande age 80 years whose petitions were also not given precedence. In spite of repeatedly moving preaciepe for the urgent circulation as there is serious attempt of forging documents of the dwelling house property of the Senior Citizen

Petitioner who, Justice More upfront rejects the preaciepe with finding that there is no urgency.

This shows blatent misuse of discretion by Judge Ranjit More.

14. Hon'ble Uttaranchal High Court in **Laxman Singh Rana Vs. Jagdish** in **C-482 No. 1014486/ 2015** vide order dated 8th December, 2015 it is ruled as under;

> *"As per the mandate of Article 14 of the Constitution of India, every litigant should be given equal treatment. Ordinarily, no case / suit should be directed to be decided by the Trial Court out of turn, unless, of course, there are compelling circumstances to do so."*

Similar law is followed in **Ishk Lal Vs. Avodh Bihari Mittal** in **WPMS No. 2210 of 2015 vide order dated 8 September, 2015** it is read as under;

> *"As per mandate of Article 14 of the Constitution of India, every litigant should be given equal treatment & ordinarily, no case should be directed to be decided out of turn, on priority basis unless, of course, there are compelling circumstances to do so. Undisputedly, there are so many appeals, which were filed prior to the appeal, in question, which are still pending and waiting for their turn. I do not find any compelling circumstance justifying out of turn hearing of the appeal."*

15. On a similar issue Hon'ble Delhi High Court had issued notice to Central Information Commission for out of turn hearing.

In **R. K. JAIN Vs. UNION OF INDIA** in **W.P. (C) 183/2014** it is observed as under;

> *"Present writ petition has been filed under Articles 226 and 227 of the Constitution virtually impugning the procedure and practice being followed by the Central Information Commission. In the petition, it is averred that large number of cases have been listed and heard out of turn by the Central Information Commission in an irregular manner, without any*

judicial order as well as in violation of the norms set by itself under the Right to Information Act, 2005. Petitioner, who appears in person, states that while some cases have been decided on the same date they have been filed even though they have not been registered, there are other cases which have not been listed for more than two years. He further states that 3500 appeals and complaints are awaiting registration with the Registry of the Central Information Commission. Issue notice. Mr. Neeraj Chaudhari, learned counsel accepts notice on behalf of respondent No.1. Issue notice to respondent No.2 through its Secretary, by all modes including dasti, returnable for 04th April, 2014."

16. **Ideally, Judges have to give reasons in writing as to what is the urgency to hear and decide such matter on priority keeping all other matters aside.** However, in the case of 'Ratan Tata' no such reason or logic of keeping this matter on 'Supplementary Board' and 'High on Board' is given or mentioned anywhere in any order.

In **State of Gujarat Vs. Bhagabhai Dhanabhai Barad MANU/ GJ/ 0398/ 2019** it is ruled as under;

"Reasoned Order – Any Order should be with intellectual reasons on each point – Any Judge or quasi judicial authority is bound to pass a reasoned order-

Reasons in support of decisions must be cogent, clear and succinct.

"adequate and intelligent reasons must be given for judicial decisions".

A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

The Apex Court further held that a litigant who approaches the Court with any grievance is

entitled to know the reasons for grant or rejection of his prayer.

It further held that insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, but it must also appear to be done, as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. Insistence on reason is a requirement for both judicial accountability and transparency.

If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process, then, it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, MANU/UKWA/0114/2001 : 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires "adequate and intelligent reasons must be given for judicial decisions".

The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or

speaking order. This has been uniformly applied by courts in India and abroad.

"the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. The orders of the court must reflect what weighed with the court of granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court."

Considering these decisions and also noticing that the combined order impugned, passed below Exh. Nos. 3 and 4 of the Criminal Appeal No. 4 of 2019 lacks completely reasons and is a cryptic, non-speaking order, therefore, cannot stand to leg nor can it be sustained. The application, which had been tendered on the part of respondent No. 1 even though contains requirements of respondent No. 1 and also has conveyed the details as would be required to be placed before the Court concerned, however, that which is obligatory on the part of the Court can have no other substitute and the appellate Court while dealing with such application, when has totally failed in its duty in giving reasons, this Court would be failing in its duty if it does not interfere and quash the said order.

It can be deduced that the State is before this Court seeking quashment of the order invoking

powers of this Court under Articles 226 and 227 so also under section 482 of the Code. It is a settled law that the High Court can exercise its powers of judicial review and such powers are conferred upon the High Court to check the abuse of process of law.

Reasons being the soul of any order, this opaqueness on account of absence of reasons, it not checked, it may give impetus to the arbitrariness and to trade on extraneous grounds. Our democracy based on rule of law, favours the reasoned order and decisions based on facts and hence, to upkeep the objectives of judicial accountability and transparency, this Court is required to interfere with the order impugned.

In the case of Kranti Associates Private Limited and another (supra), the Apex Court was dealing with a case where the question arose of necessity of giving reasons by a body or authority in support of its decision. Such aspect has come up before the Apex Court in several cases. Initially the Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time, the distinction between the two got blurred and thinned out and virtually reached the vanishing point. The Apex Court has always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a sphinx". The Court further held that only in cases of Court Martial, has it struck a different note wherein it held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial. Court martial asa proceeding is sui generis in nature and the Court of Court martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. The Constitution

also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution. The Apex Court held that in India judicial trend has always been to record reasons, even in administrative decision, since such decisions affect anyone prejudicially. It further held that insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, but it must also appear to be done, as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. Insistence on reason is a requirement for both judicial accountability and transparency. If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process, then, it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Stransbourg Jurisprudence.

29.1 Relevant paragraphs are reproduced for better appreciation of this aspect:-

"47. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-

stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, MANU/UKWA/0114/2001 : 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process"."

30. In yet another decision in the case of Maya Devi (supra), the Apex Court held that the most effective check against any arbitrary exercise of power is the well-recognised legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion. Following are the golden words amplifying the requirement of reasons:-

"15. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well recognized legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

16. *Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An appellate Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate Court may notwithstanding the absence of reasons in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate stage. Whether or not the appellate Court should remit the matter is discretionary with the appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate Court is of the view that it will prolong the litigation."*

31. In the case of Shukla and Brothers (supra), the Apex Court was considering an appeal under Article 136 of the Constitution of India, which was directed against the judgment passed by the High Court of Judicature for Rajasthan Bench at Jaipur in SB Sales Tax Revision Petition, where the High Court had summarily dismissed the revision petition by cryptic non-speaking order. The Apex Court held that the judgments of the Court should meet the requirement of recording of reasons with higher degree of satisfaction than administrative or the quasi-judicial orders. It further held that requirement of stating reasons for judicial orders necessarily does not mean a very detailed or lengthy order, but there should be some reasoning recorded for declining or granting relief. While dealing with the matter at admission stage even recording of concise reasons dealing with the merit of the contentions raised before the Court may suffice. In contrast, a detailed judgment while the matter is being disposed of after final hearing may be more appropriate. In both the events, it is imperative for the Court to record its own reasoning however concise it might be.

31.1 The Apex Court further held that a litigant who approaches the Court with any grievance is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to two kinds of infirmities, namely, that it may cause prejudice to the affected party and it would hamper the proper administration of justice. These principles, the Apex Court held that are not only applicable to administrative or executive actions, but they apply with equal force and, with the mightier degree of precision to judicial pronouncements. The order of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant.

"9. The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has

invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

10. *The Supreme Court in the case of S.N. Mukherjee v. Union of India [MANU/SC/0346/1990 : (1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This Court with approval stated:-*

"the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

11. *In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged*

to give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

12. *At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view."*

xxx xxx xxx

xxx xxx xxx

19. *In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in the absence of proper discussion. The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. The orders of the court must reflect what weighed with the court of granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court."*

32. Considering these decisions and also noticing that the combined order impugned, passed below Exh. Nos. 3 and 4 of the Criminal Appeal No. 4 of 2019 lacks completely reasons and is a cryptic, non-speaking order, therefore, cannot stand to leg nor can it be sustained. The application, which had been tendered on the part of respondent No. 1 even though contains requirements of respondent No. 1 and also has conveyed the details as would be required to be placed before the Court concerned, however, that which is obligatory on the part of the Court can have no other substitute and the appellate Court while dealing with such application, when has totally failed in its duty in giving reasons, this Court would be failing in its duty if it does not interfere and quash the said order.

17. In **A. V. Amarnath Vs. The Registrar ILR 1999 KAR 478** it is ruled as under;

"43-A. *The Full Bench of this Court in ILR 1998 KAR 3230 has considered the scope and the ambit of the powers of the Chief Justice with regards to posting of the cases before different Benches of the High Court. In the Light of provisions of the Karnataka High Court Act, 1961 and the Karnataka High Court Rules 1959, it held as follows:*

"It also goes without saying that while exercising powers of allocation/distribution of judicial work among the benches, it is open for the Chief Justice to devise his own method of classification of cases to ensure quick and effective disposal of cases and for effective administration of justice. Such classification can be based on any intelligible criteria like the nature of dispute involved, valuation of subject matter, age of case, the area from which the case is arising, as also, as to whether the case pertain to private or public litigation, whether the jurisdiction exercised is revisional, appellate, or original, whether the cases are to be instituted on regular petitions or on information received from known or unknown sources and the like, keeping in view the recent judgment of the supreme court in the case of State of Rajasthan (supra). But it needs to be stressed here that the exercising of the said power by the Chief Justice by deviating from the normal rule based on the regular practice of the Court (See AIR 1974 SC 2269, para6) or the statutory provisions must stand the test of reason and objectivity since such exercise will be always subject to mandates of Article 14 of the Constitution of India which absolutely prohibits the exercise of powers in a discriminatory, arbitrary or mala-fide manner and always entitle the aggrieved party to seek remedy against the same by approaching the appropriate forum ."

18. In **Prof. Ramesh Chandra Vs. State MANU/UP/0708/2007** it is ruled as under;

"14. Equality before law - *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*

In Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr. ([1975] 2 SCR 674), the Supreme Court observed that where Government activity involves public element, the "citizen has a

right to gain equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of "democratic form of Government demands equality and absence of arbitrariness and discrimination."

Every action of the executive Government must be informed by reasons and should be free from arbitrariness. That is the very essence of rule of law and its bare minimum requirement.

The decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness as denial of administrative fairness is Constitutional anathema.

The rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an Impression of bias, favoritism and nepotism.

Procedural fairness is an implied mandatory requirement to protect arbitrary action where Statute confers wide power coupled with wide discretion on the authority. If procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad.

Official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but; the wand of official arbitrariness can be waved in all directions indiscriminately.

Similarly, in S.G. Jaisinghani v. Union of India and Ors. ([1967] 65 ITR 34 (SC)), the Constitution Bench of the Apex Court observed as under:

"In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional

System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and h general such, decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is" antithesis to the decision taken in accordance with the rule of law."

Even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The factual position that emerges in the present case is that the report of the Commissioner, Jhansi formed the sole basis for taking action against the Vice-Chancellor.

ABUSE OF POWER - the expression 'abuse' to mean misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.

Abuse of power must be in respect of such an incident which would render the office holder

unworthy of holding the said post and it must entail adverse civil consequences, therefore, the word requires to be construed narrowly.

In M. Narayanan vs. State of Kerala [(1963) IILLJ 660 SC], the Constitution ''Bench of the Hon'ble Supreme Court interpreted the expression 'abuse' to mean as misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means."

19. In **Nand Lal Misra Vs. KanhaiyaLal Misra 1960 Cri.L.J. 1346** it is ruled as under;

"Judge - Double standard and biased conduct of Judge

In the courts of law, there cannot be a double-standard - one for the highly placed and another for the rest: the Judge has no concern with personalities who are parties to the case before him but only with its merits.

The record discloses that presumably the Judge was oppressed by the high status of the respondent, and instead of making a sincere attempt to ascertain the truth proceeded to adopt a procedure which is not warranted by the Code of Criminal Procedure, and to make an unjudicial approach to the case of the appellant.

Thereafter, the Judge considered the evidence. Indeed, he took upon himself the role of a counsel engaged by the respondent.

Though ordinarily, the Supreme Court would not interfere in such a case under Art. 136, considering the special circumstance of the case, the Supreme Court interfered and set aside the orders of Magistrate on ground of illegal procedure followed by him."

20. In **Nirankar Nath Wahi and others Vs. Fifth Addl. District Judge, Moradabad and others (1984) 3 SCC 531** it is ruled as under;

"BIAS – JUDGMENT PASSED BY JUDGE TO HELP INFLUENTIAL PERSON SENIOR ADVOCATE IS

VITIATED

Malafides of a judge - Landlords' appeal from proceeding for eviction of his tenant, a leading influential member of Bar - Refusal to grant short adjournment to landlord to engage senior counsel - Landlord's appeal dismissed by readymade judgment - No reasonable opportunity of hearing -Judgment of Addl. Dist Judge vitiated."

21. In **Indirect Tax Indirect Tax Practitioners Association Vs. R.K. Jain (2010) 8 SCC 281** it is read as under;

"It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy.Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves"

22. In **Prakash Chand (1998) 1 SCC 1** it is ruled as under;

Erosion of credibility of the Judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the Judiciary. It must be remembered that IT IS THE DUTY OF EVERY MEMBER OF THE LEGAL FRATERNITY TO ENSURE THAT THE IMAGE OF THE JUDICIARY IS NOT TARNISHED AND ITS RESPECTABILITY ERODED. … Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. … It needs no emphasis to say that all actions of a Judge must be Judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the Judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer from self-inflicted mortal wounds". We must remember

that the Constitution does not give unlimited powers to any one including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the Judiciary and every member of the Judiciary must ensure that this perception does not receive a setback consciously or unconsciously. Authenticity of the Judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices.

23. Justice Krishna Iyer in **Raghbir Singh vs State Of Haryana 1980 SCR (3) 277** said :

4. We conclude with the disconcerting note sounded by Abraham Lincoln :

"*If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem.* ***It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time."***

24. Unholy nexus between Justice Ranjit More and Adv. Amit Desai:-

Apart from above illegalities the glaring example of misuse of power by Justice Ranjit More to grant undue, undeserving favor to Adv. Amit Desai even against Supreme Court guideline is ex-facie proved from following case.

24.1. In the case between **Mr. Charu Sharma-vs-State , in Writ Petition No.671 of 2015** the Writ petition was filed by the petitioner was disposed of vide order dated 15th July 2019.

The reason was that the police submitted report before the Magistrate and protest petition of the petitioner was pending in the court for adjudication.

While disposing the petition, Justice Ranjit More, in order to help Adv. Amit Desai's client directed the Magistrate to decide the report after hearing accused also.

Para 4 of the order reads as under;

> *"It is also pertinent to note that even this Court permitted the Investigation Officer for continuation of the investigation in subject crime. When the Investigation Officer found that there is no substance in the said FIR, the C-Summary report was filed. If the respondent no. 2- complainant wants to object the same he can always file protest petition before Magistrate and the learned Magistrate shall decide the C-Summary Report after hearing both the sides including the petitioner."*

Which is not permissible in any case and more particularly in view of law laid down by Full Bench of Supreme Court In **Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel 2013 CRI. L. J. 144**, where it is ruled as under;

> *"If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process.*
>
> *We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."*

24.2. Full Bench of Hon'ble Supreme in the case of **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)** it is ruled as under;

> *"If any Judge acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. And he can be proceeded for passing unlawful*

order apart from the fact that the order is appealable. Action for violation of Conduct Rules is must for proper administration.

"28. Certainly, therefore, the officer who exercises judicial or quasi - judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii)if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii)if he has acted in a manner which is unbecoming of a government servant;

(iv)if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

"17. In this context reference may be made to the following observations of Lopes, L.J. in Pearce v. Foster.

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant." (emphasis supplied)"

24.3. In **R.R. Parekh Vs High Court of Gujarat 2016) 14 SCC 1** case it is ruled as under ;

"A judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed."

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the

conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct. "

24.4. In **Re C.S. Karnan's case (2017) 7 SCC** 1 it is ruled as under;

"A) High Court Judge disobeying Supreme Court direction and abusing process of court sentenced to six months imprisonment.

B) Even if petition is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation."

24.5. In **Prabha Sharma Vs Sunil Goyal (2017) 11 SCC 77** it is ruled as under;

> *"Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.*
>
> *BRIEF HISTORY (From : (MANU/RH/1195/2011))*
>
> *High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.*
>
> *Held, the judgment, has mainly stated the legal position, making it clear that the judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We do not find any observation in the impugned judgment which reflects on the integrity of the Appellant. Therefore, it is not necessary to expunge any of the observations in the impugned Judgment and to finalise the same expeditiously.*
>
> *Based on this Judgment, disciplinary proceedings have been initiated against the Appellant by the High Court. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision and to finalise the same expeditiously."*

25. # CHARGE # MALICE IN LAW

25.1. In the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray (AIR 2007 SC 976),** it is ruled as under;

*"**Malice in law**"**"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.** See S. R. Venkataraman v. Union of India, (1979) 2 SCC 491.*

25.2. Hon'ble Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors**.**(2010) 9 SCC 437**had ruled as under;

A. Legal Malice: The State is under obligation to act fairly without ill will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. *Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended."* ***It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law.***

26. On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in **"The Desired Qualities of a Good Judge",**have expressed thus:

"In all acts of judgment, the Judges should be transparent so that not only the lawyers but also the litigants can easily predict the outcome of a case. Transparency and predictability are

essential for the judiciary as an institution of public credibility."

In *"A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533"*, it was held that –**the quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary.**

Other qualities of a good judge have been described by the said authors as under:

(i) ***A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.***

(ii) ***Judgesmust be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny.***

(iii) Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.

(iv) ***Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law.***

(v) Every judge is a role model to the society to which he belongs. The same are embodied in all the religious scriptures. ***Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.***

(vi) The qualities of a good judge include patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.

(vii) ***Simon Rifkind laid down "The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it… No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime."***

(viii) There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.

(ix) ***The social service, which the Judge renders to the community, is the removal of a sense of injustice.***

(x) ***Judiciary handled by legal person is the custodian of life and property of the people at large,*** *and so the pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of "standard of care", "duty of care" and "reasonable person" as necessary with judicial functionaries.*

(xi) ***The American Bar Association once published an article called Good Trial Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.***

(xii) ***The Judges exercise the judicial power on trust. Normally when one sits in the seat of justice,he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, "we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed confidence in them." That is why Lord Denning said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased".***

(xiii) A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.

(xiv) Judge ought to be more learned than witty, more reverend than plausible and more advised than confident. Above all things, integrity is their portion and proper virtue. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.

(xv) ***It is the duty of the Judges to follow the law,as they cannot do anything whatever they like.*** *In the language of Benjamin N. Cardozo – "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-*

errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles".

(xvi) ***Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.***

(xvii) ***If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.***

(xviii) A Judge has to be not only impartial but seen to be impartial too.

(xix) Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".

(xx) ***With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the subordinate courts for the effective control and supervision of the High Courts Division. In this method, the judicial accountability of the Judges of the subordinate courts could be ensured.***

27. **Conspiracy**:- While confirming prosecution of a H.C. Judge Raman Lal - vs - State 2001 Cr. L. J. 800 it was observed about proof of conspiracy as under ;

"Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal ommission committed by them in furtherance of a common design – Once such a conspiracy is proved,

act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed. "

28. Role of Adv. Amit Desai :-

28.1. In **E.S. Reddi Vs. Chief Secretary, Government of A.P (1987) 3 SCC 258** it is ruled as under;

A) Duty of Advocates towards Court – Held, he has to act fairly and place all the truth even if it is against his client – he should not withhold the authority or documents which tells against his client – It is a mistake to suppose that he is a mouthpiece of his client to say that he wants – He must disregard with instruction of his client which conflicts with their duty to the Court.

B) Duty and responsibility of senior counsel - By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honor and privilege conferred on advocates of standing and experience by the chief justice and the Judges of this court. They thus become leading counsel and take precedence on all counsel not having that rank- A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors. (Para 10)

"(11) Lord Reid in Rondel v. Worsley has succinctly set out the conflicting nature of the duties a counsel

has to perform in his own inimitable manner as follows :

Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, , which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.

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

He (the counsel) has time and again to choose between his 265 duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. . . . When a barrister (or an advocate) puts his first duty to the court, he has nothing to fear. (words in brackets added).

In the words of Lord Dinning:

It is a mistake to suppose that he is the mouthpiece of his client to say what he wants :. . . . He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honor. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

28.2. In **Hindustan Organic Chemicals Ltd. Vs. ICI India**

Ltd. 2017 SCC Online Bom 74 it is read as under;

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

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

The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good law. *The performance of that duty may be more onerous with the proliferation of online research tools, but that is a burden that lawyers are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable**."***

28.3. In **Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak and Ors. 2016 SCC OnLine Bom 9859** it is ruled as under ;

"DUTY OF ADVOCATE"

A] The counsel in question was A. S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:

While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style he did the wonderful act of balancing of his duty to his client and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client. As Lord Denning MR in Randel v W. (1996)

3 All E. R. 657 observed: "Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

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

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

B] Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With the proliferation of online databases and access to past orders on the High Court website, there is no excuse at all for not cross-checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar. Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported. The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.

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

the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled."

28.4. In **Lal Bahadur Gautam Vs. State of UP 2019 SCC OnLine SC 687** it is ruled as udner;

10. *Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier,* ***reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment****.*

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

a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.

12. As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1: "34.…relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client….."

13. The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed in D.P. Chadha vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221: "22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subjectmatter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court,

a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

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

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

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

14. That a higher responsibility goes upon a lawyer representing an institution was noticed in State of Rajasthan and another vs. Surendra Mohnot and others, j(2014) 14 SCC 77: "33. As far as the counsel for the State is concerned, it can be decidedly stated that he has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say "things fall apart". He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the

legal profession in his bones.

We hope, that there would be response towards duty; the hallowed and honoured duty."

28.5. In **State Of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19** it is ruled as under ;

"THE ADVOCATE RELYING ON OVERRULED JUDGMENT IS A GUILTY OF PROFESSIONAL MISCONDUCT.

" The conduct of an Advocate by citing a overruled judgment is falling standard of professional.

Citing case which was overruled by Supreme Court - is Falling standard of professional conduct - Deprecated .

It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon before the High Court has been overruled by this Court and it was duty of the learned counsel not to cite an overruled judgment .

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

Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment - We can only express our anguish at the falling standards of professional conducts."

28.6. In **Ujwala J. Patil Vs. Slum Rehabilitation Authority 2016 SCC Online Bom 5259** it is ruled as under ;

"ADVOCATE - STANDARD OF MORAL, ETHICAL AND PROFESSIONAL CONDUCT - has a duty to the Court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him.

Although, we do not propose to say anything with regard to the actions of the learned counsel appearing for the petitioner, we must reject the submissions of the learned counsel that it was not their duty to disclose the history and the fate of previous litigations upon the substantially same issue andthat they are bound only by the instructions of the petitioner, who has engaged their services. *In our opinion, the observation made by Lord Denning in* ***Rondel vs. Worsley*** *(1966) 3 All E.R. 657 (CA) affords a complete answer to such contention. The Supreme Court in the case of* ***Himachal Pradesh Scheduled Tribes Employees Federation & Anr. vs. Himachal Pradesh Samanaya Varg Karamchari Kalayan Mahasangh & Ors,*** *has expressly approved the exposition of very high standard of moral, ethical and professional conduct expected to be maintained by members of the legal profession by quoting the*

observation in ***Rondel vs. Worsley****. In paragraphs 31 and 32, the Hon'ble Supreme Court has observed thus:*

"31. When a statement is made before this Court it is, as a matter of course, assumed that it is made sincerely and is not an effort to overreach the Court. Numerous matters even involving momentous questions of law are very often disposed of by this Court on the basis of the statement made by the learned counsel for the parties. The statement is accepted as it is assumed without doubt, to be honest, sincere, truthful, solemn and in the interest of justice. The statement by the counsel is not expected to be flippant, mischievous, misleading and certainly not false. This confidence in the statements made by the learned counsel is founded on the assumption that the counsel is aware that he is an officer of the Court.

32. Here, we would like to allude to the words of Lord Denning, in ***Rondel v. Worsley*** *about the conduct expected of an advocate:*

"... As an advocate he is a minister of justice equally with the Judge.

*... I say 'all he honourably can' because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him****.***

He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not

a code of law. It is the code of honour." (QB p. 502) In our opinion, the aforesaid dicta of Lord Denning is an apt exposition of the very high standard of moral, ethical and professional conduct expected to be maintained by the members of legal profession. We expect no less of an advocate/counsel in this country."

*[**Emphasis supplied**]"*

29. Discretion of a Judge while granting or not granting the circulation:-

29.1. In **Medical Council Vs. G.C.R.G Memorial Trust (2018) 12 SCC 564** ruled as under;

"A Judge cannot think in terms of "what pleases the Prince has the force of law". A Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles the Respondent-institution directed to pay Rs. 10,00,000/- to each of the students. costs of Rs. 25 lacs to be deposited before Court within eight weeks. A Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracize perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. (13)

A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics. (13)

The judicial propriety requires judicial discipline. A Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law."

29.2. In **Prof. RameshChandra Vs State MANU/UP/0708/2007** it is ruled as under;

> ***It signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste - Discretion cannot be arbitrary - But must be result of judicial thinking - Word in itself implies vigilant circumspection and care.***
>
> ***In a case where a result of a decision taken by the Government the other party is likely to be adversely affected, the Government has to exercise its powers bona fide and not arbitrarily. The discretion of the Government cannot be absolute and in justiciable vide Amarnath Ashram Trust Society v. Governor of U.P. (AIR 1998 SC 477).***
>
> ***Each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bona fide and made in colorable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings. Vide Hansraj H. Jain v. State of Maharashtra and Ors [(1993) 3 SCC 634].***
>
> ***In fact, the order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. In State of Punjab and Anr. v. Gurdial Singh and Ors. [(1980) 1 SCR 1071] the Hon'ble Apex Court has dealt with the issue of legal malice which is, just different from the concept of personal bias. The Court observed as under:***
>
> ***"When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.... If considerations,***

foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the...official act."

In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. [(1991) I LLJ 395 SC] and Dwarka Dass and Ors. v. State of Haryana (2003 CriLJ 414) the Supreme Court observed that "discretion when conferred upon the executive authorities, must be confined within definite limits. The rule of law from this point of view means that decision should be made by the application by known-principles and rules and in general, such decision should be predictable and the citizen should know where he is.

The scope of discretionary power of an authority has been dealt with by the Supreme Court in Bangalore Medical Trust v. B.S. Muddappa and Ors [(1991) 3 SCR 102]and it has been observed:

"Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly."

In Suman Gupta and Ors. v. State of J. & K. and Ors. ([1983] 3 SCR 985), the Supreme Court also considered the scope of discretionary powers and observed:

"We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.'

In Union of India v. Kuldeep Singh (AIR 2004 SC 827), the Supreme Court again observed:

"When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary.) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or

power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law."

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, the discernment which enables a person to judge critically of what is correct and proper united with caution; nice soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow A: and substance, between equity and colourable 1 glosses and pretences, and not to do according to the will and private affections of persons. When It is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (per Lord Halsbury, L.C., in Sharp v. Wakefield). Also see S.G. Jaisinghani v. Union of India { [1967] 65 ITR 34 (SC) }.

The word "discretion" standing single and unsupported by circumstances signifies exercise own judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but

must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility.

Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors (AIR 2001 SC 24). while examining the legality of an order of dismissal that had been passed against the General Manager (Tourism) by the Managing, Director. In this context, while considering the doctrine of principles or natural justice, the Supreme Court observed:

"It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the, same is dependent upon the facts and circumstances of each individual case.... It is on this context, the observations of this Court in the case of Sayeedur Rehman v. The State of Bihar ([1973] 2 SCR 1043) seems to be rather apposite."

The omission of express requirement of fair hearing in the rules or other source of power is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

29.3. In **Anurag Kumar Singh Vs State of Uttarakhand AIR 2016 SC 4542** it is ruled as under;

"Discretion: It assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the judge is required to select that option and has no freedom of choice. No discretion is

involved in the choice between a lawful act and an unlawful act. The judge must choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several."

29.4. In **State Vs. Bhagabhai Barad, MANU/GJ/0398/2019** it is ruled as under;

"Reasoned Order-Any Judge or quasi judicial authority is bound to pass a reasoned order---

Reasons in support of decisions must be cogent, clear and succinct.

"adequate and intelligent reasons must be given for judicial decisions".

A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

The Apex Court further held that a litigant who approaches the Court with any grievance is entitled to know the reasons for grant or rejection of his prayer.

It further held that insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, but it must also appear to be done, as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. Insistence on reason is a requirement for both judicial accountability and transparency.

If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process, then, it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part

of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, MANU/UKWA/0114/2001 : 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires "adequate and intelligent reasons must be given for judicial decisions".

The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

"the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. The orders of the court must reflect what weighed with the court of granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court."

Considering these decisions and also noticing that the combined order impugned, passed below Exh. Nos. 3 and 4 of the Criminal Appeal No. 4 of 2019 lacks completely reasons and is a cryptic, non-speaking order, therefore, cannot stand to leg nor can it be sustained. The application, which had been tendered on the part of respondent No. 1 even though contains

requirements of respondent No. 1 and also has conveyed the details as would be required to be placed before the Court concerned, however, that which is obligatory on the part of the Court can have no other substitute and the appellate Court while dealing with such application, when has totally failed in its duty in giving reasons, this Court would be failing in its duty if it does not interfere and quash the said order.

It can be deduced that the State is before this Court seeking quashment of the order invoking powers of this Court under Articles 226 and 227 so also under section 482 of the Code. It is a settled law that the High Court can exercise its powers of judicial review and such powers are conferred upon the High Court to check the abuse of process of law.

Reasons being the soul of any order, this opaqueness on account of absence of reasons, it not checked, it may give impetus to the arbitrariness and to trade on extraneous grounds. Our democracy based on rule of law, favours the reasoned order and decisions based on facts and hence, to upkeep the objectives of judicial accountability and transparency, this Court is required to interfere with the order impugned.

Resultantly, the petition is allowed. The order of the appellate Court dated 07.03.2019 passed below Exhs. 3 and 4 in Criminal Appeal No. 4 of 2019 is quashed and set aside. Considering the fact that this order would leave a void."

But in none of the cases of mentioning reasoned order is passed by Justice Ranjit More

30. CHARGE# :

Undue haste in some cases by Justice Ranjit More proves his malafides and needs C.B.I. investigation :-

Hon'ble Supreme Court in **Noida Entrepreneurs Association Vs. Noida (2011) 6 SCC 508** ruled as under;

"*Undue haste by public Servant in absence of any urgency – Inference of malafide can be drawn against*

the said public as servant. Thereafter it is a matter of investigation to find out whether there was any ulterior motive."

In **Prof. RameshChandra Vs State MANU/UP/0708/2007** it is ruled as under;

"Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law for the reasons that in such a fact situation mala fide can be presumed. Vide Dr. S.P. Kapoor v. State of Himachal Pradesh (AIR 1981 SC 281) ; Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain and Ors. [(1995) 1 SCC 638] and Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Ors (AIR 2004 SC 1159)."

31. In **National Human Rights Commission Vs. State of Gujarat and Ors. MANU/SC/0713/2009** it is ruled as under;

In ***Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Ors. MANU/SC/1344/ 2006: 2006CriLJ1694*** *it was observed as under:*

If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: `The Judge was biased.

The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife should be above suspicion.

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact

in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an over hasty stage- managed, tailored and partisan trial.

The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v. Baker). Increasingly, people are believing as observed by Salmon

quoted by Diogenes Laertius in Lives of the Philosophers, "Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away." Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

"Too great a price ... for truth".

Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process:

It is the merit of the common law that it decides the case first and determines the principles afterwards.... It is only after a series of determination on the same subject-matter, that it becomes necessary to `reconcile the cases', as it is called, that is, by a true induction to state the principle which has until then been

obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well-settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step.

The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new changing circumstances, and exigencies of the situation--peculiar at times and related to the nature of crime, persons involved--directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.

This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general.The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been

viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.

32. Judges cannot be law unto themselves expecting others to obey the law**. [Vide :Nandini Sathpathy Vs. P.L.Dani & Others (1978) 2 SCC 424]**

34.1. Full Bench of Hon'ble Supreme Court in **Nidhi Keim & Ors. Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1** had

ruled that Supreme Court cannot pass any order in disregard to statutory provisions and against the law laid down by Higher Benches of the Supreme Court

This was the answer of Chief Justice J.S. Khehar to Adv. Fali Nariman who asked the Court to pass an order against the provisions of law. It is ruled as under;

> "***Article 142, 141 of the Constitution - Supreme Court cannot disregard statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances.***
>
> ***We are bound, by the declaration of the Constitution Bench , in Supreme Court Bar Association v. Union of India (1998) 4 SCC 409. It is, not possible for us to ignore the decision of a Constitution Bench of this Court- In terms of the above judgment, with which we express our unequivocal concurrence, it is not possible to accept, that the words "complete justice" used in Article 142 of the Constitution, would include the power, to disregard even statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances. - In our considered view, the hypothesis-that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any Court/Judge, however high or noble. Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally "trusted", as much as the "trust" which is reposed in a Court. Any legislation, which does not satisfy the above parameters, would per se be arbitrary, and would be open to being declared as constitutionally invalid. In such a situation, the legislation itself would be struck down.***
>
> ***The argument advanced by Mr. Nariman, that this Court can pass order against statute is indeed heartening and reassuring. But if such preposition is accepted then, Mr. Nariman, and a number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. And thereby, to persuade a Court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law.It is this, which every Court, should consciously keep out of its reach. At the cost of repetition, we would reiterate,***

that such a situation, as is contemplated by Mr. Nariman, does not seem to be possible."

33. Request: It is therefore humbly requested for:-

1. Action for serious violation of Article 14 of the Constitution and discrimination of common, poor citizen and majority of advocates by Justice Ranjit More by not granting circulation and not hearing their serious cases related with 'their life and liberty' and 'bread and butter', matters of senior citizens saying there is no urgency and the same Judge More granting urgent hearing, 'High on Board' hearing to Rich people in frivolous and non urgent cases like issue process against Ratan Tata, E-Cigarettes etc and granting final reliefs to them.

2. Taking immediate measure to protect dignity of Hon'ble High Court from arbitrary exercise and misuse of discretion by some Judges like Ranjit More, and Ors and taking action against them for serious violation of Article 14 of the Constitution and breach of the oath taken as a High Court Judge.

3. Taking suo-motu action under contempt of Courts Act as ruled in Re: C.S. Karnan (2017) 2 SCC 756 against Justice Ranjit More and Ors. for wilful disregard and defiance of Supreme Court judgment in Manhari bai's case 2013 Cr. L. J. 144 for granting undeserving relief to his close Advocate Amit Desai in Charu Sharma's case in Criminal Writ Petition No. 671 of 2015 vide order dated 15th July 2019.

4. Direction to C. B. I. to investigate the misuse of power by Justice Ranjit More as per law laid down in Noida Entrepreneurs Association (2011) 6 SCC 508.

Date : 21.08.2019
Place: Mumbai

Adv. Vijay Kurle
President – Indian Bar Association
(Maharashtra and Goa)